

9 sets 28 Pages

RECORD ON APPEAL

THE STAT OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

Thomas Russo, Circuit Court Judge

Case No. 2016-CP-21-2533

RECEIVED
APR 05 2018
SC Court of Appeals

R&R Cleaning Service &
Natalie Harris

Respondent.

v.

Edward Spears

Appellant.

RECORD ON APPEAL

Edward Spears
503 Roughfork Street
Florence, SC 29501
(843) 496-3711
Pro Se

Mike Hopewell
4703 West Evans Street
Florence, SC 29501
(843) 669-0089
Attorney for Respondent

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STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

2015CV2110108515
CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT
COMPLAINT

Edward Spears
503 W. Roughfork St.
Florence, SC 29501
(843) 496-3711

Exh. 1

PLAINTIFF(S)

Vs

R & R Cleaning Service	Natalie Harris	Matt Rogers
2215 West Palmetto St.	2215 West Palmetto St.	2215 West Palmetto St.
Florence, SC 29501	Florence, SC 29501	Florence, SC 29501

DEFENDANT(S)

I, Edward Spears, the Plaintiff in this civil action do make the following claims:

1. I believe that the defendant(s),

R & R Cleaning Service
Natalie Harris
Matt Rogers

is/are a resident(s) of Florence County, and reside within the jurisdiction of the Florence Magistrate Court or this Complaint is properly filed in Florence County.

2. I make this complaint on the following:

Plaintiff states the he is filling for harassment, favoritism, supervisory negligence, retaliation, wrongful termination.

3. I believe, because of the above information, that I am entitled to and do request a judgment for \$ 7500.00 and/or relief as below requested:

Plus \$80:00 Court Cost

including any costs resulting in this action.

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE STATED FACTS ARE TRUE EXCEPT THOSE BASED ON MY BEST INFORMATION THAT I BELIEVE TO BE TRUE.

JANUARY 19, 2016

Edward R. Spears
SIGNATURE OF PLAINTIFF/ATTORNEY

Page DE I
List

STATE OF SOUTH CAROLINA

COUNTY OF FLORENCE

Edward Spears
503 W. Roughfork St.
Florence SC 29501

Exb2

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the Court of the Florence County
Florence Magistrate Court, 180 North Irby Street (M S C-W),, Florence, SC, 295013456 on
April 7, 2016 at 9:30 AM for a HEARING to serve as a plaintiff, defendant, or attorney of a
party in case number 2015CV2110108515:

RE: Edward Spears

Vs R & R Cleaning Service
Natalie Harris
Matt Rogers

PLAINTIFF(S)

DEFENDANT(S)

On this date you are to:

- 1) present any issues at law, 2) submit a written list of names and addresses of any witnesses to be called, 3) present your Voir Dire questions, and 4) and present to the Court estimated time for jury trial.

If either party is not present or represented, the court may issue a default judgment or judicial dismissal, as appropriate.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASE MADE OR PROVIDED.

Doris Becker

JUDGE

Florence County
Florence Magistrate Court
180 North Irby Street (M S C-W),
Florence, SC, 295013456
Phone: (843) 665-0031 Fax: (843) 661-7800

March 15, 2016

U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
NOTICE OF RIGHT TO SUE (ISSUED ON REQUEST)

Exb 4

To: Edward R. Spears
503 Roughfork Street
Florence, SC 29501

From: Greenville Local Office
301 North Main St
Suite 1402
Greenville, SC 29601

On behalf of person(s) aggrieved whose identity is
CONFIDENTIAL (29 CFR §1601.7(a))

EEOC Charge No.	EEOC Representative	Telephone No.
14C-2016-00399	Andrew C. Davis Jr. Investigator	(864) 241-4427

(See also the additional information enclosed with this form.)

NOTICE TO THE PERSON AGGRIEVED:

Title VII of the Civil Rights Act of 1964, the Americans with Disabilities Act (ADA), or the Genetic Information Nondiscrimination Act (GINA): This is your Notice of Right to Sue, issued under Title VII, the ADA or GINA based on the above-numbered charge. It has been issued at your request. Your lawsuit under Title VII, the ADA or GINA must be filed in a federal or state court **WITHIN 90 DAYS** of your receipt of this notice; or your right to sue based on this charge will be lost. (The time limit for filing suit based on a claim under state law may be different.)

- More than 180 days have passed since the filing of this charge.
- Less than 180 days have passed since the filing of this charge, but I have determined that it is unlikely that the EEOC will be able to complete its administrative processing within 180 days from the filing of this charge.
- The EEOC is terminating its processing of this charge.
- The EEOC will continue to process this charge.


Age Discrimination in Employment Act (ADEA): You may sue under the ADEA at any time from 60 days after the charge was filed until 90 days after you receive notice that we have completed action on the charge. In this regard, the paragraph marked below applies to your case:

- The EEOC is closing your case. Therefore, your lawsuit under the ADEA must be filed in federal or state court **WITHIN 90 DAYS** of your receipt of this Notice. Otherwise, your right to sue based on the above-numbered charge will be lost.
- The EEOC is continuing its handling of your ADEA case. However, if 60 days have passed since the filing of the charge, you may file suit in federal or state court under the ADEA at this time.

Equal Pay Act (EPA): You already have the right to sue under the EPA (filing an EEOC charge is not required.) EPA suits must be brought in federal or state court within 2 years (3 years for willful violations) of the alleged EPA underpayment. This means that backpay due for any violations that occurred more than 2 years (3 years) before you file suit may not be collectible.

If you file suit, based on this charge, please send a copy of your court complaint to this office.

On behalf of the Commission


 Patricia B. Fuller,
 Local Office Director

MAY 06 2016

(Date Mailed)

Enclosures(s)

cc: Jamison Hickman
Owner
R & R CLEANING
2215 W. Palmetto Street
Florence, SC 29501

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Exk 7-5

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)
)
)

2016CV2110103875
CIVIL CASE NUMBER
IN THE MAGISTRATE'S COURT
COMPLAINT

Edward Spears
503 Roughfork Street
Florence, SC 29501
(843) 496-3711

PLAINTIFF(S)
Vs

R & R CLEANING SERVICE
2215 W Palmetto Street
Florence, SC 29501

Natalie Harris
2227 Mckeen Lane
Effingham, SC 29541

*Just Law Suit filed
Even contained name
Rejoins*

DEFENDANT(S)

I, Edward Spears, the Plaintiff in this civil action do make the following claims:

- I believe that the defendant(s),
R & R CLEANING SERVICE
Natalie Harris
is/are a resident(s) of Florence County, and resides within the jurisdiction of the Florence Magistrate Court or this Complaint is properly filed in Florence County.
- I make this complaint on the following: **Plaintiff is file for harassment. Favoritism, supervisor negligence, retaliation, wrongful Termination.**
- I believe, because of the above information, that I am entitled to and do request a judgment for \$ 7500.00 and/or relief as below requested:
Plus \$80.00 Court Cost.

including any costs resulting in this action.

I STATE UNDER PENALTY OF PERJURY THAT THE ABOVE STATED FACTS ARE TRUE EXCEPT THOSE BASED ON MY BEST INFORMATION THAT I BELIEVE TO BE TRUE.

JUNE 22, 2016

Edward Spears
SIGNATURE OF PLAINTIFF/ATTORNEY

Date Filed

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Second Lawsuit

EX 6 #6

STATE OF SOUTH CAROLINA)

2015-CV-2110108515
CIVIL CASE NUMBER

COUNTY OF FLORENCE)

IN THE MAGISTRATES COURT

Edward Spears,)

Plaintiff,)

-vs-)

R&R Carpet and Cleaning)
Service, Natalia Robinson and)
Matt Rogers,)

Defendant.)

CERTIFICATE OF SERVICE

I hereby certify that I have this 23rd day of June, 2016, served a copy of an Order of Final Disposition on the Plaintiff by placing same in the United States Mail, postage prepaid

to:

Mr. Edward Spears
503 W. Roughfork Street
Florence, SC 29501

Deigh S. Cepelanel
Legal Assistant to Michael S. Hopewell

Page 6

Dead

EXB. 7

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

2015CV2110108515
CIVIL CASE NUMBER

ORDER OF FINAL
DISPOSITION

Edward Spears
503 W. Roughfork St.
Florence, SC 29501
(843) 496-3711

PLAINTIFF(S)

Vs

R & R Cleaning Service 2215 West Palmetto St. Florence, SC 29501	Natalie Harris 2215 West Palmetto St. Florence, SC 29501	Matt Rogers 2215 West Palmetto St. Florence, SC 29501
--	---	--

DEFENDANT(S)

IT IS ORDERED that the above referenced civil case 2015CV2110108515 shall reflect a final disposition of:

Dismissed with Prejudice on April 7, 2016.

IT SO ORDERED

JUDGE


ROGER NERON LANGLEY

Florence County
Florence Magistrate Court
180 North Irby Street (M S C-W)
Florence, SC 295013456
Phone: (843) 665-0031 Fax: (843) 661-7800

June 8, 2016

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CANON 3

Exb 8

A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND DILIGENTLY

A. Judicial Duties in General. The judicial duties of a judge take precedence over all the judge's other activities. The judge's judicial duties include all the duties of the judge's office prescribed by law.* In the performance of these duties, the following standards apply.

B. Adjudicative Responsibilities.

(1) A judge shall hear and decide matters assigned to the judge except those in which disqualification is required.

(2) A judge shall be faithful to the law* and maintain professional competence in it. A judge shall not be swayed by partisan interests, public clamor or fear of criticism.

(3) A judge shall require* order and decorum in proceedings before the judge.

(4) A judge shall be patient, dignified and courteous to litigants, jurors, witnesses, lawyers and others with whom the judge deals in an official capacity, and shall require* similar conduct of lawyers, and of staff, court officials and others subject to the judge's direction and control.

Commentary:

The duty to hear all proceedings fairly and with patience is not inconsistent with the duty to dispose promptly of the business of the court. Judges can be efficient and businesslike while being patient and deliberate.

told clerk not to retract disposition

(5) A judge shall perform judicial duties without bias or prejudice. A judge shall not, in the performance of judicial duties, by words or conduct manifest bias or prejudice, including but not limited to bias or prejudice based upon race, sex, religion, national origin, disability or age, and shall not permit staff, court officials and others subject to the judge's direction and control to do so.

Commentary:

A judge must refrain from speech, gestures or other conduct that could reasonably be perceived as sexual harassment and must require the same standard of conduct of others subject to the judge's direction and control.

A judge must perform judicial duties impartially and fairly. A judge who manifests bias on any basis in a proceeding impairs the fairness of the proceeding and brings the judiciary into disrepute. Facial expression and body language, in addition to oral communication, can give to parties or lawyers in the proceeding, jurors, the media and others an appearance of judicial bias. A judge must be alert to avoid behavior that may be perceived as prejudicial.

(6) A judge shall require* lawyers in proceedings before the judge to refrain from manifesting, by words or conduct, bias or prejudice based upon race, sex, religion, national origin, disability or age, against parties, witnesses, counsel or others. This Section 3B(6) does not preclude legitimate advocacy when race, sex, religion, national origin, disability, age, or other similar factors, are issues in the proceeding.

P.8

#Xb 9

RULE 7. GROUNDS FOR DISCIPLINE; SANCTIONS IMPOSED; DEFERRED DISCIPLINE AGREEMENT

(a) Grounds for Discipline. It shall be a ground for discipline for a judge to:

- (1) violate or attempt to violate the Code of Judicial Conduct or the Rules of Professional Conduct or any other applicable ethics codes;
- (2) willfully violate a valid order of the Supreme Court, Commission or panels of the Commission in a proceeding under these rules, willfully fail to appear personally as directed, willfully fail to comply with a subpoena issued under these rules, or knowingly fail to respond to a lawful demand from a disciplinary authority to include a request for a response or appearance under Rule 19(b)(1), (c)(3) or (c)(4);
- (3) be convicted of a crime of moral turpitude or a serious crime;
- (4) persistently fail to perform judicial duties or persistently perform judicial duties in an incompetent or neglectful manner;
- (5) be habitually intemperate;
- (6) consistently fail to timely issue orders, decrees, opinions or otherwise perform official duties without just cause or excuse;
- (7) willfully violate a valid court order issued by a court of this state or another jurisdiction;
- (8) willfully fail to comply with the terms of a finally accepted deferred disciplinary agreement or any terms of a finally accepted agreement for discipline by consent;
- (9) violate the Judge's Oath of Office contained in Rule 502.1, SCACR.

(b) Sanctions. Misconduct shall be grounds for one or more of the following sanctions:

- (1) removal from Office by the Supreme Court. The removal shall operate as a permanent injunction prohibiting the judge from holding any judicial office within the unified judicial system in South Carolina. On petition, the Supreme Court may dissolve this permanent injunction;
- (2) suspension by the Supreme Court. The Supreme Court may also make a recommendation to the appropriate authority that the judge not be reappointed to the office at the end of the judge's term;
- (3) public reprimand;
- (4) admonition, provided that an admonition may be used in subsequent proceedings as evidence of prior misconduct solely upon the issue of sanction to be imposed;
- (5) assessment of the costs of the proceeding, including the cost of hearings, investigations, service of process and court reporter services;
- (6) limitations on the nature and extent of the judge's performance of judicial duties; or

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Exb, 10

Edward Spears
503 Roughfork Street
Florence, SC 29501

MAGISTRATE SUMMONS

A hearing has been scheduled for the purpose of determining the amount of judgment to be awarded the Plaintiff. The Defendant was served with a Summons and Complaint and has failed to answer; therefore, the Defendant has been found in default. The hearing has been scheduled for ~~August 15, 2016 at 11:00 AM~~ in the Florence Magistrate Court, located at 180 North Irby Street (M S C-W) Florence, SC 29513456

RE: Edward Spears

Vs R & R CLEANING SERVICE
Natalie Harris

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: 2016CV2110103875

Duty Becker

JUDGE

Florence Magistrate Court
180 North Irby Street (M S C-W)
Florence, SC 295013456
Phone: (843) 665-0031 Fax: (843) 661-7800

July 28, 2016

P. 18 | 0

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Exb 11

STATE OF SOUTH CAROLINA

IN THE MAGISTRATES COURT

COUNTY OF FLORENCE

CIVIL CASE # 15CV2819

Spars

RJR Cleaning - Atty Hopwell
N. Harris - Atty Hopwell
M. Rogers - Atty Bratton

PLAINTIFF(S)

DEFENDANT(S)

PARTIES PRESENT: PLAINTIFF DEFENDANT - 3 atty

DATE AND TIME OF HEARING OR TRIAL: @ 4/7/16 9:30 (9:32)

DEFAULT JUDGMENT: SCHEDULE FOR DAMAGE HEARING

SCHEDULE FOR TRIAL JURY NON-JURY

ACTION DISMISSED

SETTLED AS BELOW

JUDGMENT AMOUNT _____ COURT COSTS _____

ATTORNEY FEES _____

PLAINTIFF: Atty Bratton - Motion to Dismiss for Failure to state a case as Plaintiff to sue Rogers. No Spars was on the grounds at the time - Rogers was security guard.
Atty Hopwell - Atty for RJR - Motion to Dismiss - Has exchanged administrative remedies to resolve. Must resolve with Human Affairs.

DEFENDANT: @ Rogers - long disease

COURT: Motion to Dismiss Rogers as a def is granted.
Motion to Dismiss RJR - Granted but w/o prejudice

MAGISTRATE
Dismiss as to Matt Rogers with prejudice.

CIVIL HEARING
Dismiss as to RJR Cleaning & Harris without prejudice. Can refile later if Human Affairs gives him permission.
P. 11

Exb 12

Subject: request
From: Sandra Grimsley (SGrimsley@florenceco.org)
To: edward4920@att.net;
Date: Thursday, August 11, 2016 11:10 AM

Mr. Spears, per your request a copy of the disposition of your case which was heard by Magistrate Langley was deposited into the US mail to the address that you gave the court with the correct postage affixed.

Sandra M. Grimsley
Florence County
Chief Magistrate

[Handwritten notes and signatures, including "R1" and "K1" visible]

P. 12
20

[Handwritten notes at the bottom right]

Exb ~~12~~ 13

amount in which the plaintiff is entitled.

A suit on an account is where the defendant had a charge account with the plaintiff or where the plaintiff sold the defendant goods or services. The notarized statement of account should itemize all charges to the account and all credits to the balance being sued on. An example of credits that should be shown are partial payments made by the defendants. The statement of account must be signed by the plaintiff and his signature must be notarized (See FORMS section of the Bench Book).

In unliquidated suits where the amount being sued for is not readily ascertainable and must be determined by the court, a damage hearing must be held when the defendant is in default. An example of this is where the defendant has damaged the plaintiff's automobile. The amount of those damages is not already established and, therefore, the plaintiff must appear at the damage hearing and prove the amount of his damages.

If the defendant has been placed in default, a damage hearing has been set for the plaintiff to come in and prove his damages, and the plaintiff fails to appear at the damage hearing after due notice, the plaintiff's complaint should be dismissed.

Likewise, if a defendant has filed an answer but fails to appear at the trial, then the trial should proceed without the defendant and the plaintiff would be permitted to prove his damages or claim against the defendant without the defendant having the chance to dispute the plaintiff's claims.

In cases where a defendant has been served, failed to file an answer within the prescribed time, placed in default, and the suit is for an unliquidated sum, the court must arrange a damage hearing for the plaintiff to prove the amount of his damages or claim. The court should notify the defendant and the plaintiff of the date and time of that hearing. The defendant is entitled to attend the hearing if he so desires. If the defaulting defendant appears at the damage hearing, he is not entitled to put forth any evidence or testimony disputing liability to the plaintiff. A defaulting party's participation at a damage hearing is limited to objecting to evidence and cross-examining plaintiff's witnesses.

If at the time of filing the complaint, a plaintiff requests that the court send him a copy of the affidavit of service of the complaint on the defendant, the court should send a copy of the affidavit of service to the plaintiff as soon after the complaint is served as possible. When a plaintiff is represented by an attorney, the attorney will generally use the copy of the affidavit of service to determine if the defendant has filed an answer within the prescribed time. If the defendant does not file an answer within that time, the attorney will then forward an affidavit of default to the court. If the amount claimed is for liquidated damages or is a suit on an account with a notarized statement of account attached, he should also forward an order of default judgment which could be signed by the Court and filed.

A notice of hearing should not be attached to the summons and complaint when it is served. At this point of the case, the court does not know if the defendant will answer and, therefore, whether a hearing is necessary. A hearing should not be set and a notice of hearing sent to the parties until the defendant has filed an answer with the court, or has failed to file an answer within the prescribed time and placed in default by the Court. This enables the plaintiff, when coming to the hearing, to know if the defendant is contesting

Exb 14

STATE OF SOUTH CAROLINA

IN THE MAGISTRATES COURT

COUNTY OF FLORENCE

CIVIL CASE # 15CV2519

Spears

(RJR Cleaning - Atty Hopwell
Mr. Harris - Atty Hopwell)
Mr. Rogers - @OBAtty Bratton

PLAINTIFF(S)

DEFENDANT(S)

PARTIES PRESENT: PLAINTIFF DEFENDANT - 3 atty

DATE AND TIME OF HEARING OR TRIAL: @ 4/7/16 9:30 (9:32)

DEFAULT JUDGMENT: SCHEDULE FOR DAMAGE HEARING

SCHEDULE FOR TRIAL JURY NON-JURY

ACTION DISMISSED

SETTLED AS BELOW

JUDGMENT AMOUNT _____ COURT COSTS _____

ATTORNEY FEES _____

PLAINTIFF: Atty Bratton - Motion to Dismiss for Failure to state a case as Plaintiff to sue a case. Mr. Spears was on the grounds at the time - Rogers was security guard.
@ Hopwell - Atty for RJR - Motion to Dismiss - Has exhausted administrative remedies to resolve. Must resolve with Human Affairs.

DEFENDANT: @ Rogers - long dismissed

COURT: Motion to Dismiss Rogers as a def is granted.
Motion to Dismiss RJR - granted but w/o prejudice

grate

MAGISTRATE

Dismiss as to Matt Rogers with prejudice.

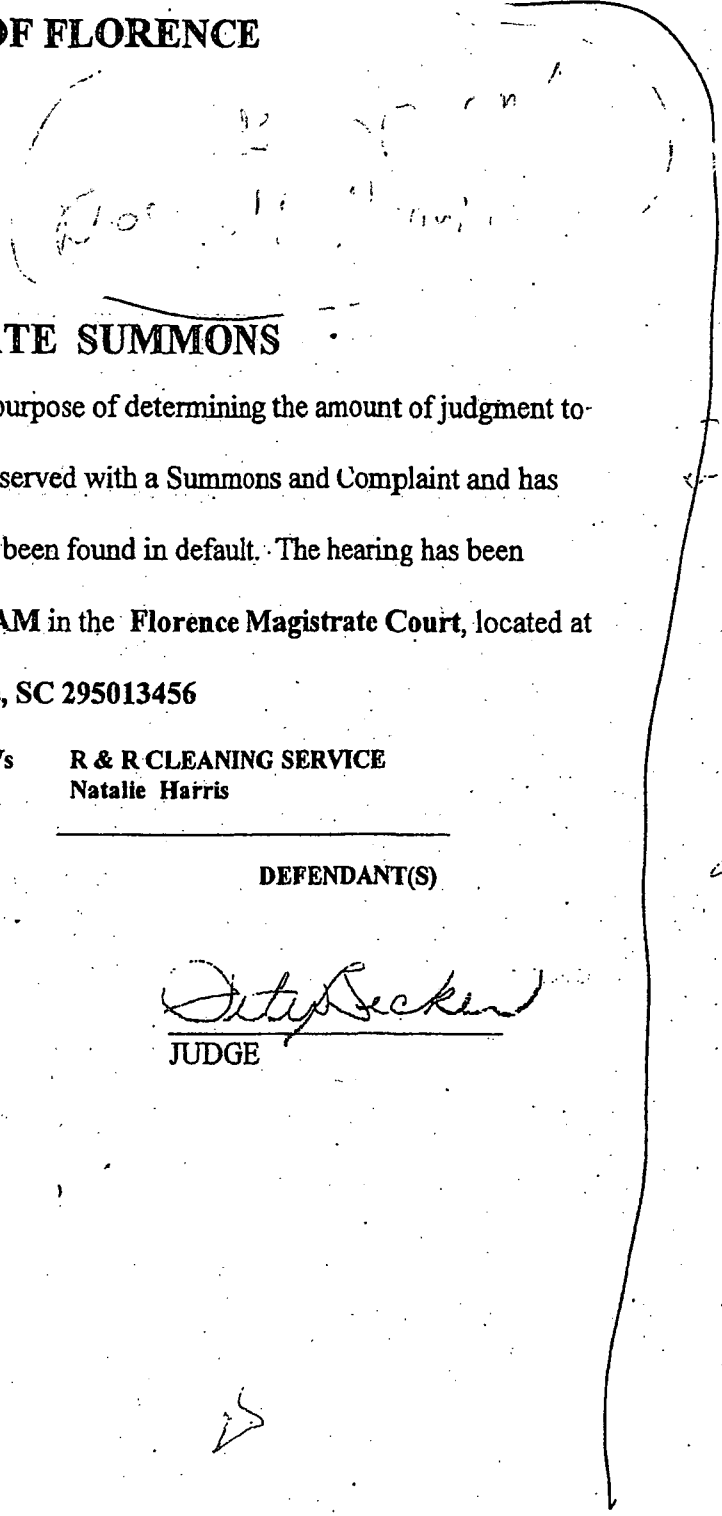
CIVIL HEARING

Mr. Hopwell was present
Dismiss as to RJR Cleaning & Harris without prejudice. Can refile later if Human Affairs gives him permission.
22
Pg 14

ENB 15

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Michael Hopewell
PO Box 148
Florence, SC 29503



MAGISTRATE SUMMONS

A hearing has been scheduled for the purpose of determining the amount of judgment to be awarded the Plaintiff. The Defendant was served with a Summons and Complaint and has failed to answer; therefore, the Defendant has been found in default. The hearing has been scheduled for September 15, 2016 at 11:00 AM in the Florence Magistrate Court, located at 180 North Irby Street (M S C-W) Florence, SC 295013456

RE: Edward Spears

Vs

R & R CLEANING SERVICE
Natalie Harris

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: 2016CV2110103875

D. Becken
JUDGE

Florence Magistrate Court
180 North Irby Street (M S C-W)
Florence, SC 295013456
Phone: (843) 665-0031 Fax: (843) 661-7800

August 23, 2016

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EXB. 16

FLORENCE SUMMARY COURT

FLORENCE, SC 29501

Edward Spears,
APPELLANT,

R&R Cleaning Services,
Natalie Harris
DEFENDANT

Case No.: 2016-CP-21-2423

RETURN ON APPEAL

NOV 7 2016
FLORENCE SUMMARY COURT

2016 NOV -7 PM 1:08
FLORENCE SUMMARY COURT

Summary

This civil case came to the attention of this court On September 15, 2016, when Edward Spears filed a complaint against Natalie Harris D/B/A R & R Cleaning Services. The case file was reviewed by the court, after the case was assigned to Judge Jerry F. Rivers by Chief Magistrate Sandra Grimsley due to Mr. Spears's request specifically that his case not be heard by Judges Neron Langley, Peter E. Becker, or Frank White, and due to the recall of the case originally by Judge Peter E. Becker after misinformation was given to the court concerning earlier dismissal of complaint with prejudice in Mr. Spears's action. Upon instructions given to Judge Rivers, the case was reopened, and Mr. Spears requested a jury trial. Mr. Spears was then advised by the court that his case would be scheduled for jury trial as requested. There was no court hearing at that time prior to the filing of the appeal by Mr. Spears. The only actions taken on September 15, 2016, were reopening the case and honoring Mr. Spears's request for jury trial, as Judge Rivers treated the case as a pretrial Summons and Complaint hearing.

P. 16

CERTIFIED: A TRUE COPY
Cristie Spears
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

1
2 LAW

3
4 **Summary Judges Benchbook**

5
6 **C.
Civil Procedure in Magistrates' Courts**

7
8 **6. Answering the Complaint**

9 If the defendant chooses to answer, whether in writing or orally (which must be
10 reduced to writing), he must do so within the time period prescribed in the summons
11 (30 days) or he may be held in default. This time period is calculated by excluding
12 the first day (day of service) and including the last day. If the last day is a
13 Saturday, Sunday, or legal holiday, the defendant has until the next day which is not
14 a Saturday, Sunday, or legal holiday. (Rule 3 and Rule 6(a), SCRCP).

15 The answer, like other pleadings in the magistrate court may be made orally, or in
16 writing. If made orally, it must be made personally before the magistrate or court
17 personnel and must be reduced to writing, with the assistance of the magistrate or
18 court personnel, if the court determines such assistance is necessary. (Rule 7, SCRMC)
19 Magistrates should not allow answers or complaints or other pleadings to be made by
20 telephone. The answer may contain a denial of the complaint or any part of it, but
21 must contain notice of facts constituting any defense.

22 The defendant, at the time of making his answer or at any time thereafter but within
23 the time prescribed in the summons, may assert a counterclaim which arises out of the
24 same transaction or occurrence as the plaintiff's complaint. (Rules 7 and 9, SCRMC).
25 Whether made in the answer or thereafter, the counterclaim may be made in writing or
26 orally (and reduced to writing), as any other pleading and must contain facts
27 sufficient to support its assertion. The claims contained in a counterclaim shall be
28 deemed denied by the plaintiff and no answer or reply is required to be filed by the
29 plaintiff in response to a counterclaim filed by the defendant.

30 The defendant in a counterclaim may waive the excess of the claim over the
31 jurisdictional maximum to bring it within the jurisdiction of magistrate court. If the
32 defendant elects to waive a portion of the counterclaim, a separate action for the
33 remainder of the may not be maintained. If the defendant does not waive the excess,
34 the entire can shall be transferred to the circuit court and tried as a reaction to
35 the originally filed there. (Rule 9(b), SCRMC).

36 The court shall deliver a copy of the answer and any counterclaim to the plaintiff in
37 a manner provided for in Rule 8, SCRMC.

38
39 **10. Default Judgments and Dismissals**

40 In unliquidated suits where the amount being sued for is not readily ascertainable and
41 must be determined by the court, a damage hearing must be held when the defendant is
42 in default. An example of this is where the defendant has damaged the plaintiff's
43 automobile. The amount of those damages is not already established and, therefore, the
44 plaintiff must appear at the damage hearing and prove the amount of his damages.

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D.
Non-Jury Trials

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3 1. Generally

4 Trials in the magistrates' courts may be either with or without a jury. Either party
5 to a civil suit is constitutionally entitled to a trial by jury upon demand, but upon
6 agreement of both parties, the right to trial by jury may be waived.

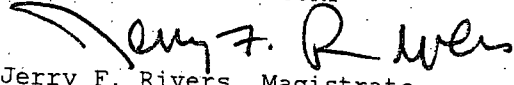
7 APPEAL GROUNDS

8
9 The appellant is appealing the Judge's decision and states based on his claim that,
10 "The magistrate court then scheduled another default hearing on September 15, 2016,
11 only to have the default hearing turned down again because Judge Rivers violated again
12 Rule 6 and 10 of the magistrate rules for civil Court in a default hearing. He also
13 changed the default hearing to a complaint hearing which he had no legal basis for
14 doing so."

15
16 ANSWER AND CONCLUSION

17 The appellant's case was reopened and treated as a pre-trial Summons and complaint
18 hearing. Appellant was explained his right to a jury trial, which he requested.
19 Therefore at that point, the court did not hold the Summons and Complaint hearing but
20 merely scheduled the case for jury trial as permitted by law at Mr. Spears request.

21
22 FLORENCE SUMMARY COURT

23 
24 Jerry F. Rivers, Magistrate

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26
27 P. 18
28

Exb. 17

(PT)

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
 Edward Spears,)
)
 Appellant,)
)
 v.)
)
 R&R Cleaning Services and Natalie Harris,)
)
 Respondents.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-21-2423

ORDER

2017 MAR -2 PM 4: 06
 DORIS PUFFUS O'HARA
 CCCP & GS
 FLORENCE COUNTY, SC

FILED

STATE OF SOUTH CAROLINA)
 COUNTY OF FLORENCE)
 R&R Carpet and Cleaning Service and)
 Natalie Harris,)
)
 Appellants,)
)
 v.)
)
 Edward Spears,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 TWELFTH JUDICIAL CIRCUIT

CASE NO: 2016-CP-21-2533

ORDER

CERTIFIED A TRUE COPY
 Clerk of Court O.R. & G.S.
 FLORENCE COUNTY, S.C.

These magistrate appeals came to be heard on February 16, 2017, before the Honorable Thomas A. Russo. Present at the hearing were Mr. Edward Spears, *pro se*, and Mr. Michael S. Hopewell, Esquire, for R&R Carpet and Cleaning Service and Natalie Harris ("Underlying Defendants"). Because both appeals arose from the same decision of the magistrate in the underlying case, the Court is addressing them contemporaneously. After hearing oral arguments, reviewing the record, and considering the applicable law, the Court finds that the Underlying Defendants' appeal is granted, Mr. Spears' appeal is denied, and the underlying case should be dismissed with prejudice.

1
 27
 P. 19
 5 pages

BACKGROUND

This case has a somewhat complicated procedural history that begins with a separate but nearly identical lawsuit. On January 19, 2016, Mr. Spears filed a complaint in Magistrate's Court against R&R Carpet and Cleaning Service ("R&R"), Natalie Harris, and Matt Rogers, alleging claims for harassment, favoritism, supervisory negligence, retaliation, and wrongful termination (Civil Action Number 2015CV211010515). That case came to a hearing before the Honorable Roger Neron Langley on April 7, 2016. Both Mr. Spears and Mr. Hopewell were present and recall Judge Langley issuing an oral ruling from the bench, dismissing the case with prejudice as to Matt Rogers and without prejudice as to Natalie Harris and R&R. However, Judge Langley's Order of Final Disposition, issued on June 8, 2016, dismissed the entire case with prejudice. A copy of the Order was served on Mr. Spears on June 23, 2016.¹

On June 22, 2016, Mr. Spears filed a new complaint with identical allegations, this time naming only R&R and Natalie Harris as parties (Civil Action Number 2016CV2110103875). Defendants failed to answer within thirty (30) days and a default hearing to determine damages was scheduled for August 15, 2016, before the Honorable Peter E. Becker. On August 4, 2016, Defendants filed a Motion to be Relieved from Default and a Motion to Dismiss, arguing that Mr. Spears failed to timely appeal Judge Langley's Order dated June 8, 2016, and that the second lawsuit should be barred under the doctrine of *res judicata*. At the August 15 hearing, Judge Becker granted Defendants' motions, ordering from the bench that the entire case would be dismissed with prejudice. However, no formal Order was entered.

¹ At the appellate hearing, Mr. Spears showed the Court an untitled, unsigned, and undated form that was filled out by hand. The document purported to provide a revised ruling from the Magistrate's Court to the following effect: "Dismiss as to Matt Rogers with prejudice. Dismiss as to R&R Cleaning and Harris without prejudice. Can refile later if Human Affairs gives him permission." Because the document was not a certified copy and could not even be identified as an official document of the Magistrate's Office, the Court cannot consider its contents.

Thereafter, for reasons that were not made abundantly clear to this Court, Judge Becker's ruling was recalled and the case reassigned to the Honorable Jerry F. Rivers. See Return on Appeal, 2016-CP-21-2423 at 1 (Nov. 7, 2016). A hearing was scheduled for September 15, 2016 "for the purpose of determining the amount of judgment to be awarded the Plaintiff." Magistrate Summons, 2016CV2110103875 (Aug. 23, 2016). At that hearing, Judge Rivers reopened the case to conduct a pretrial Summons and Complaint hearing, ruling from the bench that Mr. Spears was entitled to a jury trial. See Return on Appeal, 2016-CP-21-2423 at 1 (Nov. 7, 2016). These appeals followed.

STANDARD OF REVIEW

In South Carolina, the Circuit Court hears appeals from the Magistrate's Court. Upon hearing the appeal, the appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits. S.C. Code Ann. § 18-7-170. The Circuit Court may affirm or reverse the judgment of the Magistrate, in whole or in part, as to any or all the parties or for errors in law or fact. Id.

DISCUSSION

Mr. Spears filed his Notice of Appeal on October 4, 2016, arguing, in pertinent part, that Judge Rivers erred when he "changed the default hearing to a complaint hearing which he had no legal basis for doing so," thus entitling Mr. Spears to a default judgment. The Defendants then filed their Notice of Appeal on October 17, requesting that this Court relieve them from default and dismiss the case under the doctrine of *res judicata*.

An appellant, within thirty days after written notice of judgment has been given him or his attorney by the magistrate . . . shall serve a notice of appeal, stating the grounds upon which the appeal is founded. S.C. Code Ann. § 18-7-20. Here, Mr. Spears failed to timely appeal Judge

Langley's Order of Final Disposition dated June 8, 2016. Mr. Spears also had the opportunity to file a Motion to Reconsider Judge Langley's Order within ten days after receipt of written notice of the entry of the order. See Rule 59(e), SCRPC. However, he did not do so, opting instead to re-file the lawsuit. As such, Judge Langley's Order dismissing the entire case with prejudice remains the final order of the first lawsuit.

The doctrine of *res judicata* bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of prior action between those parties. See, e.g., Plum Creek Dev. Co., Inc. v. City of Conway, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999). To establish *res judicata*, the defendant must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. Id. Here, the parties to Mr. Spears' second lawsuit were the same as those named in the first. Likewise, the causes of action in the second suit were identical to the first.

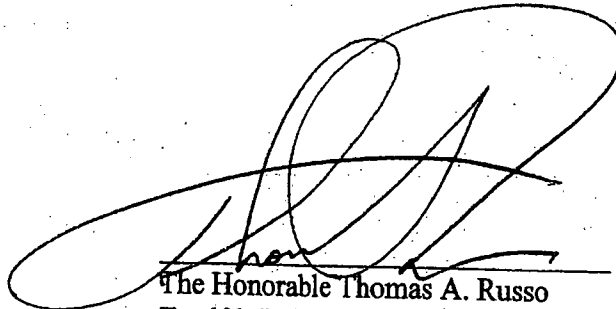
As to the third element, the former suit was dismissed with prejudice. "A dismissal of a case without prejudice means that the plaintiff can reassert the same cause(s) of action by curing the defects that led to dismissal. By contrast, dismissals with prejudice are intended to bar relitigation of the same claim." Collins v. Sigmon, 299 S.C. 464, 467, 385 S.E. 2d 835, 837 (1989) (internal quotations and citations omitted). "Where an action has been dismissed with prejudice, the judgment operates in subsequent litigation to the same extent as if the action had been tried to a final adjudication." Jones v. City of Folly Beach, 326 S.C. 360, 366, 483 S.E.2d 770, 773 (1997). Therefore, the underlying Defendants have established that the doctrine of *res judicata* applies here. As a result, Mr. Spears' second lawsuit is barred as a matter of law.

P. 22

CONCLUSION

Therefore, for the reasons set forth above, it is ORDERED that the Underlying Defendants' appeal is granted, Mr. Spears' appeal is denied, and the underlying case be dismissed in its entirety with prejudice.

IT IS SO ORDERED.



The Honorable Thomas A. Russo
Twelfth Judicial Circuit

03/02, 2017
Florence, South Carolina

CERTIFIED: A TRUE COPY
Mrs. Paula Pittman
CLERK OF COURT, C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED
2017 MAR -2 PM 4:06
DORIS POUND O'HARA
CLERK OF COURT
C.C.P. & G.S.
FLORENCE COUNTY, SC

P.23

(EXB 12)
STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

Edward Spears,

Plaintiff,

vs.

R&R Carpet and Cleaning
Service, Natalie Harris

Defendants.

EXB BA
IN THE MAGISTRATE'S COURT
CIVIL CASE #2016CV2110103875

**MOTION TO BE RELIEVED FROM
DEFAULT AND MOTION TO DISMISS**

The Defendants, through their undersigned attorneys, shall, on August 15, 2016 at 11:00 a.m. or at such other time as shall be designated by the Court, move the Court to relieve the Defendants from default and to dismiss the Plaintiff's case.

The grounds for this motion as that the same Plaintiff filed a lawsuit against the same Defendants for alleged damages arising from the same incident that is complained about in the present case. That case was captioned Edward Spears vs. R&R Carpet and Cleaning Service, Natalia Robinson and Matt Rogers, Civil Action Number 2015CV2110108515. The previous case came to a hearing before the Honorable Roger Neron Langley on April 7, 2016. As a result of that hearing, the case was dismissed with prejudice by an Order dated June 8, 2016. A copy of Judge Langley's Order is attached.

A copy of Judge Langley's Order was served on the Plaintiff on June 23, 2016. A copy of the letter serving a copy of the Order and a Certificate of Service of the Order of Final Disposition is attached. The Plaintiff failed to timely appeal Judge Langley's Order and the time to appeal has passed.

Therefore, the Defendants pray that they be relieved of default and that the present case be dismissed under the doctrine of *res judicata*.

When...
False information
Therefore
Default

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF FLORENCE

TWELFTH JUDICIAL CIRCUIT

C/A #16-CP-21-

R&R Carpet and Cleaning
Service & Natalie Harris,

Plaintiffs,

vs.

Edward Spears,

Defendant.

EXB
NOTICE OF APPEAL
17A

TO THE DEFENDANT ABOVE NAMED:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs, R&R Carpet & Cleaning Service and Natalie Harris, herewith appeal the judgment of the Florence County Magistrate's Court dated September 15, 2016. The grounds for this appeal are that on September 15, 2016, the Honorable Jerry Rivers ruled from the bench that the Plaintiff in the Magistrate's Court case was to receive a jury trial in that case.

The grounds for the appeal are contained in the Motion to be Relieved from Default and Motion to Dismiss that is attached.

That Motion was heard by the Honorable Pete Becker on August 15, 2016. Judge Becker ruled from the bench that the motion was granted and the underlying case would be dismissed with prejudice but no written Order was entered. Judge Rivers' ruling from the bench on September 15, 2016 would seem to contradict the ruling by Judge Becker.

For all the above reasons, the Plaintiffs request this Court vacate the judgment entered on September 15, 2016 and rule that the underlying Magistrate's Court case be dismissed with prejudice.

Prejudice

and...
P26
P26
P26

The Supreme Court of South Carolina

RE: Amendment to Rule 402, SCACR.

ORDER

Pursuant to Art. V, § 4 of the South Carolina Constitution, Rule 402(k), the Oath of Office for Attorneys, is amended to read as attached. This Rule change is effective immediately and all attorneys in the State will be expected to take the amended oath. Continuing Legal Education opportunities will be offered around the State to discuss the content of the new oath and to administer it to those who have already been admitted to the Bar.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/James E. Moore J.

s/John H. Waller, Jr. J.

s/E.C. Burnett, III J.

s/Costa M. Pleicones J.

Columbia, South Carolina
October 22, 2003

Lawyer's Oath

I do solemnly swear (or affirm) that:

I am duly qualified, according to the Constitution of this State, to exercise the duties of the office to which I have been appointed, and that I will, to the best of my ability, discharge those duties and will preserve, protect and defend the Constitution of this State and of the United States;

I will maintain the respect and courtesy due to courts of justice, judicial officers, and those who assist them;

To my clients, I pledge faithfulness, competence, diligence, good judgment and prompt

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Pages
P 27

communication;

To opposing parties and their counsel, I pledge fairness, integrity, and civility, not only in court, but also in all written and oral communications;

I will not pursue or maintain any suit or proceeding which appears to me to be unjust nor maintain any defenses except those I believe to be honestly debatable under the law of the land, but this obligation shall not prevent me from defending a person charged with a crime;

I will employ for the purpose of maintaining the causes confided to me only such means as are consistent with trust and honor and the principles of professionalism, and will never seek to mislead an opposing party, the judge or jury by a false statement of fact or law;

I will respect and preserve inviolate the confidences of my clients, and will accept no compensation in connection with a client's business except from the client or with the client's knowledge and approval;

I will maintain the dignity of the legal system and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;

I will assist the defenseless or oppressed by ensuring that justice is available to all citizens and will not delay any person's cause for profit or malice;

[So help me God.]