THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

RECEIVED
JUL 24 2017
SC Court of Appeals

App. Case No. 2017-001460
Case No. 2007-CP-10-01444

C. Holmes,

Appellant,

v.

James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

Rule 240(j) and Rule 221, SCACR, Petition for Rehearing

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Appellant timely files Petition for Rehearing of the Order entered July 7, 2017, and respectfully submits that the Court has overlooked or misapprehended the following errors of material fact and law.

Facts

The lower court order was entered June 21, 2017. Written notice of the lower court order was postmarked on June 22, 2017. Accordingly, pursuant to Rule 203, SCACR, the notice of appeal was timely served within 30 days after receipt of written notice of entry of the order, thereby vesting jurisdiction in the Court of Appeals. The lower court's reliance on an unrelated matter with a different caption and unrelated issues at the behest of Defendants is reversible error and/or abuse of discretion requiring meaningful judicial review. Credibility of untrustworthy malpractice Defendants, Pro Se Respondents herein, is relevant. Untrustworthy Pro Se Defendants attempted impermissible ex parte communication in the Federal Clerk of Court's office. Thank heaven for the conscientious Federal Court employee who documented the wrongdoing in the attached copy. A "runner" back-dated an out-of-time response to cover-up professional negligence. When asked who committed the wrongdoing, the Federal Court employee pointed to the signature on the last page. Similarly, on information and belief, untrustworthy malpractice Defendants attempted impermissible ex parte contact in the lower court herein with "Judge shopping" while nefariously skulking around that Clerk of Court's office, too. See attached January 2017 document Defendants falsely peddled as a "true copy." The actual copy which is attached is materially different. See attached Federal Court decision ordering that

untrustworthy malpractice Defendants failed to timely appeal the loss of the injunction reversing the status quo and causing irreparable damages; at the time, the malpractice Defendants stated they did not want to sue hospitals because they wanted to "represent hospitals," including but not limited to, cases similar to *In re Hospital Pricing Litigation*. Because retired judges have no support staff, the retired judge allowed untrustworthy malpractice Defendants to write their own order granting directed verdict. Defendants then wrote an order which does not reflect the record (transcript available on request) and misrepresented that a new statute, the revised S.C. Code Section 15-36-10 was applicable when it was not. See *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). As is more fully set forth below, that inapplicable statute was used to deny appeal and meaningful judicial review of that very order.

Moreover, new case law in the *Brooks* case, infra, and controlling precedent provide that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). The order on appeal denies a citizen the statutory right to defend his own cause and denies the State and federal constitutional right of every citizen of access to the courts. Further, *Metts v. Mims*, 384 S.C. 491, 682 S.E.2d 813 (2009), supports appeal of the June 21, 2017, contempt order because this appeal is based on denial of State and federal constitutional rights which necessarily relate to and affect

the lower court proceeding. The efficacy of the order of reference is challenged as well. Privileged, confidential information is at issue as well. It is axiomatic that Courts are charged with protecting constitutional rights and upholding express legislative intent – not denial of the right to meaningful opportunity to be heard, the right to file, and the right to defend. Full and fair judicial review on the merits is respectfully requested.

Standard of Review

The issue of interpretation of statutes is a question of law for the court. *Catawba Indian Tribe of South Carolina v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007). In a case raising a novel question of law regarding the interpretation of a statute, the appellate court is free to decide the question with no particular deference to the lower court. *New York Times Co. v. Spartanburg County Sch. Dist. No. 7*, 374 S.C. 307, 309, 649 S.E.2d 28, 29 (2007). Moreover, Rule240(j), SCACR, review is appeal to a panel which does not include the Judge who issued the July 7, 2017, order or retirees and that review is de novo. Questions of law are reviewed de novo. S.C. Const. art. V, § 5. Moreover, the Rule 240(j), SCACR, motion herein is an appeal of an order by an individual judge and the proper legal standard is de novo. S.C. Code § 14-8-220. It is well established that the Federal Rules of Appellate Procedure (FRAP), upon which the SCACR are based, have long been interpreted to provide for review of decisions by a single judge for self-evident reasons. See Local Rule 27(e), FRAP. Pursuant to S.C. Code § 14-8-220 and Rule 240(j), SCACR, the case stands before the appellate court as if it had never been decided.

I. A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires.")

A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) provides "[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires." Express legislative intent and the plain meaning of the statute support the Appellant's appeal which must be immediately appealed because it involves a substantial right.

Further, in Toal *et al, Appellate Practice in South Carolina,* 3rd edition, (2016), the order on appeal is immediately appealable, because such order falls within the statutory definition of a substantial right under section 14-3-330(2)(a). The order is immediately appealable as an order which could determine the action and prevent a judgment from which an appeal might be taken or could discontinue an action or could essentially deny a well-established substantial right closely related to the right to a particular mode of trial. *Hagood v. Sommerville,* 362 S.C. 191, 607 S.E.2d 707 (2005); *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017); Toal *et al*, *Appellate Practice in South Carolina,* 3rd edition, 2016. Additionally, objection is made to denial of the plaintiff's right to discovery and/or depositions as a denial of the right to a full and fair hearing. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). The plaintiff is prejudiced thereby, including but not limited to denial of discovery to establish violation of legal interest by untrustworthy Pro Se Defendants herein.

II. The lower court order denying the right to file, to proceed pro se, and to defend effectively determines the proceeding and must be immediately appealed.

The lower court order denying the right to file, to proceed pro se, and to defend effectively determines the proceeding and must be immediately appealed. By analogy, an order denying a request to proceed in forma pauperis effectively discontinues the action and therefore, is immediately appealable. *See Harrison v. Harrison*, 373 S.C. 524, 646 S.E.2d 180 (Ct. App. 2007).

Further, the order is immediately appealable pursuant to S.C. Code Section 14-3-330(1) because it "involves the merits" and is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or **defense**." *Mid-State Distributors Inc. v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993) (citing *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988). Emphasis supplied.

Moreover, if an order requires a party to turn over documents that the party feels contain proprietary or confidential information, compliance renders the privilege or confidentiality a nullity. Where the appealed order has the effect of revealing the very thing the appellant claims should remain privileged and confidential, as in this case, an immediate appeal is indicated. See *City of Columbia v. ACLU of S.C., Inc.*, 323 S.C. 384, 475 S.E.2d 747 (1996). Accordingly, the order of dismissal should be reversed.

III. The contempt order stands on its own, is separate and distinct from the underlying action, is not the same as the underlying action, and does not relate to the hospital matter. It does, however, affect the lower court proceeding. The efficacy of the order of reference is challenged and the discovery order was itself improper.

It is well-settled that a *party* can obtain review of the merits of a discovery order only after refusing to comply and being held in contempt. On appeal from the contempt order, the contemnor may argue that the contempt finding must be reversed because the underlying discovery order was itself improper. *Grosshuesch v. Cramer,* 377 S.C. 12, 659 S.E.2d 112 (2008). *Metts v. Mims,* 384 S.C. 491, 682 S.E.2d 813 (2009), supports appeal of the June 21, 2017, contempt order because this appeal is based on denial of State and federal constitutional rights which necessarily relate to and affect the lower court proceeding.

IV. A contempt order is a final order that is immediately appealable.

A contempt order is a final order that is immediately appealable. *Hooper v. Rockwell,* 334 S.C. 281, 513 S.E.2d 358 (1999). " An order finding a party in contempt is immediately appealable. *See Hooper v. Rockwell,* 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999)." *Arnal v. Arnal,* 363 S.C. 268, 609 S.E.2d 821 (S.C. App., 2005).

V. Rule 203, SCACR, does not prohibit appeal of this contempt order.

" An order finding a party in contempt is immediately appealable. *See Hooper v. Rockwell,* 334 S.C. 281, 291, 513 S.E.2d 358, 364 (1999)." *Arnal v. Arnal,* 363 S.C. 268, 609 S.E.2d 821 (S.C. App.,

2005). Rule 203, SCACR, provides that a party is not required to appeal a form order. It does does prohibit it. Rule 203(b)(1), SCACR. There have been instances where a formal order is anticipated but is not issued or not timely issued, thereby thwarting appeal. In that case, the only way to preserve appeal is to timely appeal the Form Order as was done in this case. In fact, Rule 214, SCACR, anticipates, even authorizes more than one appeal by providing for consolidation. *See Stevens & Wilkinson of S.C., Inc., v. City of Columbia*, 396 S.C. 338, 721 S.E.2d 455 (Ct. App. 2011).

VI. The order is appealable under S.C. Code Section 14-3-330(1).

The order is appealable under S.C. Code Section 14-3-330(1) because it involves the merits. An order "involving the merits" is one that "must finally determine some substantial matter forming the whole or a part of some cause of action or defense." *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993). In this case, the appellant is denied any defense or ability to file objections thereby "necessarily affecting the judgment." *Link v. School District of Pickens Cty.*, 302 S.C. 1, 393 S.E.2d 176 (1990).

VII. The Order is appealable under S.C. Code Section 14-3-330(2).

The order is appealable under S.C. Code Section 14-3-330(2)(a) because it affects a substantial right when such order "in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action." In this case, the party is effectively foreclosed from contesting the case on the merits which affects a substantial right and is immediately appealable. *McLaughlin v. Strickland*, 279 513, 309 787 (Ct. App. 1983).

The order is appealable under S.C. Code Section 14-3-330(2)(c) because it affects a substantial

right when such order "strikes out an answer or any part thereof or any pleading in any action." This case involves striking any and all pleadings, answers, and/or defense, therefore, there is no record for meaningful judicial review on appeal necessarily preventing vindication on appeal. The Order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

VIII. The Order is appealable under S.C. Code Section 14-3-330(3).

The order is appealable under S.C. Code Section 14-3-330(3) which allows appellate review of orders affecting a substantial right "made in any special proceeding or upon a summary application in any action after judgment." In the instant case, the lower court proceeding is not a traditional action. It is a "special proceeding." *See Allen v. Partlow*, 3 S.C. 417 (1872). Denial of the right to defend and to file affects a substantial right in this special proceeding. The Order is appealable.

IX. The order is appealable under S.C. Code Section 14-3-330(4).

The order is appealable under S.C. Code Section 14-3-330(4) because it is an interlocutory order or decree ... "granting, continuing, modifying, or refusing the appointment of a receiver." S.C. Code Section 14-3-330(4). The lower court order to the extent it involves a receiver is immediately appealable. Accordingly, the order is appealable under S.C. Code Section 14-3-330(4). *See Williams v. Northwestern Securities Life Ins. Co.*, 307 S.C. 462, 415 S.E.2d 809 (1992).

X. Pursuant to Rule 205, SCACR, the appellate court obtains exclusive jurisdiction upon the timely service of the notice of appeal in Appellate Case No. 2017-000266.

The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8- 200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al., Appellate Practice in South Carolina* (3d ed. 2016), p. 11. The instant matter is a direct appeal. Under Rules 205 and 241, SCACR, the lower court may not act or issue orders that affect an issue on appeal. In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. S.C. Code Section 14-3-330(2); *see Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017).

New case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or

defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

XI. The money judgment exception to automatic stay does not apply because the matter herein does not constitute a "money judgment" in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim.

The money judgment exception to automatic stay does not apply because the matter herein does not constitute a "money judgment" in the underlying claim within the contemplation of S.C. Code Section 18-9-130; rather the matter is incidental to the underlying claim. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000); Toal *et al, Appellate Practice in South Carolina,* 3rd edition (2016), p. 341. In the instant case, the underlying claims ended with directed verdict for the defendants. Significantly and materially, there was no counterclaim. Accordingly, the matter herein is not a traditional money judgment and, therefore, it is subject to automatic stay under Rule 241(a), SCACR. Toal *et al, Appellate Practice in South Carolina,* 3rd edition (2016), p. 340. In the alternative, any dispute regarding the application of automatic stay is resolved in the appellate court. *See Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191,

607 S.E.2d 707 (2005).

XII. The lower court's reliance on the December 2009 order is a violation of State and federal statutory and Constitutional law.

New case law in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). In this case, the right to represent oneself, to have access to the court, to file, and/or to defend is closely related to the right to a particular mode of trial, a well-established substantial right, and this order must be immediately appealed. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005).

XIII. When deciding a jurisdictional question based on facts, a reviewing court has the duty to review the entire record and find the jurisdictional facts within the entire record.

When deciding a jurisdictional question based on facts, a reviewing court has the power and the duty to review the entire record, find the jurisdictional facts within the entire record, and decide the jurisdictional question in accord with the preponderance of evidence. *Canady v. Chas. Cty. Sch. Dist.*, 265 S.C. 21, 216 S.E.2d 755 (1975). It is respectfully submitted there is no adequate record to make a finding on the jurisdictional question.

XIV. Novel issues regarding new legislation and new statutory law support review.

When a case contains a novel question of law, the appellate court is free to decide the question with no particular deference to the lower court. *Osprey Inc., v. Cabana Limited Partnership*, 340 S.C. 367, 532 S.E.2d 269 (2000). It is respectfully submitted that novel issues regarding the revised S.C. Code Section 15-36-10 support review.

XV. Controlling precedent provides that authority to resolve disputes concerning the application of automatic stays in Appellate Case Number 2017-000266 does not reside in the lower court.

Controlling precedent provides that authority to resolve disputes concerning the application of automatic stays in Appellate Case Number 2017-000266 does not reside in the lower court. *See Keurney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). Appellant respectfully requests review. *See State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal *et al., Appellate Practice in South Carolina* (3d ed. 2016), p. 11. Upon service of the notice of appeal, the appellate court shall have **exclusive** jurisdiction over the appeal. Rule 205, SCACR (emphasis supplied). Accordingly, the plaintiff requests protective order. The final disposition of the appeal occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time the case is pending on appeal. *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994); *McDowell v. SC DSS*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989); Toal *et al., Appellate Practice in South Carolina* (3d ed. 2016), p. 393. There is no remittitur. Accordingly,

plaintiff respectfully requests reversal of the order entered June 21, 2017.

XVI. The matter is automatically stayed pending appeal because no exception to automatic stay applies since there is no traditional money judgment or counterclaim in the underlying case against Defendants, rather the matter herein is incidental to or collateral to the case and is not a traditional "money judgment" as contemplated by the statute, S.C. Code Section 18-9-130.

The lower court proceeding, including discovery, is held in abeyance pending resolution of the appeal, in cases such as this, where there are no exigent or other circumstances and where none have been claimed. See Rule 27, SCRCP. Further, pursuant to *State v. Cooper*, 342 S.C. 389, 536 S.E.2d.870 (2000), no exception to automatic stay applies because the matter is incidental or collateral to the underlying claim and does not constitute a traditional money judgment on the underlying claim as contemplated by the statute, S.C. Code Section 18-9-130. Any dispute regarding appellate jurisdiction is resolved in the appellate court. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). Accordingly, the plaintiff respectfully requests reversal of the order entered June 21, 2017.

XVII. The lower court proceeding herein is a matter affected by the appeal which "must be immediately appealed" (*Hagood, infra*). Rule 205, SCACR, provides "Upon service of the notice of appeal, the appellate court shall have *exclusive jurisdiction* over the appeal." (Emphasis supplied.)

This appeal asserts the exclusive jurisdiction of the appellate court in App. Case No. 2017-000266 which is pending; because the lower court proceeding is a matter affected by that appeal, there is no jurisdiction in the lower court and the June 21, 2017, order should be reversed. Upon service of the notice of appeal, the appellate court obtains exclusive jurisdiction over the appeal and the lower court may not proceed with matters affected by the appeal as in this case. Rule 241, SCACR, Rule 205, SCACR; *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156 (2003); Toal *et al, Appellate Practice in*

South Carolina, 3rd edition, (2016). Additionally, pursuant to new case law in *Brooks, infra,* as well as *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005), the order on appeal is immediately appealable and must be immediately appealed. *Brooks v. CCCID and OID*, South Carolina Court of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). Further, in Toal *et al, Appellate Practice in South Carolina*, 3rd edition, (2016), the order on appeal is immediately appealable, because such order falls within the statutory definition of a substantial right under section 14-3-330(2)(a). The order is immediately appealable as an order which could determine the action and prevent a judgment from which an appeal might be taken or could discontinue an action or could essentially deny a well-established substantial right closely related to the right to a particular mode of trial. *Hagood v. Sommerville*, 362 S.C. 191, 607 S.E.2d 707 (2005); Toal *et al*, *Appellate Practice in South Carolina*, 3rd edition, 2016. Additionally, objection is made to denial of the plaintiff's right to discovery and/or depositions as a denial of the right to a full and fair hearing. *Baughman v. AT&T*, 306 S.C. 101, 410 S.E.2d 537 (1991). The plaintiff is prejudiced thereby, including but not limited to denial of discovery to establish violation of legal interest. Because the matter is pending appeal, it is respectfully submitted that the South Carolina Appellate Court Rules, statutory, and case law vest jurisdiction in the appellate courts.

Moreover, new case law from the Court of Appeals in the *Brooks* case, *infra*, provides that the South Carolina Constitution guarantees every person the right of access to the courts. S.C. Const. art. I, § 9 provides, "All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained." A litigant has a statutory right to proceed pro se in South Carolina. S.C. Code Ann. § 40-5-80 (2011) ("[The chapter regulating the practice of law] may not be construed so as to prevent a citizen from prosecuting or defending his own cause, if he so desires."); *Washington v. Washington*, 308 S.C. 549, 550, 419 S.E.2d 779, 780 (1992). The statutory right of self-representation is also provided to litigants under federal law. 28 U.S.C. § 1654 (2016). *Brooks v. SCCID and OID*, South Carolina Court

of Appeals, decided February 15, 2017, App. Case No. 2014-002477 (Remittitur sent March 3, 2017). The order on appeal denies a citizen the statutory right to defend his own cause and denies the State and federal constitutional right of every citizen of access to the courts. Any dispute regarding appellate jurisdiction is resolved in the appellate court. *Kearney v. Allen*, 287 S.C. 324, 338 S.E.2d 335 (2014). The plaintiff respectfully requests that this petition be granted.

XVIII. Defendants failed and refused to provide timely notice of the motion.

Defendants' Motion was not timely served prior to the hearing. In fact, the plaintiff did not receive it in a timely fashion and the plaintiff is prejudiced thereby. The motion was served by mail, therefore, five days shall be added. Rule 6(e), SCRCP. Accordingly, the motion was not served in a timely manner and the order should be reversed. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XIX. Untrustworthy Pro Se Malpractice Defendants failed to copy the other side with the proposed order.

Untrustworthy Pro Se Malpractice Defendants failed to copy the other side with the proposed order. The case of *Burgess v. Stern*, *infra*, is controlling. "South Carolina case law and rule-making authorities are well synchronized on the prohibition against ex parte contacts. In Herring v. Retail Credit Co., 266 S.C. 455, 224 S.E.2d 663 (1976), the judicial practice of merely signing an order

prepared by counsel of one party was condemned. This Court advised the Bench and the Bar that not only do such orders deprive the reviewing Court of adequate records on appeal, but also deny to the deprived party an opportunity to be heard in matters which affect them. Id. Aiken County v. BSP Div. of Envirotech Corp., 866 F.2d 661 (4th Cir.1989), evinces the Fourth Circuit Court of Appeals' disapproval of ex parte contacts of this type.... Canon 3(A)(4), Rule 501, Code of Judicial Conduct, SCACR, states: 'A judge should ..., except as authorized by law, neither initiate or consider ex parte or other communications concerning a pending or impending matter.' While Canon 3(A)(4) guards against ex parte indiscretion, it also strives to eliminate the appearance of impropriety. This issue was discussed succinctly in the case of In re: Wisconsin Steel. 48 B.R. 753 (D.Ill.1985). The Court in Wisconsin Steel noted:

It is rarely possible to prove to the satisfaction of the party excluded from the communication that nothing prejudicial occurred. The protestations of the participants that the communication was entirely innocent may be true, but they have no way of showing it except by their own self-serving declaration. This is why the prohibition [311 S.C. 331] is not against "prejudicial" ex parte communications, but against ex parte communications." In re: Wisconsin Steel. 48 B.R. 753 (D.Ill.1985).

Burgess v. Stern, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992).

As a matter of public policy, ex parte proposed orders by untrustworthy Malpractice Defendants are prohibited and undermine the integrity of the process, particularly where judges are elected and are subjected to re-elections. Former Justice Sandra Day O'Connor's warned the public about the dangers of electing judges. Former Justice Sandra Day O'Connor wrote ". . . many Americans today do not see the need for independent judges. Many prefer a judiciary that acts merely as a reflex of popular will." *Judicial Independence and 21st Century Challenges,* Sandra Day O'Connor, The Bencher, July/August 2012. As she explained, "[t]he reason why judicial independence is so important is because **there has to be a safe place** where being right is more important than being popular; where fairness triumphs strength. That place, in our country, is the courtroom. It can only survive so long as we keep out

political influences." *Id* (emphasis supplied). Public policy, legislative intent, statutory authority, Federal case law, FRAP, State and federal constitutional law, and the SCRCP abhor ex parte orders. This Court is respectfully requested to uphold the letter and spirit of the rule of law and grant this motion. "There has to be a safe place." *Id.* The plaintiff is prejudiced thereby, and the order entered June 21,2017, should be reversed.

XX. Failure to provide filing fee is a fatal flaw.

Untrustworthy Defendants have apparently failed to pay the Clerk of Court the statutorily mandated filing fees, thereby requiring that the unverified petition be stricken and/or dismissed. Without the filing fee, there is no legal authority, no legal process, and no jurisdiction. Unauthorized actions are deemed unofficial and carried out in unofficial and/or individual capacity. Accordingly, the order entered June 21, 2017, should be stricken. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXI. This matter includes jurisdictional challenge to the efficacy of the order of reference and the disputed, unverified, false petition.

Untrustworthy Defendants have apparently failed to pay the Clerk of Court the statutorily mandated filing fees, thereby requiring that the unverified petition be stricken and/or dismissed along

with discovery or other requests. The failure to support the rule to show cause by verified petition is a fatal defect. *Toyota of Florence, Inc. v. Lynch,* 314 S.C. 257, 442 S.E.2d 611, 617 (1994). Though captioned as "verified petition," defendant's *pro se* petition does not contain a verification and does not comply with the South Carolina Rules of Court or the Rules of Civil Procedure. Pursuant to Rule 9(i), SCRCP, verification of account is required and Rule 11(c), SCRCP, specifies that the verification or affidavit shall be sworn to or affirmed before an officer authorized to administer oaths. *BB&T v. Fleming*, 360 S.C. 341, 601 S.E.2d 540 (2004). Further, when a motion is to be supported by affidavit or sworn itemized statement, it "SHALL be served with the motion." Rule 6(d), SCRCP. Moreover, the pro se petition is false and is disputed. It contains material misstatements of fact and is not itemized, verified, or proper. Strict compliance with the rules and statutes is required for summary application. The efficacy of the order of referral is challenged. The plaintiff respectfully submits defendant's unverified petition should be dismissed or stricken and the order entered June 21, 2017, should be reversed.

XXII. Defendants confirmed receipt of plaintiff's financial information on the record.

It is respectfully submitted that defendants are in possession of the requested financial information and tax returns which show that the only income is from personal services which is expressly excepted by statute, S.C. Code Section 15-39-410. Defendants omitted material information at the hearing when they failed to disclose timely receipt of requested information. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on **oath**, except that when a corporation answers the answer shall be on the oath of an officer. Defendants did not comply with S.C. Code Section 15-39-400. The plaintiff submits the defendants have the necessary information which was submitted in a timely fashion despite Defendants'

misrepresentations. The transcript and the motion show that Defendants were not requesting additional information because they had the information they needed from Plaintiff. Additional information is unnecessarily overbroad, cumulative, duplicative, irrelevant, and/or burdensome, if not meant to harrass, oppress, and/or cause hardship. The transcript and motion show Defendants were asking for $2500 from the plaintiff, not additional information. Transcript available on request. No oath, no corporate officer on oath, and no evidence was provided by Defendants to support the motion. The plaintiff respectfully requests reversal of the order entered June 21, 2017. *Stone v. Reddix-Smalls*, 295 S.C. 514, 369 S.E.2d 840 (1988); *Turner v. Rogers*, 564 U.S. 431 (2011).

XXIII. Defendants failed their burden of proof and presented no evidence.

Defendants failed their burden of proof and presented no evidence. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on **oath**, except that when a corporation answers the answer shall be on the oath of an officer. Plaintiff did provide the financial information in a timely manner and Defendants materially misrepresented this fact. Transcript available on request. At the hearing, Defendants stated for the record that they were seeking two things: 1. contempt sanctions of $2500.00, and 2. an order for subpoena to the holder of a mortgage. Defendants failed their burden of proof. No oath, no corporate officer on oath, and no evidence was provided by Defendants to support the motion. The order should be reversed. *Stone v. Reddix-Smalls*, 295 S.C. 514, 369 S.E.2d 840 (1988); *Turner v. Rogers*, 564 U.S. 431 (2011).

XXIV. Pro Se Malpractice Defendants are not entitled to attorney's fees.

In even-handedness and fairness, Defendants are well aware and the record reflects that Defendants received timely notice that the appeal was pending vesting exclusive jurisdiction in the appellate court. The final disposition of the appeal occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time the case is pending on appeal. *Christy v. Christy*, 317 S.C. 145, 452 S.E.2d 1 (Ct. App. 1994); *McDowell v. SC DSS*, 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989); Toal *et al., Appellate Practice in South Carolina* (3d ed. 2016), p. 393. There is no remittitur. Accordingly, Defendants failed to mitigate and in equity and fairness are not entitled to attorneys fees. Moreover, the S.C. Code, including but not limited to Sections 37-3-404 and 37-2-413 prohibit the attorneys fees and there is no contract authorizing attorneys fees. Accordingly, the June 21, 2017, order should be reversed.

XXV. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment.

This matter is incidental to the case and does not constitute a traditional money judgment. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. Summary application applies to traditional judgments where the party has been afforded the right to trial by jury. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (*to show cause*), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). Defendants did not counterclaim, thereby waiving any. The Physician is not the Defendant, and the matter herein is incidental. Defendants *pro se*, unverified, false petition should be dismissed and the June 21, 2017,

order should be reversed. *Turner v. Rogers*, 564 U.S. 431 (2011); *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXVI. There has been no finding on ability to pay.

Plaintiff respectfully submits there has been no finding on ability to pay. Pursuant to S.C. Code Section 15-39-400, all examinations and answers before a judge or master under this article shall be on **oath,** except that when a corporation answers the answer shall be on the oath of an officer. The March 10, 2017, transcript on page 15, line 22-24 reflects that plaintiff appeared in order to provide the pertinent testimony and, in fact, did provide the information to Defendants on the record. The transcripts establish that the plaintiff appeared in order to provide evidence and in fact, did provide the financial information and tax returns to the other side. Transcripts available on request. Accordingly, the order entered June 21, 2017, should be reversed. See *Turner v. Rogers*, 564 U.S. 431 (2011); *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXVII. Undivided interest in the marital home which houses child(ren) of the marriage who are in school is in the exclusive jurisdiction of the family court.

Undivided interest in the marital home which houses child(ren) of the marriage who are in school is in the exclusive jurisdiction of the family court. Pursuant to S.C. Code Section 15-39-60, an execution may issue against a married woman, and it shall direct the levy and collection of the amount of the judgment against her from her separate property, and not otherwise. Accordingly, the order entered June 21, 2017, should be reversed. See *Gilley v. Gilley*, 327 S.C. 8, 488 S.E.2d 310 (S.C., 1996) ("The family court has exclusive jurisdiction to hear and determine actions for separate support and maintenance, legal separation, other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions related to the real and personal property of the marriage. S.C.Code Ann. § 20-7-420(2)."); *Turner v. Rogers*, 564 U.S. 431 (2011); *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXVIII. One Circuit Judge has no power to change, alter, review, revise or reverse the action of another Circuit Judge.

Defendants presented their unverified petition to one Circuit Court Judge. Unhappy with the order of that Circuit Court Judge, Pro Se Defendants went "Judge Shopping," and impermissibly presented the same unverified petition to another Circuit Court Judge, while the first order was subject to a pending Rule 59(e), SCRCP, Motion to alter or amend. Rule 43(l), SCRCP , provides, "If any

motion be made to any judge and be denied, in whole or in part, or be granted conditionally, no subsequent motion upon the same state of facts shall be made to any other judge in that action." "This rule results from the nature of the case and well-established principles. Its propriety is so obvious that it has not been thought necessary to enforce it by constitutional prohibition or express enactment, but for the sake of symmetry and convenience in practice it has been embodied in our 61st rule (now Rule 43(l), SCRCP) of the Circuit Courts, which declares that 'if any application for an order be made to any judge, and such order be refused, in whole or in part, or be granted conditionally, or on terms, no subsequent application upon the same state of facts, shall be made to any other judge; and if upon such subsequent application, any order be made, it shall be revoked'...(A) judgment of the Court of Common Pleas... must stand until reversed or set aside in the manner prescribed by law. There is no appeal from one Circuit judge to another. All are of equal dignity and have the same right to pronounce the judgments of the court. One Circuit judge upon the same state of facts, has no power to change, alter or reverse a decision of a brother judge of the same Circuit." Steele v. Charlotte, Columbia & Augusta R.R. Co., 14 S.C. 324 (S.C., 1880) (emphasis supplied); State v. Harrelson, 211 S.C. 11, 43 S.E.2d 593 (S.C., 1947). Defendants attempt to "Judge Shop." Further, on information and belief, untrustworthy pro se Defendants, who are officers of the Court, materially failed, refused, and/or omitted disclosing the fact that the exact same Order on the exact same facts had already been adjudicated by another Circuit Court Judge. Untrustworthy pro se Defendants have unclean hands. See Enoree Baptist Church v. Fletcher, 287 S.C. 602, 604, 304 S.E.2d 546, 547 (1986) ("One Circuit Court Judge does not have the authority to set aside the order of another."). "It was in substance really, an appeal from the judgment of one judge to that of another." *State v. Harrelson,* 211 S.C. 11, 43 S.E.2d 593 (S.C. 1947). It is apparent that the order of *Judge Jefferson*, bearing *a later date*, is in conflict with the previous ruling of *Judge Young*, the presiding Judge, which order of *Judge Jefferson* will have to be reversed since one Circuit Judge has no power to review, revise or reverse the action of another Circuit Judge. *Steele v.*

Charlotte C. & A. R. Co., 14 S.C. 324 (S.C. 1880) (emphasis supplied); *Warren, Wallace & Co. v. Simon*, 16 S.C. 362; *Charles v. Jacobs*, 18 S.C. 598; *State v. Price*, 35 S.C. 273, 14 S.E. 490. The efficacy of the order of reference is challenged. Accordingly, the order of June 21, 2017, should be reversed.

XXIX. Public policy prohibits two orders on the same petition by two different judges as unfair, improper, unconscionable, and denial of due process and equal protection.

The law recognizes only the first order of reference, and that order was pending Rule 59(e), SCRCP, motion. As such, there is no jurisdiction for any other Circuit Court Judge to entertain the same petition. See attached letter by the Clerk of Court documenting the **rule of law** and customary procedure: the Presiding Judge who signed the first order is the only Circuit Court Judge with jurisdiction to hear and rule on the Rule 59(e), SCRCP, motion regarding that order. The rule of law abhors untrustworthy malpractice Defendants blatant attempts at Judge Shopping. Public policy prohibits two different orders on the same petition by two different judges as unfair, improper, unconscionable, and unconstitutional. Impossibility of compliance with two different orders on the same unverified petition by two different judges is a complete defense. The efficacy of the order of reference is challenged. Accordingly, the order entered June 21, 2017, should be reversed. *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXX. Defendants proposed Rule to Show Cause is void on its face because Defendants have no authority to deny the rule of law, appellate jurisdiction, and access to the South Carolina Court of Appeals.

Defendants proposed Rule to Show Cause purports to deny the plaintiff access to appeal to the South Carolina Court of Appeals. As such, it is void on its face because Defendants have no authority to deny litigants the rule of law, appellate jurisdiction, and access to the South Carolina Court of Appeals. The Court of Appeals has such jurisdiction as the General Assembly prescribes by general law. S.C. Const. art. V, § 9. Its jurisdiction under S.C. Code §14-8-200(a) is as follows:

> [T]he court shall have jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of the circuit or family court. S.C. Code §14-8-200(a).

The Court of Appeals is an error-correction court. S.C. Const. art. V, § 9. In a direct appeal, the focus is on the propriety of rulings made by the circuit court. See Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). Toal et al., Appellate Practice in South Carolina (3d ed. 2016), p. 11. Defendant's brazen assertion that Defendants are somehow exempt from the South Carolina Appellate Court Rules and the South Carolina Court of Appeals characterizes the way Defendants have proceeded in this professional negligence action all along, i.e., the rules do not apply to them. Accordingly, the order entered June 21, 2017, is void/voidable and should be reversed.

XXXI. Novel issues are raised regarding new legislation and new statutory law.

This case contains novel questions of law. *Osprey Inc., v. Cabana Limited Partnership*, 340 S.C. 367, 532 S,E,2d 269 (2000). It is respectfully submitted that novel issues regarding the revised S.C. Code Section 15-36-10 support reversal of the order. *Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743

(2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXXII. Summary application is not proper because this matter is incidental to the case and does not constitute a traditional money judgment.

This matter is incidental to the case and does not constitute a traditional money judgment. *State v. Cooper*, 342 S.C. 389, 536 S.E.2d 870 (2000). The underlying claim ended in wrongful directed verdict with no money judgment. Summary application applies to traditional judgments where the party has been afforded the right to trial by jury. "A summary application by rule to show cause is not allowed in that class of cases....(I)t must be of a more formal character than the present rule (*to show cause*), such as would admit of a formal mode of trying any issue of fact that might arise in such proceeding." *Smith v. Lake*, 5 S.C. 341 (S.C., 1874) (emphasis supplied). Defendants did not counterclaim, thereby waiving any. The Physician is not the Defendant, and the matter herein is incidental. Defendants *pro se*, unverified, false petition should be dismissed and the June 21, 2017, order should be reversed.

XXXIII. A novel question is raised of constitutionality of summary application by rule to show cause pursuant to amended S.C. Code Section 15-36-10 and/or incidental matter.

Amended S.C. Code Section 15-36-10 is unconstitutional on its face and as applied as a denial of the right to trial by jury. Summary application is unconstitutional in incidental matters where the right to trial by jury on issues of fact has been denied. Federal and State constitutional challenge is hereby raised, including but not limited to, deprivation of right to full and fair hearing at trial by jury, deprivation of right to neutral fact-finder where the scales of justice are tipped in favor of untrustworthy Malpractice Defendants who are officers of the court, and the amended S.C. Code Section 15-36-10 statute's reasonable attorney standard is not reasonable notice to the layperson or affected parties. Accordingly, the statute is null and void, and Defendants' summary application should be dismissed and the June 21, 2017 order should be reversed. *See Moore v. Moore*, 376 S.C. 467, 657 S.E.2d 743 (2008) (procedural due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses). See S.C. Const. art. I, sec. 2, 3, 4, 10, and 14; S.C. Const. art. V, sec. 4; S.C. Const. art. V, sec. 5; U.S. Const., Article I, sec. 9 and 10; U.S. Const. amend. I, IV, V, VII, and XIV. *Hicks v. Feiock*, 108 S.Ct. 1423, 485 U.S. 624, 99 L.Ed. 721, 56 U.S.L.W. 4347 (1988).

XXXIV. The June 21, 2017, order grants relief that was not requested and that is inconsistent with the hearing; malpractice Defendants, untrustworthy officers of the Court, failed and refused to copy the other side with the proposed order.

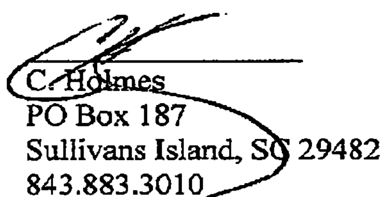
The record reflects that the order grants relief that was not requested, and malpractice Defendants, untrustworthy officers of the Court, failed and refused to copy the other side with the

proposed order. *Burgess v. Stern*, 428 S.E.2d 880, 311 S.C. 326 (S.C., 1992). Accordingly, the order should be reversed.

CONCLUSION

For the foregoing reasons and for substantial justice affecting substantial rights, appellant respectfully requests that this Court grant this petition with abeyance.

Respectfully submitted,



C. Holmes
PO Box 187
Sullivans Island, SC 29482
843.883.3010

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D.,

Plaintiff,

v.

Tenet HealthSystem Medical Inc., and East Cooper Community Hospital, Inc.,

Defendants.

CIVIL ACTION NO.: 2:99-0833-23

PLAINTIFF'S RESPONSE TO DEFENDANT'S MOTION TO DISSOLVE PRELIMINARY INJUNCTION

FILED
JAN 25 2000
LARRY W. PROPES, CLERK
COLUMBIA, S. C.

Plaintiff, through her undersigned counsel, hereby responds to the Defendant's Motion to Dissolve Preliminary Injunction as follows:

Plaintiff has responded to the Defendant's discovery requests and Plaintiff's experts have calculated an itemization of damages which will be provided at the time of a discovery deposition of Plaintiff's experts. This deposition was previously scheduled for Monday, January 24, 2000. Plaintiff's expert, Dr. Jonathan Cunitz, has reviewed adequate information to form his opinions and is prepared to give those in his deposition as soon as it takes place. Dr. Cunitz has not prepared a written report.

In addition, the Plaintiff's deposition has been scheduled for January 26, 2000. The Plaintiff has made reasonable attempts to comply with her discovery obligations within the time specified in the Court's Scheduling Order. Therefore, the Court should not find that there is any evidence of unclean hands which would warrant a dissolution of the preliminary injunction.

FILED

The time stamp was incorrectly changed to "1/23" by a runner. Correct date is 1/25.

RECEIVED

SINKLER & BOYD, P.A.

By: ______________________
James Y. Becker
Post Office Box 11889
Columbia, South Carolina 29211
(803) 779-3080
Attorneys for the Plaintiff

January 24, 2000

Columbia, South Carolina

A TRUE COPY
Attest: Larry W. Propes, Clerk
By: ______________________
Deputy Clerk

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker,

Defendants.

C/A NO: 2007-CP-10-01444

2017 JAN -3 AM 9:14

RULE TO SHOW CAUSE IN SUPPLEMENTARY PROCEEDINGS AND ORDER OF REFERENCE

Judgment having been rendered, an execution issued, and a *nulla bona* return made to said execution, the Defendants, Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker, having moved for an examination of Plaintiff, Cynthia Holmes, M.D., under oath in Supplementary Proceedings, pursuant to the provisions of South Carolina Code Ann. §15-39-310, *et. seq.*; It is therefore,

ORDERED that Plaintiff, Cynthia Holmes, M.D., DO APPEAR before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, South Carolina, 100 Broad Street, Courtroom 2-A, Charleston, South Carolina, on the 10th day of March, 2017, at 10:30 o'clock in the A M to answer under oath concerning her assets, and TO SHOW CAUSE why her property should not be applied toward satisfaction of the Judgment set out in the Petition; and TO SHOW CAUSE why a Receiver of such property should not be appointed, pursuant to the provisions of South Carolina Code Ann. § 15-39-430.

IT IS FURTHER ORDERED that, pursuant to South Carolina Code Ann. §§ 14-11-90 and 15-30-390, this matter being referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County to entertain and rule upon all motions necessary to dispose of this matter, to include, but not be limited to, motions to appoint a receiver, motion to continue the matter, motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt,

motions to dismiss, and having authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court.

IT IS FURTHER ORDERED that this Rule to Show Cause may be served on the Defendant by means of a private process server.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING the following:

1. Bank statements for all bank accounts [checking, savings, financial accounts, certificates of deposit, etc...] of Plaintiff from 2014 to the present;
2. Financial Statements from 2014 to the present;
3. Copies of all pay stubs from 2014 to the present;
4. All stock certificates;
5. All licenses and franchise agreements;
6. All State and Federal Tax Returns from 2014 to the present;
7. All insurance policies [personal, automobile, real estate];
8. Records of any real estate owned, either in whole or in part by Plaintiff since 2012;
9. Records of automobiles, trucks, trailers, boats, ATV's, and other vehicles and accessories;
10. Any inventories of personal property now or formerly owned from 2014 to the present;
11. Records of all inventories of furniture, fixtures, and/or equipment owned in whole or in part;
12. Copies of any contracts entitling you to payment of money.

IF YOU FAIL TO APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

S/ Roger Young
Presiding Judge

Dated: 12/30/16
Charleston, South Carolina

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, CP, GS, FC
By: [signature]
DEPUTY CLERK

DM: 4785898 v.1

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Cynthia Holmes, M.D.,

Plaintiff,

vs.

Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker,

Defendants.

C/A NO: 2007-CP-10-01449

FILED
2017 JAN -3 AM 9:13
JULIE J. ARMSTRONG
CLERK OF COURT

RULE TO SHOW CAUSE IN SUPPLEMENTARY PROCEEDINGS AND ORDER OF REFERENCE

Judgment having been rendered, an execution issued, and a *nulla bona* return made to said execution, the Defendants, Haynsworth Sinkler Boyd, P.A., successor to Sinkler & Boyd, P.A., Manton Greer and James Y. Becker, having moved for an examination of Plaintiff, Cynthia Holmes, M.D., under oath in Supplementary Proceedings, pursuant to the provisions of South Carolina Code Ann. §15-39-310, *et. seq.*; It is therefore,

ORDERED that Plaintiff, Cynthia Holmes, M.D., DO APPEAR before the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, South Carolina, 100 Broad Street, Courtroom 2-A, Charleston, South Carolina, on the ________ day of ______________, 2017, at ______ o'clock in the ___M to answer under oath concerning her assets, and TO SHOW CAUSE why her property should not be applied toward satisfaction of the Judgment set out in the Petition; and TO SHOW CAUSE why a Receiver of such property should not be appointed, pursuant to the provisions of South Carolina Code Ann. § 15-39-430.

IT IS FURTHER ORDERED that, pursuant to South Carolina Code Ann. §§ 14-11-90 and 15-30-390, this matter being referred to the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County to entertain and rule upon all motions necessary to dispose of this matter, to include, but not be limited to, motions to appoint a receiver, motion to continue the matter, motions to sell all or certain property of judgment debtor in satisfaction of the Petitioner's debt,

motions to dismiss, and having authority to enter a Final Order, with any appeal directly to the South Carolina Supreme Court.

IT IS FURTHER ORDERED that this Rule to Show Cause may be served on the Defendant by means of a private process server.

YOU ARE FURTHER ORDERED TO BRING WITH YOU TO THE HEARING the following:

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2. Financial Statements from 2014 to the present;
3. Copies of all pay stubs from 2014 to the present;
4. All stock certificates;
5. All licenses and franchise agreements;
6. All State and Federal Tax Returns from 2014 to the present;
7. All insurance policies [personal, automobile, real estate];
8. Records of any real estate owned, either in whole or in part by Plaintiff since 2012;
9. Records of automobiles, trucks, trailers, boats, ATV's, and other vehicles and accessories;
10. Any inventories of personal property now or formerly owned from 2014 to the present;
11. Records of all inventories of furniture, fixtures, and/or equipment owned in whole or in part;
12. Copies of any contracts entitling you to payment of money.

IF YOU FAIL TO APPEAR AS ORDERED, YOU MAY BE HELD IN CONTEMPT OF COURT WHICH COULD RESULT IN A FINE AND/OR JAIL SENTENCE.

Presiding Judge

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

Dated: 12/30/16
Charleston, South Carolina

DM: 4785898 v.1

FILED
JUN - 2 2000
LARRY W. PROPES, CLERK
CHARLESTON, SC

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

J. Doe, M.D.,

Plaintiff,

v.

C.A. # 2:99-833-23

Tenet HealthSystem Medical, Inc. and East Cooper Community Hospital, Inc.,

Defendants.

ORDER

This matter is before the court upon plaintiff's motion for an injunction pending appeal under Federal Rule of Civil Procedure 62 (c). For the following reasons, the motion is denied.

Plaintiff, Cynthia Holmes, M.D., is a physician who had admitting privileges at the defendant Hospital. Upon the Hospital's termination of her admitting privileges, Dr. Holmes brought this action for both injunctive relief and monetary damages asserting violations of federal anti-trust laws and state law claims. On November 22, 1999, this court enjoined the Hospital from terminating Dr. Holmes' privileges. Thereafter, the defendants filed a motion to dissolve the preliminary injunction on the grounds that Dr. Holmes had failed to abide by the Scheduling Order and had failed to comply with the rules of discovery. Furthermore, the alleged harm suffered by her current patients had not materialized.

On January 25, 2000, the court granted the defendants' motion to dissolve the preliminary injunction after holding a hearing on the matter. Dr. Holmes did not appeal the court's order dissolving the injunction. Soon thereafter, the defendants moved for summary judgment. After considering the briefs filed, both in support of and in opposition to the motion, this court granted the defendants' motion for summary judgment as to all federal claims, and dismissed without prejudice

the supplemental state law claims on April 17, 2000. Plaintiff has now appealed this court's Order. Simultaneous with the filing of her notice of appeal, plaintiff filed this motion for an injunction pending appeal pursuant to Rule 62 (c).[1]

Rule 62 (c) authorizes the court to suspend, modify, restore, or grant an injunction during the pendency of an appeal. Fed. R. Civ. P. 62 (c) "This subdivision . . . codifies the inherent power of courts to make whatever order is deemed necessary to preserve the status quo and to ensure the effectiveness of the eventual judgment." Charles A. Wright, Arthur R. Miller, Mary K. Kane, 11 Federal Practice and Procedure § 2904 (2d ed 1995). However, due to the fact that Dr. Holmes did not seek such relief upon the dissolution of the injunction back in January, this court declines to restore the injunction at this time. If Dr. Holmes had appealed the order dissolving the injunction, such a motion may have been appropriate at that time. However, the status quo of this case since January is the absence of any injunction against the defendants. Therefore, the motion is denied.

It is therefore,

ORDERED, for the foregoing reasons, that the Plaintiff's motion for an injunction pending appeal is DENIED,

AND IT IS SO ORDERED.

PATRICK MICHAEL DUFFY
UNITED STATES DISTRICT JUDGE

Charleston, South Carolina
June 14, 2000

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[1] Plaintiff also referenced the provision for injunctive relief under Clayton Act cases as a basis for her request. See 15 U.S.C. § 26. However, section 26 only provides injunctive relief as a remedy for antitrust violations. It has no applicability to the relief sought at this stage of the plaintiff's case.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

9th Judicial Circuit Court Judge

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SC Court of Appeals

App. Case No. 2017-001460
Case No. 2007-CP-10-1444

C. Holmes,

Appellant,

v.

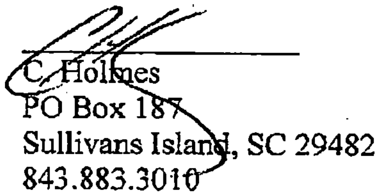
James Y. Becker, Manton Grier,
and Haynsworth Sinkler Boyd, P.A.,
as successor to Sinkler & Boyd, P.A.,

Respondents.

PROOF OF SERVICE

I certify that I have served a copy of the foregoing on the Respondents by depositing a copy of it in the United States Mail, postage prepaid, addressed to Respondents on this date at 1201 Main St. #2200, Columbia, SC 29201.

Dated 7/24/17



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Clerk, South Carolina Court of Appeals
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Columbia, SC 29201/29211

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JUL 24 2017

SC Court of Appeals

Re: Holmes v. Haynsworth et al
App. Case No. 2017-01460

Dear Jenny:

Enclosed for filing is the original with abeyance request in the above case. Also, enclosed are the following:

1) The filing fee,
2) Seven copies,
3) Proof of Service and a copy, and
4) SASE for return.

Thank you for your kind attention to this matter. With best personal regards, I remain

Very truly yours,

cc: Respondent's Counsel

DURST FAMILY MEDICINE, LLC

(843) 883-3176

(843) 883-3459

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