

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM ANDERSON COUNTY
R. Scott Sprouse Judge

Appeal No. 2016-CP-04-00560

Civil Case No. 2015CV0410103735

George C. McCullough, Pro Se

Appellant

v.

Author Solutions

Respondent

RECEIVED

JUN 29 2017

SC Court of Appeals

APPELLANT'S INFORMAL PETITION FOR
REHEARING OF DECISION

George C. McCullough
1106 Erskine Rd
Anderson, South Carolina 29621
Pro Se, Litigant
(864) 642-1867

I. Rehearing

A. Preliminary Statement.

The Appellant in the above and entitled civil case number, pursuant South Carolina Appeals Court Rule 221 and South Carolina Code of Laws §18-7-170 petitions the court for a rehearing. Anderson County's Court of Common Pleas and General Sessions' Judge R. Scott Sprouse's order dated May 5, 2017 dismissed the cause of action against the Respondent Author Solutions, LLC upholding the Anderson County Summary Court's Judge Wynee D Eubank's dismissal of the original claim for lack of jurisdiction. This request for Rehearing was mistakenly filed May 17, 2017 with the Circuit Court, thereby delaying appropriate filing with the Court of Appeals. Apln't em'l ltr; Pr'f Srvc Cert

II. Issues

A. Overlook of facts:

1. South Carolina Rules of the Magistrate Court (SCRMC).

1 In her order reply to the Court of Common Pleas and General Sessions, Judge Eubanks
2 gave three particular reasons for her action to dismiss. Among them to first was Rule 4
3 (a) of SCRMC that states:

4
5 *RULE 4. FILING CIVIL ACTION; ACTION AGAINST*
6 *CORPORATION; LONG ARM STATUTE*

7 *(a) A civil action may be filed in any magistrates court in the county in which at*
8 *least one defendant resides or where the most substantial part of the cause of*
9 *action arose, except that civil actions against ***domestic corporations*** may*
10 *be filed in the county where such corporation shall have its principal place of*
11 *business.*

12 The magistrate, Judge Eubanks, selected to cite only a part of that rule thereby invocation
13 of Rule 4 (a), as was discussed in the Respondent's/Defendant's December 8, 2015
14 Jurisdictional Challenge to the Summary Court. Rspnd't Jrsdc't Chln'g at p. 2; Apln't
15 Frml Brf pp. 6 (ln 5) thru 8 (ln 27) Sublet (a) of Rule 4 is with regards to litigation
16 between individuals or corporations within the State of South Carolina (; i.e. domestic).
17 The Long Arm or Door Closing Statute became a legal construct for courts to determine
18 suitability with regards to reasonable convenience of venues, diversity of forums, and
19 diversity of States' laws within the United States, or foreign States abroad. Remainder of
20 the rule governs disputes arising outside of the State (; i.e. foreign), and it is as follows:

21 *(b) A civil action may be filed in any magistrates court in the county in which*
22 *the plaintiff resides or where the cause of action arose ***when the defendant*
23 *does not reside in this State*** and jurisdiction is based upon S.C. Code Ann. §*
24 *36-2-803. [emphasis added]*

25 Sublet (b) is imperative for the State Long Arm Statute, and more so with regards to
26 internet cases as that presented before and dismissed by her in the Summary Court on
27 February 3, 2016. A non-resident of South Carolina, the Respondent/Defendant Author
28 Solutions, LLC is a "foreign" limited liability company outside of the State, having its
29 principle place of business in Bloomington, Indiana; therefore, thereby Rule 4 (b) and
30 other State Statutes does Summary Court magistrates have exercise of personal as well as
31 subject matter jurisdiction in the civil case action presented before it. S.C. Code Ann. §
32 36-2-803 itself is as follows:

33 *SECTION 36-2-803. Personal jurisdiction based upon conduct.*

34 *(A) A court may exercise personal jurisdiction over a person who acts directly or*
35 *by an agent as to a cause of action arising from the person's:*
36 *(1) transacting any business in this State; [emphasis added]*

37 Courts define and treat corporate businesses as that of the Respondent/Defendant Author
38 Solutions, LLC the same as individual persons in lawsuits. Personal

1 jurisdiction of the Summary Court is thus established by this code. Subject matter
 2 jurisdiction is established by virtue of the cause being a civil action falling within the
 3 small claims' forum for damages of \$7,500 or less. State law giving circuit court
 4 magistrates subject matter jurisdiction is:

5 *S.C. Code § 22-3-10. Concurrent civil jurisdiction.*

6 ***Magistrates have concurrent civil jurisdiction in the following cases:***

7 ***(1) in actions arising ***on contracts*** for the recovery of money only, if the***
 8 ***sum claimed does not exceed seven thousand five hundred dollars; [emphasis***
 9 ***added]***

10 Defense counsel's March 30, 2017 pleading by personal email correspondence to the
 11 Anderson County Civil Court Coordinator, attached to this petition, defended that her Motion to
 12 Dismiss should be granted on grounds that the Anderson County Tenth Circuit Court of Common
 13 Pleas and General Sessions lacks territorial jurisdiction is without merit. Territorial jurisdiction
 14 simply expands on States' Long Arm and Door Closing statutes so to include the high seas and
 15 properties outside of the State governed by the laws of, or owned by the State. Rspndn't ltr at p.
 16 **1 The Circuit Court of appeals did not consider in its ruling that none of the Federal or**
 17 **State law codes defense counsel and magistrate identified as basis for dismissal are in any**
 18 **way relevant to jurisdictional power of the Summary Court. Nor did it weigh the critical**
 19 **fact that the Federal and State law codes on which the Appellant based his appeal are**
 20 **binding Statutes clearly giving the Summary Court and its magistrates jurisdiction.**
 21 *[emphasis added]*

- 22 2. South Carolina Code of Laws Title 15 Civil Remedies and Procedures Chapter Venue
 23 Section 15-7-30 (E)(1).

24 Item #2 of her Amended Return to the Court of Common Pleas specifying basis
 25 for dismissal invoked § 15-7-30 (E)(1), a law code addressing domestic entities within
 26 the State of South Carolina. The Respondent/Defendant Author Solutions, LLC would
 27 correctly be defined as a "foreign" limited liability company thereby § 15-7-30 A (7) of
 28 the title of that same Statute. Both statutory codes are as follows:

29 *(E) A civil action tried pursuant to this section against a domestic corporation,*
 30 *domestic limited partnership, domestic limited liability company, or domestic*
 31 *limited liability partnership, must be brought and tried in the county in which the:*
 32 *(1) corporation, limited partnership, limited liability company, or limited liability*
 33 *partnership has its principal place of business at the time the cause of action*
 34 *arose;*

35 In Comity, such laws reflect the necessity laid upon States to take recognition of
 36 residence complacency of multiple owners of business partnerships being possibly
 37 distributed in any number of locations domestically or abroad (; i.e. foreign), and what
 38 proportionate sum of liability each must rightly assume that might could act to create
 39 jurisdictional issues. The Respondent/Defendant Author Solutions, LLC is a "foreign"
 40 limited liability company as correctly defined by § 15-7-30 A (7) as so,

1 (A) As used in this section:

2 (7) "Foreign limited liability company" means a "foreign limited liability
3 partnership" as defined in Section 33-41-1150 with its principal place of
4 business ***outside this State***.

5 Magistrate either intentionally or unintelligibly mistook "foreign" to apply only to
6 international abroad States as opposed to states foreign to states within the United States,
7 and "domestic" to apply only to within the United States as opposed to domestic within
8 the state of South Carolina. Section 33-41-1150 does not at all involve subject matter
9 concerning jurisdiction, but acts to instead stir clear the State of South Carolina's courts
10 from disputes that might arise among partners in a foreign partnership created outside of
11 it, though licensed to conduct business therein the state.

12 In error, the magistrate judge in the reply order either intentionally or
13 unintelligibly implied the Respondent/Defendant to be that of a domestic entity.

14 [emphasis added] As a foreign based business outside of South Carolina would the cause
15 of action against the Respondent/Defendant Author Solutions, LLC be subject to the
16 constitutional laws of this state. More readily, S.C. Code Ann. § 15-5-150 of the same
17 Statute is of appropriate enforceability for the State Long Arm or Door Closing Statute
18 governing foreign firms. Apln't Frml Brf at p. 6 (ln 19-24) It enacts by a plain language:

19 An action against ***a corporation created by or under the laws of any other
20 state***, government[,] or country may be brought in the circuit court: (1) By
21 any resident of this State for any cause of action; or (2) By a plaintiff not a
22 resident of this State when the cause of action shall have arisen or the subject of
23 the action shall be situated within this State. [emphasis added]

24 A comprehensive law setting jurisdiction over defendant subjects of foreign states,
25 foreign governments, and foreign countries. Including not only liabilities for personal
26 injuries, but foregoes this limitation to encompass any sustained injuries or damages.
27 Therein having a provisional clause to guarantee even non-resident citizens of the State a
28 right to due process of the law against such foreign corporations.

29 None else of what Judge Eubanks returned for an answer to the Court of
30 Common Pleas and General Sessions was of weighing fact. The
31 Respondent's/Defendant's Exhibit 1 (D# 1) and also Exhibit 2 presented in Summary
32 Court on the day of the trial are holistically irrelevant and non-binding. Apln't Frml Brf
33 at pp. 9&10 The Appellant/Plaintiff was disallowed to speak, present evidence, or raise
34 arguments in his behalf, nor was questioned of Judge Eubanks for thorough a
35 presentation of his claim. A large volume of evidence was submitted for the court's
36 review in the initial Formal Complaint submission. That included:

- 37 • Complaint filed of Complainant, dated September 9, 2015.
- 38 • Complainant's Exhibit A, Trafford Publishing Guide, copyrighted 2005 with
39 copy of an original contract Publishing Agreement, entered May10, 2005,
40 pp. 16 (16.1-2 and 16.4).

- 1 • Payment receipts of proof of payments made to Trafford.
- 2 • Electronic flash drive containing (1) copy of *Eternal Doctrine: The Bible in*
- 3 *Sequence* to explain delay in editing process.
- 4 • Complainant's Exhibit B, contract cancellation correspondence of June 22,
- 5 2010
- 6 • Exhibits of correspondence letters establishing "minimum contacts" of Author
- 7 Solutions in its repeated demands for further payments for services.

8 Not any of these were considered for deliberation by the magistrate, or mentioned at all
 9 on the trial date. She overlooked as if no such evidence had ever been submitted, and
 10 made no remarks on them. She stated in the Amended Return,

11 *"Evidence presented in Court on the day of trial:*

12 *Appellant: No evidence*

13 *Respondent: D#1 – Services offered; Prepare for Publication; Trafford*
 14 *Publishing Terms and Conditions."* Apndx Amn'd Rtrn p. 2

15 **Summary Court's magistrate judge outright lied** about the evidence to give the
 16 appeals court the appearance that the Plaintiff/Appellant had no knowledge of court
 17 procedure, nor any evidence to support his claim. *[emphasis added]* She would instead
 18 review, mention, and impose terms of contract on the Plaintiff/Appellant that he never
 19 agreed to, never saw, or ever signed. Her actions were solely toward acting as counsel for
 20 the Defendant/Respondent. With despite, **magistrate intentionally mixed up the facts,**
 21 **and the appeals court made no mention of any of these facts in its decision to dismiss**
 22 **the Appellant's appeal.** *[emphasis added]*

23 III. Facts

24 A. Novation of Contract.

25 1. Magistrate judge maintained an untrue assertion that a novation of contract¹ occurred
 26 with the original May 10, 2005 contract, *vinculum juris*, and the April 3, 2009 invalid
 27 contract. Material existence of the latter became only disclosed to the Plaintiff/Appellant
 28 when produced of Defendant's/Respondent's counsel on the trial date. In Russ v Barnes,
 29 329 A.2d 767, 23 Md.App. 691, a state court of appeals rendered:

30 *Analyzing appellees' assertion that . . . the contract effected a novation, we must*
 31 *consider the necessary elements of that legal metamorphosis: " 'A 'novation' is a*
 32 *new contractual relation, and contains four essential requisites: (1) A previous valid*
 33 *obligation; (2) the agreement of all the parties to the new contract; (3) the validity of*
 34 *such new contract; and (4) the extinguishment of the old contract, by the substitution*

¹*Novation* is a contract invention that would allow parties to mutually agree voluntarily to extinguish an old contract and substitute it with a new. It cannot be performed within legal bounds without the tripartite of parties' consent. Author Solutions presenting a 2009 contract during Summary Court's trial wrongly implied novation of contract aptly occurred upon its purchase of Trafford Publishing Services.

1 *for it of the new one' ” Balt. Academy of the Visitation v. Schapiro, 169 Md. 332,*
2 *338-339 quoting Dist. Nat. Bank of Wash. v. Mordecai, 133 Md. 419.*

3 *A novation “necessarily involves the immediate discharge of an old debt or duty, or*
4 *part of it, and the creation of a new one. There is no novation until this has been*
5 *accomplished.”*

6 A previous valid “performance obligation” (; i.e, an old duty) existed, as of the May 10,
7 2005 signed and dated contract, yet not any other three of the four requirements were met
8 of Author Solutions to prove novation, creating a new duty, ever occurred. Its counsel
9 and the magistrate judge insisted it be believed that the Plaintiff/Appellant knowingly and
10 willfully agreed to a novation of contract, without producing proof of it. Magistrate
11 forced the April 3, 2009 contract and its terms and conditions on the Plaintiff/Appellant,
12 as if he had agreed to it. Simple facts were collusively and intentionally frustrated thereby
13 their actions. **Yet the Circuit Court of appeals did not heed the fact that defense**
14 **counsel and magistrate clearly outright lied about the signing of a new contract,**
15 **with its terms and conditions, that never occurred.** *[emphasis added]*

16 B. American Arbitration Association’s small claims option.

- 17 1. The magistrate had leeway to therefore insist validity of a non-binding arbitration clause
18 included in the April 3, 2009 contract’s terms, stipulating “MUST” arbitration through
19 the state of Indiana’s American Arbitration Association (AAA). This also was adequately
20 proven farcical. Apln’t Frml Brf at Apndx pp.1&2 AAA, in avoidance of usurping
21 powers of the courts, specifically states in its Consumer Arbitration Rules, rule R-9 (a),

22 *“If a party’s claim is within the jurisdiction of a small claims court, either party*
23 *may choose to take the claim to that court instead of arbitration as follows: (a)*
24 *the parties may take their claim to small claims court without first filing with*
25 *AAA.”* *[emphasis added]*

26 Brought up before the court of appeals was how Defendant/Respondent counsel’s
27 Jurisdictional Challenge was contrived solely on the premise that she could persuade the
28 magistrate court judge of South Carolina’s Summary Court to pretend to be unintelligible
29 as to if the rule reference is regarding South Carolina’s small claims courts, or if a
30 reference to Indiana small claims courts. **The Circuit Court of appeals gave no**
31 **recognition to invalidity of the April 3, 2009 contract in its totality, nor recognition**
32 **of AAA’s small claims court option. It likewise pretended to be unintelligible about**
33 **interpret of the option in its actions to dismiss.** *[emphasis added]*

34 C. Failed court appearances.

- 35 1. Jurisdiction of the Court was established on the Defendant/Respondent counsel’s Special
36 Appearance to challenge became that of a General Appearance when upon its defense of
37 Author Solutions on the merits on February 3, 2016, which in itself was submission to the

1 Summary Court venue and forum, and gave automatic waiver thereto challenge thereof
2 jurisdiction. After this was argued in the Appellant's initial formal brief before the
3 appeals court, the defense counsel made no further appearances so to avoid automatic
4 waiver to challenge jurisdiction. **The Circuit Court of appeals gave no recognition of**
5 **argument of automatic waiver when it was argued before it.**

6 2. The Respondent was not present on either of the scheduled hearing dates in the court of
7 appeals. On the Respondent's failure to be present during the May 31, 2016 hearing date
8 the Appellant motioned the Circuit Court of appeals on August 8, 2016 for Entry of
9 Default and Default Judgment against the Respondent. **But, the Plaintiff/Appellant's**
10 **Motion for Entry of Default and Default Judgment received no ruling by the Circuit**
11 **Court judge.**

12 The Defendant/Respondent's presence was absent three rescheduled rehearings;
13 on August 25, 2016, December 1, 2016, and March 30, 2017 rehearings on its Motion to
14 Dismiss for lack of Jurisdiction. **Yet, regardless of each failure to appear the Circuit**
15 **Court of appeals continued with reschedules before finally ruling to dismiss against**
16 **the Appellant on May 5, 2017.** [emphasis added]

17 **III. Conclusion**

18 Wherefore Article V, The Judicial Department, of South Carolina's Constitution
19 makes no provision for any other court in the State to hear small claims as that presented
20 except other than the Summary Court of the South Carolina Unified Judicial System;
21 wherefore the cause of action is not a matter a Federal court of the United States could
22 exercise jurisdiction; and whereof the facts set forth above, the State of South Carolina
23 Court of Appeals should overturn the Circuit Court's judgment that the matter may be
24 heard *de novo* by a fair and impartial judge of the court.

25 *I declare under penalty of perjury that the foregoing is correct and true.*

Signed George C. McCullough
George C. McCullough, Appellant (Pro Se)

on this 21th day of June, 2017

THE STATE OF SOUTH CAROLINA
Court of Appeals

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas and General Sessions

R. Scott Sprouse Judge

RECEIVED

Appeal No. 2016-CP-04-00560

JUN 29 2017

Civil Case No. 2015CV0410103735

SC Court of Appeals

George C. McCullough, Pro Se

Appellant

v.

Author Solutions

Respondent


PROOF OF SERVICE

I certify that I have served the Appellant's Petition for a Rehearing by depositing a copy of it in the United States Mail, postage prepaid, on June 27, 2017 addressed to ^{c/o} Judge Nancy Devine Anderson County Summary Court, 2404 N. Main Street Anderson SC 29621, and to Author Solutions, LLC, 1663 Liberty Dr., Bloomington, Indiana 47403.

June 27, 2017

George C. McCullough
1106 Erskine Rd
Anderson, South Carolina 29621
(864) 642-1867
Pro Se

Signed


George C. McCullough, Appellant (Pro Se)

on this

27th day of June, 2017

83842

George C. McCullough
1106 Erskine Rd
Anderson, South Carolina 29621
Email: George012@hughes.net
June 27, 2017

Honorable Jenny Abbott Kitchings
Anderson County Clerk of Court
P.O. Box 11629
Columbia, SC 29211

RECEIVED

JUN 29 2017

SC Court of Appeals

Dear Honorable Jenny Abbott Kitchings:
this letter and the attached check in the amount of \$100.00 is to cover the Court of Appeals filing fee pursuant SCRCP 203 (d) (1) (B).

Should any additional requirements be necessary, I can be contacted at the mailing address above. Or, called at (864) 642-1867.

Kindly


George C. McCullough



UNITED STATES
POSTAL SERVICE®

Click-N-Ship®

P

usps.com

9405 8036 9930 0469 5004 31 0066 5000 0022 9211

\$6.65

US POSTAGE

Flat Rate Env



06/27/2017

Mailed from 29621

062S0000000310

PRIORITY MAIL 2-DAY™

GEORGE C MCCULLOUGH

Expected Delivery Date: 06/29/17

1106 ERSKINE RD

ANDERSON SC 29621-5053

0024

RECEIVED

JUN 29 2017

B012

SHIP TO: SC Court of Appeals

JENNY A KITCHINGS

SOUTH CAROLINA CLERK OF APPEALS COURT

PO BOX 11629

COLUMBIA SC 29211-1629

USPS TRACKING #



9405 8036 9930 0469 5004 31

Electronic Rate Approved #038555749