

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Joseph C. Sun,

PLAINTIFF,

v.

Bryan Norberg, Angela Tubbs, Joseph Babkiewicz, Claudia Hebda, Jeffrey Dickson, and Christian Gonzales,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2014-CP-07-00943

ORDER DENYING PLAINTIFF'S MOTION TO VACATE AND SET ASIDE JUDGMENT

RECEIVED

OCT 30 2017

SC Court of Appeals

This matter is before me on the motion of Plaintiff Joseph C. Sun ("Mr. Sun" or "the Plaintiff"), dated July 16, 2017, for an order to vacate and set aside my Amended Order granting Defendants' Motion for Summary Judgment, dated May 23, 2017, pursuant to Rule 60(b)(3), SCRPC. A hearing on the motion took place on August 1, 2017. Present at the hearing were Joseph C. Sun, pro se, and Hillary G. Meyer, of Griffith, Freeman, and Liipfert, LLC, attorneys for the Defendants. At the hearing, Mr. Sun presented his memorandum, amended motion, and affidavit of Joseph Sun. He presented that the Defendants' affidavits provided to the Court in the Defendants' Motion for Summary Judgment were perjuries. Mr. Sun further presented that the Defendants' counsel was committing extrinsic fraud upon the Court by providing the Court with the perjuries. No other evidence was presented.

LEGAL STANDARD

Rule 60(b)(3) of the South Carolina Rules of Civil Procedure states that "on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: ... (3) fraud,

misrepresentation, or other misconduct of an adverse party.” However, “fraud upon the court is a narrow and invidious species of fraud that ‘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.” Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 47, 590 S.E.2d 502, 504–05 (Ct. App. 2003) (citing Chewning v. Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 608 (2003)). In order to show fraud upon the court, a plaintiff must show “that one has acted with an intent to deceive or defraud the court.” Chewning, 354 S.C. at 78, 579 S.E.2d at 608. “Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” Raby Const., L.L.P. v. Orr, 358 S.C. 10, 17–18, 594 S.E.2d 478, 482 (2004).

DISCUSSION

I have reviewed the evidence and arguments presented by Mr. Sun, and I find that the matter before me does not present grounds for the exceptional relief requested by the Plaintiff under Rule 60(b)(3), SCRPC.

Therefore as discussed above, it is:

ORDERED that the Plaintiff’s Motion to Vacate and Set Aside Judgment is DENIED.

IT IS SO ORDERED.

Judge Marvin H. Dukes, III

Beaufort, South Carolina

_____, 2017



Beaufort Common Pleas

Case Caption: Joseph Sun VS Town Of Bluffton , defendant, et al

Case Number: 2014CP0700943

Type: Order/Vacate Judgment

So Ordered:

s/Marvin H. Dukes III #3069

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CERTIFICATE OF SERVICE

On August 30, 2017, I served *Order Denying Plaintiff's Motion to Vacate and Set Aside Judgment* pursuant to Rule 5, SCRCF by depositing it in the United States mail, with postage prepaid, and addressed as follows:

Joseph C. Sun
PO Box 151
Bluffton, SC 29910

s/ *E. Mitchell Griffith*

E. Mitchell Griffith

Beaufort, South Carolina