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APR 19 2017

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEE COUNTY
COURT OF COMMON PLEAS

S. Bryan Doby, Master-In-Equity

Case No. 2009-31-0131
APPELLANT CASE NO. 2016-002261

MAXIE LEE THOMAS, JR. AKA
MAXIE LEE THOMAS, DECEASED, and all
Other heirs at law and/or distributes of Maxie
Lee Thomas, Jr., a/k/a Maxie Lee Thomas, deceased
His heirs, personal representatives, executors,
Administrators, successors and assigns, and
Any spouses if any he has, and all persons
Entitled to claim under or through him or any
Right, title, estate, interest in or lien upon the
Real estate described in the Complaint
Herein; also any persons who may be in the
Military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
Under a disability being a class designated as
Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas.

Appellants,

vs.

United States of America, Acting
through the Farmers Home
Administration, United States
Department of Agriculture

Respondents.

**MOTION FOR LEAVE OF COURT AND TO FILE A LATE INITIAL BRIEF AND
DESIGNATION OF MATTER**

Pursuant to Rule 240, the Appellant respectfully requests that her case in held in abeyance and she is allowed Leave of Court to litigated a Motion 60 because of the following.

1. Mr. Taylor peace never made an Appearance in this case. The Substitute of counsel referenced Mr. Donald Tyler, Jr. Mr. Taylor Peace has litigated this case for years without following court procedures. **EXHIBIT 1**

2. The Appellant later discovered that the Order for Substitute of Counsel has evidence of being a forgery and filed a Motion 60(b)(3). The signature on the Order does not match other signatures of the Honorable George James, Jr. **EXHIBIT 2** This constitutes fraud on the court. Mr. Taylor Peace when further to execute another document with The Honorable George James, Jr.'s signature. **EXHIBIT 3** Based on the results from a Forensic Handwriting Specialist that the Plaintiff retained, there is evidence of forgery on these documents. Forgery under South Carolina Code of Law also states: **SECTION 16-13-10. Forgery.**
 - (A) It is unlawful for a person to:
 - (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or willfully act or assist in the false

making, forging, or counterfeiting of any writing or instrument of writing;

(2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing;

(3) falsely make, forge, counterfeit, alter, change, deface, or erase; or cause or procure to be falsely made, forged, counterfeited, altered, changed, defaced, or erased any record or plat of land; or

(4) willingly act or assist in any of the premises, with an intention to defraud any person.

(B) A person who violates the provisions of this section is guilty of a:

(1) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years, or both, if the amount of the forgery is ten thousand dollars or more;

(2) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than five years, or both, if the amount of the forgery is less than ten thousand dollars.

Forgery also is a violation of the Professional Code of Conduct according to the South Carolina Supreme Court:

(1) DR 1-102(A)(1) (prohibits a lawyer from violating a Disciplinary Rule); (2) DR 1-102(A)(3) (prohibits a lawyer from engaging in illegal conduct involving moral turpitude); (3) DR 1-102(A)(4) (prohibits a lawyer from engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); (4) DR 1-102(A)(5) (prohibits a lawyer from engaging in conduct that is prejudicial to the administration of justice); (5) DR 1-102(A)(6) (prohibits a lawyer from engaging

in conduct that adversely reflects on his fitness to practice law); (6) DR 7-102(A)(5) (prohibits a lawyer, in the course of his representation of a client, from knowingly making a false statement of law or fact); and (7) DR 7-102(A)(8) (prohibits a lawyer, in the course of his representation of a client, from knowingly engaging in other illegal conduct or conduct contrary to a Disciplinary Rule).

Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard. Relief is granted for extrinsic fraud on the theory that because the fraud prevented a party from fully exhibiting and trying his/her case. Rule 60(b)(3) of the South Carolina Rules of Civil Procedure allows a party to make a motion within one year (or as soon as reasonable) to set aside a judgment based on fraud. Whether a court will grant a new trial depends on whether the fraud is "intrinsic" or "extrinsic." South Carolina's courts may set aside a judgment if the fraud is considered extrinsic but will not void the judgment if the fraud is intrinsic. **Intrinsic fraud** is defined as "fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. Allegations that a party failed to disclose documents also generally amount to intrinsic, rather than extrinsic, fraud." Stated another way, intrinsic fraud is fraud that was presented to the court and considered at trial. Unfortunately, as unfair as it may seem, there is little to be done under these circumstances. **Essentially, the court does not grant relief for intrinsic fraud based on a**

theory that this type of deception should be discovered during the lawsuit itself and that if the court allows relief for intrinsic fraud, then the stability of all judgments may be undermined.

Fraud upon the court is "fraud which . . . subvert[s] the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." Evans v. Gunter, S.E.2d 44, 46 (Ct. App. 1988) (emphasis added) (quoting Lightsey & Flanagan, supra,). It has also been defined as "fraud that does, or at least attempts to, defile the court itself" Moore's Federal Practice § 60.21[4][a] (3d. ed. 2000). Historically, after the period to claim relief under Rule 60(b)(1) through (3), SCRCF, has expired, courts have required a showing of extrinsic fraud to vacate a judgment. See Hagy v. Pruitt, 339 S.C. S.E.2d 714, 717 (2000); Evans, 294 S.C. at 529, 366 S.E.2d at 46.

South Carolina law maintains a distinction between intrinsic and extrinsic fraud. Mr. G v. Mrs. G, 320 S.C. S.E.2d (Ct. App. 1995) (Hearn, J. dissenting). "Intrinsic fraud refers to fraud presented and considered in the judgment assailed, including perjury and forged documents presented at trial." Evans, 294 S.C. at 529, 366 S.E.2d at 46. It is fraud which "goes to the merits of the prior proceeding which the moving party should have guarded against at the time." City of San Francisco v. Cartagena, 41 Cal. (Cal. Ct. App. 1995), quoted with approval in Mr. G, S.E.2d at 103. By contrast, extrinsic fraud "refers to frauds collateral or external to the

matter tried such as bribery or other misleading acts which prevent the movant from presenting all of his case or deprives one of the opportunity to be heard." Lightsey & Flanagan supra, at 486; see also Hilton Head Ctr., Inc. v. Pub. Serv. Comm'n, S.E.2d 176, 177 (1987) ("Extrinsic fraud is fraud that induces a person not to present a case or deprives a person of the opportunity to be heard."). The South Carolina Supreme Court states: Our Court has not previously defined fraud upon the court in connection with setting aside a final judgment. in Evans v. Gunter, S.C. S.E.2d (Ct. App. 1988), the Court of Appeals noted one commentator described "fraud upon the court" as "that species of fraud which does, or attempts to, subvert the integrity of the Court itself, or is a fraud perpetrated by officers of the court so that the judicial machinery cannot perform in the usual manner its impartial task of adjudging cases that are presented for adjudication." (citing H. Lightsey, J. Flanagan, South Carolina Civil Procedure, (2nd ed. 1985).

Other jurisdictions describe fraud upon the court as follows:

Generally speaking, only the most egregious misconduct, such as bribery of a judge or members of a jury, or the fabrication of evidence by a party in which an attorney is implicated will constitute fraud on the court. Less egregious misconduct, such as nondisclosure to the court of facts allegedly pertinent to the matter before it, will not ordinarily rise to the level of fraud on the court. Rozier v. Ford Motor Co., F.2d 1332, 1338 (5th Cir. 1978) citing United States v. Int'l Telephone & Telegraph Corp., F.Supp. 22, 29 (D. Conn. 1972) (internal

citations omitted). Fraud upon the court is a "serious allegation . . . involving 'corruption of the judicial process itself.'" Cleveland Demolition Co., Inc. v. Azcon Scrap Corp., supra F.2d at quoting In re Whitney-Forbes, F.2d (7th Cir. 1985).. . . '[F]raud on the court,' whatever else it embodies, requires a showing that one has acted with an intent to deceive or defraud the court. A proper balance between the interests of finality on the one hand and allowing relief due to inequitable conduct on the other makes it essential that there be a showing of conscious wrongdoing - - what can properly be characterized as a deliberate scheme to defraud - - before relief from a final judgment is appropriate. . . . Thus, when there is no intent to deceive, the fact that misrepresentations were made to a court is not of itself sufficient basis for setting aside a judgment for 'fraud on the court.' United States v. Buck, 281 F.3d 1136, 1342 (10th Cir. 2002) quoting Robinson v. Audi Aktiengesellschaft, 56 F.3d 1259, 1267 (10th Cir. 1995).

WHEREFORE, Appellant respectfully requests that she be allowed to pursue this Motion 60 and the pending case in held in abeyance.


Laura Toney, Pro Se

P.O. Box 722

Bishopville, SC 29010

(803) 459-6006

Exhibit 1

STATE OF SOUTH CAROLINA
COUNTY OF LEE

IN THE COURT OF COMMON PLEAS
 FAMILY COURT

United States of America, et al.
 Plaintiff,

CASE NO.: 2009-CP-31-0131

v.
Maxie Lee Thomas, et al.,
 Defendant.

**ORDER AND MOTION INFORMATION FORM
AND COVER SHEET**

COPIED

check box above indicating submitting party)

<u>name, S.C. Bar no. and address of plaintiff's attorney</u> Donald W. Tyler, Jr., Esquire Tyler, Cassell, Jackson, Peace & Silver, L.L.P. P.O. Box 11656 Columbia, SC 29211-1656 telephone: 803-779-4997 fax: 803-733-2712 e-mail: djtyler@tcjps.com other:	<u>name, S.C. Bar no. and address of defendant's attorney</u> S.C. Bar No. Unknown to Plaintiff telephone: fax: e-mail: other:
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
- FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
- PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

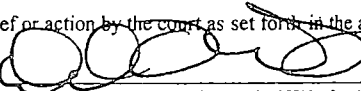
SECTION I: Hearing Information

Nature of Motion: _____
Estimated Time Needed: Thirty (30) minutes Court Reporter Needed: YES / NO

SECTION II: Motion Type

- Written motion attached
- Form Motion -

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for Plaintiff/Defendant

July 27, 2009
Date submitted

SECTION III: Motion Fee

- PAID - AMOUNT: \$25.00
- EXEMPT:
 - Rule to Show Cause in Child or Spousal Support
 - Domestic Abuse or Abuse and Neglect
 - Indigent Status State Agency v. Indigent Party
 - Sexually Violent Predator Act Post-Conviction Relief
 - Motion for Stay in Bankruptcy
 - Motion for Publication Motion for Execution (Rule 69, SCRPC)
 - Proposed order submitted at request of the court; or
reduced to writing from motion made in open court per judge's instructions
 - Name of Court Reporter: _____
 - Other:

JUDGE'S SECTION

- Motion Fee to be paid upon filing of the attached order
- Other:

JUDGE
CODE: _____ Date: _____

CLERK'S VERIFICATION

DATE FILED

Collected by: _____
(print name)

- MOTION FEE COLLECTED: _____
- CONTESTED - AMOUNT DUE: _____

SCCA/233

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEE) 2009-CP-31-131

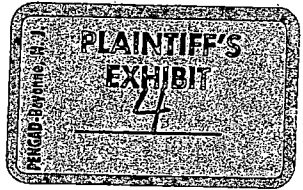
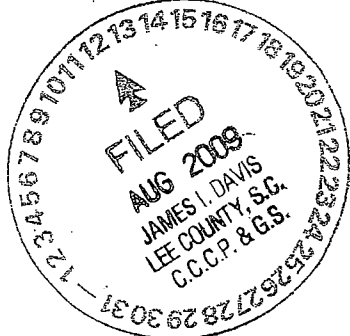
United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture,)
)
Plaintiff,)

vs.)

CONSENT ORDER
SUBSTITUTING COUNSEL

Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased and all other)
heirs at law and/or distributees of)
Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased, his heirs,)
personal representatives,)
representatives, executors,)
administrators, successors and)
assigns, and any spouses if any he)
has, and all persons entitled to)
claim under or through him or any)
of them; all persons unknown)
claiming any right, title, estate,)
interest in or lien upon the real)
estate described in the Complaint)
herein; also, any unknown adults)
being as a class designated as)
John Doe and any unknown infants or)
persons being under disability)
being as a class designated as)
Richard Roe, Laura Ann Toney and)
Brittany Nicole Thomas)

Defendants.)



Pursuant to Rule 11(b), SCRPC, Donald W. Tyler, Jr., with the consent of Gary P. Rish, Esquire of the law firm of Gary P. Rish, PC, current counsel for Plaintiff, moves before this Court for an Order substituting Donald W. Tyler, Jr., for Gary P. Rish

and his firm as counsel for the Plaintiff in this matter.

The Court hereby grants this Motion and hereby substitutes Donald W. Tyler, Jr., as counsel for Plaintiff.

IT IS SO ORDERED this 12 day of August, 2009 at Spartanburg, South Carolina.

St. George C. James, Jr.
Presiding Judge

I SO MOVE:

[Signature]
Donald W. Tyler, Jr., Esquire
P. O. Box 11656
Columbia, SC 29202-1656

I CONSENT:

[Signature]
Gary P. Rish, Esquire
P. O. Box 508
Irmo, SC 29063

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF LEE) 2009-CP-31-131

United States of America, acting)
through the Farmers Home)
Administration, United States)
Department of Agriculture,)

Plaintiff,)

vs.)

CONSENT ORDER
SUBSTITUTING COUNSEL

Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased and all other)
heirs at law and/or distributees of)
Maxie Lee Thomas, Jr., aka Maxie)
Lee Thomas, deceased, his heirs,)
personal representatives,)
representatives, executors,)
administrators, successors and)
assigns, and any spouses if any he)
has, and all persons entitled to)
claim under or through him or any)
of them; all persons unknown)
claiming any right, title, estate,)
interest in or lien upon the real)
estate described in the Complaint)
herein; also, any unknown adults)
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persons being under disability)
being as a class designated as)
Richard Roe, Laura Ann Toney and)
Brittany Nicole Thomas)

Defendants.)

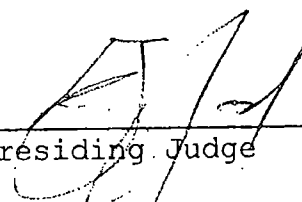


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and his firm as counsel for the Plaintiff in this matter.


The Court hereby grants this Motion and hereby substitutes
Donald W. Tyler, Jr., as counsel for Plaintiff.

IT IS SO ORDERED this 12 day of August, 2009 at
Sumter, South Carolina.



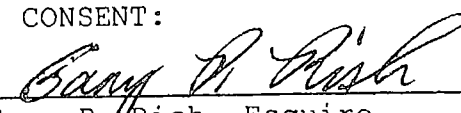
Presiding Judge

I SO MOVE:

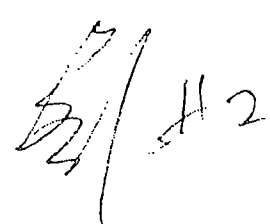


Donald W. Tyler, Jr., Esquire
P. O. Box 11656
Columbia, SC 29202-1656

I CONSENT:



Gary P. Rish, Esquire
P. O. Box 508
Irmo, SC 29063


b2/ #2

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEE COUNTY
COURT OF COMMON PLEAS

S. Bryan Doby, Master-In-Equity

Case No. 2009-31-0131

MAXIE LEE THOMAS, JR. AKA
MAXIE LEE THOMAS, DECEASED, and all
Other heirs at law and/or distributes of Maxie
Lee Thomas, Jr., a/k/a Maxie Lee Thomas, deceased
His heirs, personal representatives, executors,
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Military service of the United States of
America, being a class designated as John
Doe; and any unknown minors or persons
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Richard Roe, Laura Ann Toney, and
Brittany Nicole Thomas.

Appellants,

vs.

United States of America, Acting
through the Farmers Home
Administration, United States
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Respondents.

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CERTIFICATE OF MAILING

The Appellant certifies that she mailed a copy of the MOTION FOR LEAVE OF COURT AND TO FILE A LATE INITIAL BRIEF AND DESIGNATION OF MATTER via United States Postal Mail on April 17, 2017, addressed as follows:

Harrell, Martin & Peace, P.a.

135 Columbia Avenue

P.O. Box 1000

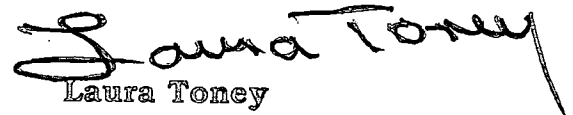
Columbia, SC 29036

AND

Tyler, Cassell, Jackson, Peace & Silver L.L.P.

P.O. Box 11656

Columbia, SC 29211-1656



Laura Toney

P.O. Box 722

Bishopville, SC

29010

April 17, 2017

P.O. Box 722
Bishopville, SC 29010

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SC Court of Appeals

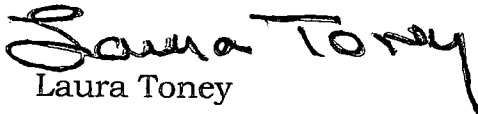
South Carolina Court of Appeals
Clerk of Court
P.O. Box 11629
Columbia, SC 29010

Dear Sir or Madam:

Please see enclosed (1) original copy of the Motion and (6) copies for filing. Also enclosed is the \$25.00 filing fee.

Thank you for your attention in this matter.

Sincerely,

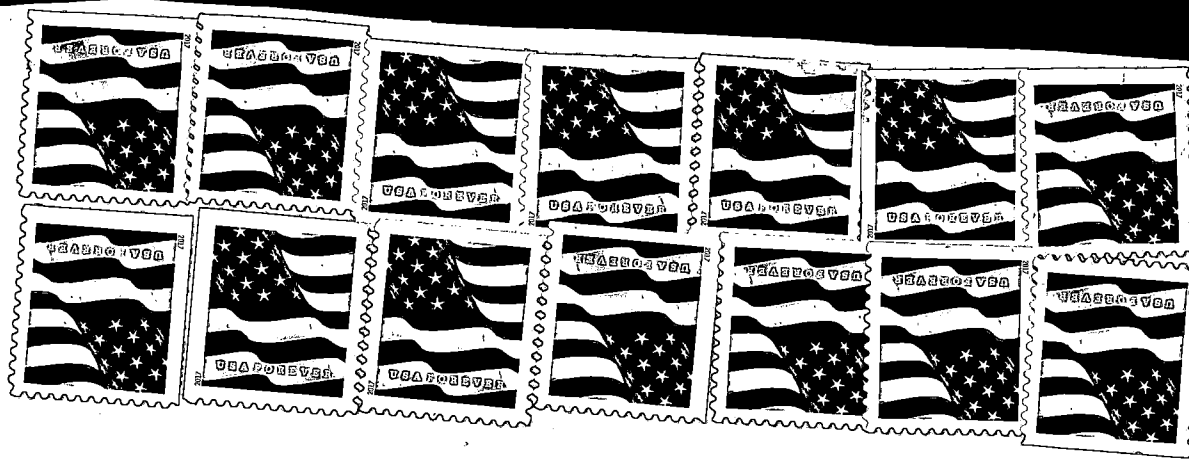

Laura Toney

CC: Harrell, Martin & Peace, P.a.
135 Columbia Avenue
P.O. Box 1000
Columbia, SC 29036

AND

Tyler, Cassell, Jackson, Peace & Silver L.L.P.
P.O. Box 11656
Columbia, SC 29211-1656

Common 1749



P.O. Box 722
Bishopville, SC 29010

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South Carolina Court of Appeals SC Court of Appeals
P.O. 11629
Columbia, SC 29211