

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
Isaac Noyes Smith V,)
Plaintiff,)
vs.)
Stuart Lewis Smith,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2016-CP-26-6640

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OCT 10 2017
SC Court of Appeals

ORDER

This matter came before the Court on Defendant's motion for default judgment against the Plaintiff. A hearing was held before me at 1:00 p.m. on June 19, 2017, in the Horry County Government and Justice Center in Conway, South Carolina. Present at that time were both parties and William A. Bryan, the attorney for the Defendant. The Plaintiff is pro se.

The Court finds that on February 16, 2017, the Defendant served her answer, counterclaim and set off on the Plaintiff. The Plaintiff has filed no reply to the counterclaim. The Defendant supported her motion with an affidavit for default judgment, as well as an affidavit of non-military service as to the Plaintiff.

The motion and supporting affidavit are consistent with the prayer of relief set forth in the Defendant's counterclaim against the Plaintiff. That is, the Defendant alleged in her counterclaim that she was entitled to a judgment of \$650,000 against the Plaintiff, plus interest at the legal rate from June 30, 2006. In the Defendant's affidavit for default judgment accompanying the motion for default judgment, interest is calculated at the legal rate of 8 3/4% per annum to be \$617,833.90 to May 11, 2017, with per diem interest accruing thereafter of \$155.82. The affidavit further states that the total due as of May 11, 2017, is \$1,267,833.90, plus \$155.82 interest per day thereafter.

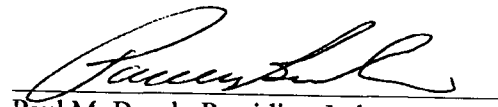
attorney must be accomplished by serving the attorney, rather than the party individually. Therefore service of the amended summons and complaint on the Defendant rather than her attorney is not service as contemplated under the South Carolina Rules of Civil Procedure.

This Court concludes that Plaintiff has not complied with Rule 15(a) SCRPC since service of the amended complaint was not accomplished within thirty days of service of the Defendant's counterclaim.

IT IS ORDERED that the attempted service of the amended summons and complaint on Defendant personally on April 17, 2017, is quashed.

IT IS FURTHER ORDERED that since the amended summons and complaint was not timely served within thirty days of service of the Defendant's answer and counterclaim on Plaintiff, the Plaintiff's amended summons and complaint filed March 3, 2017, is dismissed.

AND IT IS SO ORDERED.


Paul M. Burch, Presiding Judge
Fifteenth Judicial Circuit


Conway, South Carolina