

STATE OF SOUTH CAROLINA  
COUNTY OF SPARTANBURG  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-42-1592

Beverly Dale Jolly

Crosby Valve, LLC, et al.

Brenda Rice Jolly  
PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for :  Plaintiff  Defendant  
 Self-Represented Individual

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SC Court of Appeals

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DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.  See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):**  Rule 12(b), SCRPC;  Rule 41(a), SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other
- ACTION STRICKEN (CHECK REASON):**  Rule 40(j), SCRPC;  Bankruptcy;  Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;  Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
 Affirmed;  Reversed;  Remanded;  Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:  See attached order (formal order to follow)  Statement of Judgment by the Court: DEFENDANTS' MOTION TO QUASH PLAINTIFFS' TRIAL SUBPOENAS IS DENIED.

ORDER INFORMATION

This order  ends  does not end the case.  
Additional Information for the Clerk :

*See attached order*

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In e-filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

*[Signature]*

Judge Code

2758

Date

9-21-17





LAW AND ANALYSIS

Defendants claim Plaintiffs' trial subpoenas are not valid "in that Fisher (and Crosby) is not a resident of South Carolina and was not served pursuant to the rule." Defs' Mot. to Quash at 1. Defendants' argument fails to recognize that Defendants Fisher and Crosby are parties to this action who have submitted to the jurisdiction of this Court. They are not merely non-party witnesses.

Rule 45, SCRPC, only allows *non-parties* to quash a trial subpoena. The rule states in pertinent part, as follows:

(3)(A) On timely motion, the court by which a subpoena was issued, or regarding a subpoena commanding appearance at a deposition, or production or inspection directed to a non-party, the court in the county where the non-party resides, is employed or regularly transacts business in person, shall quash or modify the subpoena if it:

- (i) fails to allow reasonable time for compliance; or
- (ii) requires *a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party*, to travel more than 50 miles from the county where that person resides, is employed or regularly transacts business in person, except that, subject to the provision of clause (c)(3)(B)(iii) of this rule, such a person may in order to attend trial be commanded to travel from any such place within the state in which the trial is held; or
- (iii) requires disclosure of privileged or otherwise protected matter and no exception or waiver applies; or
- (iv) subjects a person to undue burden.

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Rule 45(c)(3)(A), SCRPC (emphasis added). Rule 45 thus provides that only a non-party may quash a subpoena for geographic or travel reasons, and even then a non-party may be subpoenaed to attend trial from anywhere in the state.

The rule does provide a mechanism for quashing a trial subpoena, but again only for non-parties:

(B) If a subpoena . . .

(iii) requires a person who is not a party nor an officer, director or managing agent of a party, nor a general partner of a partnership that is a party, to incur substantial expense to travel from the county where that person resides, is employed or regularly transacts business in person, the court may, to protect a person subject to or affected by the subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship and assures that the person to whom the subpoena is addressed will be reasonably compensated, the court may order appearance or production only upon specified conditions.

Rule 45(c)(3)(B), SCRCP (emphasis added). There is simply no provision for a party to quash a trial subpoena because the party resides outside the county or even the state.

In contending that they cannot be compelled to attend trial because they are corporations, Fisher and Crosby ignore the key fact that they are parties to this case. Their status as nonresident corporations does not change the fact that they have submitted to the jurisdiction of this Court by making a general appearance and litigating this case to trial. A general appearance constitutes a voluntary submission to the jurisdiction of the court. See, e.g., *Stickland v. Consol. Energy Prod.*

*Co.*, 274 S.C. 554, 555, 265 S.E.2d 682, 683 (1980); *Brays Island Plantation, Inc. v. Harper*, 245 S.C. 399, 405, 140 S.E.2d 781, 784 (1965).

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The Court should reject Defendants' arguments that the only mechanism to secure trial testimony from Fisher and Crosby's corporate representatives is through a Rule 30(b)(6) deposition. There is no authority for the proposition that Plaintiffs cannot obtain live testimony from a party to this case. Rule 32 references the use of depositions of "witnesses" that reside more than 100 miles from the courthouse, not parties.

Defendants contend that Plaintiffs can present the testimony of the Defendants from depositions taken in other cases from other states. Defendants overlook the fact that, in addition to the reality that these Defendants are parties to the instant actions, that these other depositions are piecemeal, from other cases in other jurisdictions, and generally must be read in from paper

transcripts.<sup>1</sup> It is only fair that Plaintiffs be allowed to question Defendants, through their representatives, through live testimony at trial. In-person testimony will certainly aid the jury's understanding of the relatively complex issues presented in this case regarding Defendants' wrongful conduct in manufacturing and marketing asbestos products without a warning and their knowledge of the danger.

Finally, there is also no merit to Fisher and Crosby's contention that Plaintiffs' method of service was deficient. The Editor's Notes to the 2002 Amendments to Rule 45 confirm that a subpoena may be served on a corporation and that such service may be made on the corporation's attorney:

The first 2002 amendment amends Rule 45(b)(1) to permit service of subpoenas by the same method as used to serve a summons and complaint.

First, in addition to in hand service of the subpoena, service on an individual could be made by leaving the subpoena at the person's home or usual place of abode with a person of suitable age and discretion then residing there provided in Rule 4(d)(1). Second, *a subpoena could be served on an individual, a corporation, or a partnership by registered or certified mail with return receipt requested and delivery restricted to the addressee under Rule 4(d)(8). In addition, the person or the person's attorney may accept service under Rule 4(j).*

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Notes to 2002 Amendments, Rule 45, SCRPC (emphasis added).

Further, subsection (j) of Rule 4 defines acceptance of service and provides that "[n]o other proof of service shall be required *when acceptance of service is acknowledged in writing and signed by the person served or his attorney*, and delivered to the person making service. The

<sup>1</sup> Defendants also, in contending that Plaintiffs must rely only on Rule 30(b)(6), appear to be of the position that Plaintiffs must conduct discovery and preserve trial testimony in the same deposition and in the same sitting. This fundamentally undermines the purpose and value of discovery in a civil case.

acknowledgement shall state the place and date service is accepted.” Rule 4(j), SCRCP (emphasis added).

In addition, Rule 5(b), SCRCP applies to all service requirements listed in any South Carolina Rule of Civil Procedure. Subsection (b)(1) of Rule 5 provides that unless the Court orders that service on the party must be made personally, then whenever “service is required to be made upon a party represented by an attorney the service shall be made upon the attorney.” *Id.* Rule 5 even defines delivery as meaning “handing it to the attorney or the party or leaving it at his office with his clerk or other person in charge thereof.” *Id.*

Here, the Court never ordered that either Defendant Fisher or Defendant Crosby were to be served personally in circumvention of Rule 5(b)(1), therefore Defendant Fisher and Defendant Crosby “shall” be served by their attorney of record in the pending case pursuant to Rule 5(b)(1). Secondly, Plaintiffs have provided the Court with Defendants’ acknowledgment of acceptance of service in writing and signed by the person served or his attorney. Finally, Plaintiffs served timely valid subpoenas for attendance at trial, issued pursuant to Rule 45, served on Defendants pursuant to rule Rule 5(b)(1) and acknowledged by Defendant through signature of acceptance of service pursuant to Rule 4(j). Rules 4, 5 and 45, SCRCP.

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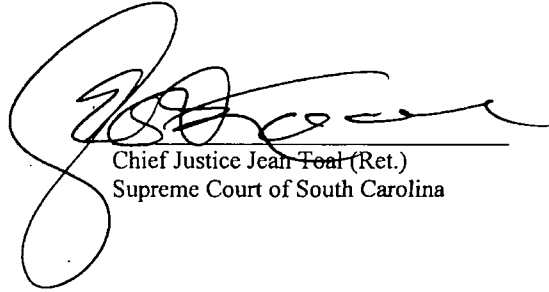
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**CONCLUSION**

Therefore, Plaintiffs are entitled to an Order denying Defendants’ motions to quash Plaintiffs’ trial subpoenas and for an order compelling Defendant Fisher and Defendant Crosby to comply with Plaintiffs’ trial subpoenas and appear at trial to give live testimony in Plaintiffs’ case-in-chief.

For the reasons set forth above, Defendants Motion to Quash is DENIED and Defendants Crosby and Fisher are ORDERED to appear and present a corporate representative for examination at trial.

SO ORDERED.



Chief Justice Jean Toal (Ret.)  
Supreme Court of South Carolina

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