

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Appellate Case No.: 2017-002469
Case No.: 2016-CP-40-0378

RECEIVED
AUG 30 2018
SC Court of Appeals

Neal Truslow,

Respondent,

v.

Stephen Bretzinger, Lindsey
Holsinger, and Rikard &
Protopapas,

Defendants

Of Whom Stephen Bretzinger
and Lindsey Holsinger are the
Appellants.

RECORD ON APPEAL – VOLUME I

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Order for Publication filed on September 12, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-03728

**ORDER
FOR SERVICE
BY PUBLICATION**

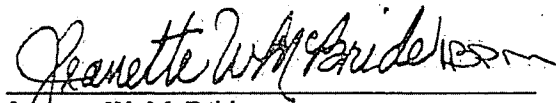
RICHLAND COUNTY
FILED
2016 SEP 12 PM 1:12
JEANETTE W. MCBRIDE
C.C.P. & G.S.

This matter comes before me upon the Motion of the attorney for Plaintiff, Harvey M. Watson III, for an Order for Service by Publication pursuant to S.C. Code § 15-9-710.

It appears that there is just cause for granting this Motion, therefore,

IT IS HEREBY ORDERED that service upon the Defendants Stephen Bretzinger and Lindsey Holsinger be made by publication in the SunSentinel newspaper located in Palm Beach County, FL, once a week for three weeks.

IT IS SO ORDERED.



Jeanette W. McBride
Clerk of Court

Dated: 9-12-16
Richland County, South Carolina

Default Judgment against Defendants Bretzinger and Holsinger
filed on November 29, 2016

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003728

Neal Truslow

Stephen Bretzinger

Lindsey Holsinger

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Dismissal);
☐ 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 _____
- ☐ 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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Nov, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 29 November 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Harvey M. Watson III

Peter Demos Protopapas

Alexandre Nicolas MacClenahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Janette W. McBride



STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03728

Neal Truslow)

Plaintiff)

vs.)

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC)

Defendants)

**DEFAULT JUDGMENT
AGAINST DEFENDANTS BRETZINGER
AND HOLSINGER**

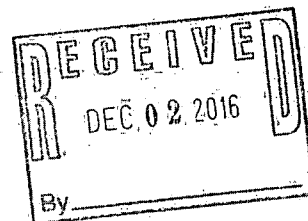
FILED
2016 NOV 29 AM 11:44
JEANETTE W. MCGRIDDE
C.C.P. & G.S.

Plaintiff moves for entry of a default judgment against defendants Stephen Bretzinger and Lindsey Holsinger. It appears that the defendants Bretzinger and Holsinger were served with the summons and complaint in this matter via publication in the Sun Sentinel on September 22, 2016, September 29, 2016 and lastly on October 06, 2016 (see Affidavit of Publication filed by the Clerk of Court in this matter on October 14, 2016). No responsive pleadings were filed and an Affidavit of Default was submitted with a Motion for Default Judgment and a proposed Order of Judgment on November 8, 2016.

Therefore, IT IS ORDERED that judgment shall be entered in favor of the plaintiff against the defendants Stephen Bretzinger and Lindsey Holsinger in the amount of Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55).

It is further ORDERED that defendant Rikard & Protopapas LLC are authorized to release the sum Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55) to Plaintiff or his designee. This judgment shall bear interest at the legal rate.

[signature next page]



IT IS SO ORDERED.



Honorable DeAndrea G. Benjamin
Chief Administrative Judge

November 18, 2016

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of ~~Proposed Order~~ Order on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

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Date: 11.14.16 Signed: Mara Ballard

Order Granting Motion to Compel filed on August 30, 2017

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

CASE NUMBER: **2016CP4003728**

Neal Truslow

Stephen Bretzinger

Lindsey Holsinger

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ **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:

ORDER INFORMATION

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

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
		\$
		\$
		\$
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.

Circuit Court Judge

Alfred Lee

Judge Code _____

Date

8/30/2017

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 30 day of Aug, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Harvey M. Watson III

Desa Ballard

Peter Demos Protopapas

Alexandre Nicolas MacClenahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

Court Reporter _____

ATTORNEY(S) FOR THE DEFENDANT(S)

Clerk of Court

Jeannette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger and Lindsey Holsinger,

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2016-CP-40-03728

ORDER

RICHLAND COUNTY
FILED
2017 AUG 30 PM 3:11
JEANETTE
CLERK

This matter came before the Court on a Motion to Compel Answers to Discovery by Plaintiff Neal Truslow ("Plaintiff") against Defendants Stephen Bretzinger and Lindsey Holsinger ("Defendants"). A hearing on the motion was conducted on July 11, 2017. Present at the hearing were Desa Ballard, Esquire, attorney for Plaintiff, and Alexandre MacClenahan, Esquire, attorney for Defendants.

BACKGROUND

This case arises from a breach of contract for defects in a home from Crestwood Homes, LLC, which was purchased in 2008. Plaintiff filed this action following Defendants' refusal to pay Plaintiff attorney's fees and costs advanced by Plaintiff while representing Defendants in prior litigation in federal court. Plaintiff filed the Summons and Complaint on June 16, 2016. Defendants filed an answer on November 18, 2016. A Default Judgment against Defendants was signed by the Court on November 18, 2016, and was filed with the Clerk of Court on November 29, 2016. Defendants subsequently filed a Motion to Set Aside Default Judgment on December 28, 2016. Plaintiff served discovery relating to the default motion on January 6, 2017. Plaintiff filed a Motion to Compel Answers to Discovery against Defendant on March 31, 2017 requesting full and complete responses to interrogatories and requests to produce. Plaintiff also seeks appropriate sanctions, including but not limited to attorney's fees, allowable pursuant to Rule 37, SCRPC.

DISCUSSION

I. Request for Production

Plaintiff served Requests for Production on Defendants requesting documents relevant to the arguments Defendants were asserting in support of their motion to set aside default judgment.

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On January 6, 2017, Plaintiff requested any and all copies of the Complaint, received from any source, in this action. On February 24, 2017, Defendants objected to the request, contending Plaintiff's requested documents are protected by attorney client privilege and work product. Defendants served a supplemental response on March 20, 2017, indicating they did not receive any non-protected or non-privileged documents that are responsive to Plaintiff's request. At the motion hearing, Defendants contended the documents Plaintiff requested are privileged communications and good cause does not exist for the documents to be produced. Defendants' answer states that attorney Peter Protopapas ("Protopapas") remained as counsel for the Defendant through the conclusion of the federal action. Protopapas was not serving as counsel for Defendants when Plaintiff's counsel asked if he could accept service of the pleadings in this action on August 22, 2016.

Attorney-client privilege protects a client and any other person from disclosing confidential communications made to counsel relative to a legal matter. *Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 383, 453 S.E.2d 880, 884 (1994). To establish an attorney-client privilege, the person asserting the privilege must show that the relationship between the parties was that of attorney and client and that the communications were confidential in nature. *Crawford v. Henderson*, 356 S.C. 389, 395, 589 S.E.2d 204, 207 (Ct. App. 2003). The burden of establishing attorney-client privilege is upon the person asserting it. *Id.* at 399, 589 S.E.2d at 210, citing *State v. Love*, 275 S.C. 55, 59, 271 S.E.2d 110, 112 (1980).

In Defendants' privilege log, multiple pages identified communications with Protopapas or his office after the attorney-client relationship ended. Multiple entries in Defendants' privilege log claim privilege from production based on work product. The privilege log reveals nothing about the documents asserted to be privileged. It is insufficient to establish any basis for asserting a privilege. It does not state for example, whether the communication is a letter, email, fax, or other document. The date Defendants alleged to have received the Summons and Complaint (October 24, 2016), is not listed in the privilege log.

Pursuant to Rule 26(b)(3) SCRCP, the attorney "work product doctrine" protects from discovery documents prepared in anticipation of litigation, unless a substantial need can be shown by the requesting party. *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 537, 787 S.E.2d 485, 495 (2016), citing *Tobaccoville USA, Inc. v. McMaster*, 387 S.C. 287, 294, 692 S.E.2d 526, 530 (2010). "Generally, in determining whether a document has been prepared 'in anticipation of

litigation,' most courts look to whether or not the document was prepared because of the prospect of litigation." *Id.* Work product does not mean communications between an attorney and former clients. The listed entries from Defendants' privilege log were generated after the attorney-client relationship between Protopapas and Defendants ended. The identified documents or communications listed in Defendants' privilege log are not work product. Further, Plaintiff's Request for Production No. 4 did not request copies of any communications, but copies of the Complaint in this action received by Defendants from any source. Because Protopapas' representation of Defendants ended at the conclusion of the federal action, and Defendants' privilege log reflect settlement proceeds were disbursed to Defendants on June 15, 2015, any communications between Protopapas and his prior client are not protected by attorney-client privilege or work product. Therefore, Plaintiff is entitled to all copies of the Complaint in this action received by Defendants.

II. Attorney Fees

Plaintiff requests an award of attorney fees for costs incurred by him relating to the filing and prosecution of this motion. Pursuant to Rule 37(a)(4), SCRPC:

If the motion is granted, the court shall, after opportunity for hearing, require the party or deponent whose conduct necessitated the motion or the party or attorney advising such conduct or both of them to pay to the moving party the reasonable expenses incurred in obtaining the order, including attorney's fees, unless the court finds that the opposition to the motion was substantially justified or that other circumstances make an award of expenses unjust.

"[T]he court shall require the payment of reasonable expenses incurred in obtaining the order compelling discovery, including attorneys' fees." *Ball v. Canadian Am. Exp. Co.*, 314 S.C. 272, 277, 442 S.E.2d 620, 623 (Ct. App. 1994). Defendants shall pay reasonable expenses Plaintiff incurred in obtaining this order compelling discovery in the amount of \$750 within 15 days of receipt of the Order by their attorney.

ORDER

After considering the arguments by all parties and reviewing the materials submitted to the Court, **IT IS HEREBY ORDERED**, Plaintiff Neal Truslow Motion to Compel Answers to Discovery is **GRANTED**. Complete answers to the discovery request shall be served on Plaintiff's counsel not later than September 8, 2017.

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Plaintiff's request for attorney fees regarding costs incurred for bringing and prosecuting this motion is **GRANTED**. Defendants' shall pay \$750 to Plaintiff's counsel not later than September 8, 2017.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

August 30, 2017
Columbia, South Carolina

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Order Denying Motion to Set Aside Default filed on September 21, 2017

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016-CP-40-03728

Neal Truslow

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ **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 _____
- ☐ **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:

ORDER INFORMATION

Defendants' Motion to Set Aside Default Judgment is denied.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge

Al Bruce Lee

Judge Code 2118

Date

9/21/2017

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of Sept, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20 _____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Neal Truslow)

Docket No. 2016-CP-40-03728

Plaintiff,)

v.)

ORDER

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.)

Defendants.)

RICHLAND COUNTY
FILED
2017 SEP 21 PM 4:18
JEANIE H. S. F.

This matter came before the Court on a Motion to Set Aside Default Judgment and Entry of Default by Defendants Stephen Bretzinger and Lindsey Holsinger ("Defendants") against Plaintiff Neal Truslow ("Plaintiff"). A hearing on the motion was conducted on July 11, 2017. Present at the hearing were Desa Ballard, Esquire, attorney for Plaintiff, and Alexandre MacClenahan, Esquire, attorney for Defendants.

BACKGROUND

This case arises from a breach of contract claim for defects in a home from Crestwood Homes, LLC, purchased in 2008. Plaintiff filed this action following Defendants' refusal to pay Plaintiff attorney's fees and costs advanced by Plaintiff while representing Defendants in prior litigation in federal court. Plaintiff filed the Summons and Complaint on June 16, 2016. Defendants Stephen Bretzinger and Lindsey Holsinger filed an answer on November 18, 2016. Plaintiff filed a Motion for Default Judgment on November 14, 2016. Defendants filed a Motion to Set Aside Entry of Default on November 18, 2016. On the same day, an Order for Default Judgment was signed and subsequently filed on November 29, 2016. Thereafter, Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016.

DISCUSSION

At the motion hearing Defendants argued that on October 24, 2016, Defendants' counsel notified Plaintiff's counsel of his recent representation in the case and requested a copy of the pleadings filed to date. Later that same day, a copy of the Summons and Complaint, Order for Service by Publication, and a filed copy of the Affidavit for Service by Publication were provided

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to Defendants' counsel. On November 14, 2016, a copy of Plaintiff's Affidavit of Default, Motion for Default, and Proposed Order for Default Judgment were sent by email to Defendants' counsel. He responded on November 15, 2016, stating an answer was being prepared and requested Plaintiff to set aside the default. Plaintiff's counsel declined to do so.

Service by Publication was authorized by Order dated September 12, 2016 after the Sheriff's Department attempted service upon Defendants on eight occasions and noted activity that suggested Defendants were avoiding service of process. Service was also attempted by United Parcel Service on four occasions. Defendants were served by publication in the Sun Sentinel newspaper in the area of Defendants' residence in Florida once a week for three consecutive weeks completed on October 6, 2016. Upon receipt of the documents from Plaintiff's counsel on October 24, 2016, Defendants did not request an extension of time to file an Answer and did not communicate with Plaintiff's counsel.

Defendants contend the Default Judgment should not have been entered and should be set aside because Defendants' Answer was pending and Plaintiff sent the Motion for Default Judgment to circuit court without an examination under oath, which is required under Rule 55(b)(4), SCRPC. Further, Defendants contend they acted swiftly and promptly to defend their rights in the case by notifying Plaintiff of their representation in the case. Upon learning of the entry of default, Defendants' counsel made a formal appearance and promptly filed an Answer and Motion to Set Aside Entry of Default.

Defendants rely on Rule 55(b)(4), SCRPC, as a basis to set aside the default judgment. It states:

In actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined on oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.

However, Rule 55(b)(4) does not apply in this case. An examination under oath was not necessary because the Complaint alleges the money owed to Plaintiff has not been paid and is being held in

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trust by Defendant Rikard & Protopapas, a law firm. An attachment to levy on property of Defendants was not necessary because the money was being held in the law firm trust account. Plaintiff alleges Defendants were represented by an attorney when the dispute arose, refused to negotiate with Plaintiff, acknowledged they were aware of Plaintiff's charging lien, and evaded service. Sufficient evidence existed at the time the default judgment was entered to demonstrate that Plaintiff complied with the requirements for the issuance of the judgment and that Defendants' due process rights were protected.

Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009). Once a default judgment has been entered, a party seeking to be relieved from the judgment must do so under Rule 60(b), SCRCP. *Id.* at 608, 681 S.E.2d at 888. Defendants argue the default judgment should be set aside under Rule 60(b)(1) which requires a showing of mistake, inadvertence, excusable neglect, or surprise. Rule 60(b)(1), SCRCP. The party seeking to set aside the judgment has the burden of presenting evidence proving the facts essential to entitle him to relief. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct. App. 2008). The decision whether to set aside a default judgment lies solely within the sound discretion of the trial court. *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 490, 713 S.E.2d 335, 337 (Ct. App. 2011).

Regarding the timing for relief, Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016, after an Order for Default Judgement was signed and subsequently filed on November 29, 2016. Defendants filed an Answer five weeks after service by publication was completed and three weeks after proof of service on October 6, 2016 had been provided by Plaintiff. The filing of the motion was certainly prompt. However, Defendants' failed to establish a basis to set aside the default under Rule 60(b)(1). Even when Plaintiff provided the documents evidencing the filing of the action and service, no efforts were made by Defendants to answer within the remaining time allotted or to request additional time to respond to the Complaint. Defendants make no argument to show mistake, inadvertence, excusable neglect, or surprise.

Courts have held that in order to obtain relief from a default judgment under Rule 60(b)(1), not only must the movant make a proper showing he is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense. *McClurg*

and
#3

v. Deaton, 380 S.C. 563, 574, 671 S.E.2d 87, 93 (Ct. App. 2008). A meritorious defense need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence. *Id.* at 575, 671 S.E.2d at 94. Defendants' Answer alleges defenses of unclean hands, misrepresentation, fraud, failure to mitigate damages, and estoppel without any factual basis. Defendants do not provide any explanation as to how these defenses are meritorious.

Defendants argue there is no prejudice to Plaintiff if the default judgment in this case is determined on the merits. However, Defendants have been holding \$35,132.55 allegedly owed to Plaintiff in trust since June 5, 2015. Defendants have not provided a satisfactory explanation for the default and have not presented any evidence proving the facts essential to entitle them to relief. Accordingly, Defendants are not entitled to relief on any of the grounds specified under Rule 60(b)(1), SCRPC.

ORDER

IT IS HEREBY ORDERED, Defendants Stephen Bretzinger and Lindsey Holsinger Motion to Set Aside is Default Judgment is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

September 21, 2017
Columbia, South Carolina

ad
#4

Order Denying Motion to Reconsider filed on October 31, 2017

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003728

Neal Truslow

Stephen Bretzinger

PLAINTIFF(S)

Lindsey Holsinger

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ 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:

ORDER INFORMATION

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

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
		\$
		\$
		\$
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.

Circuit Court Judge _____ Judge Code 2118 Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this 31 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Harvey M. Watson III

Desa Ballard,

Peter Demos Protopapas

Alexandre Nicolas MacClenahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

SCRPC Form 4C (10/2011)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2016-CP-40-03728

**ORDER DENYING
MOTION TO RECONSIDER**

RICHLAND COUNTY
FILED
2017 OCT 31 AM 11:42
JEAN
D.C.

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Defendants to alter or amend this Court's order signed and filed on September 21, 2017. The Motion for Reconsideration was filed with the Clerk of Court on October 2, 2017.

Defendants assert that the Court did not make any rulings on Defendants' Motion to Set Aside Entry of Default. Defendants contend they mistakenly calendared the due date to respond to the Summons and Complaint as November 17, 2016. Further, Defendants argue a Default Judgment should not have been entered against them because at the time Default Judgment was entered on November 18, 2016, Defendants' Motion to Set Aside Entry of Default filed on November 18, 2016 was pending. Defendants also contend they filed an Answer within 24 hours of being told that Plaintiff would not consent to set aside the entry of default. Additionally, Defendants contend they had the right to have their pending Motion to Set Aside Entry of Default heard before the court entered default judgment.

The standard for granting relief from Entry of Default under Rule 55(c) is good cause. Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff if relief is granted. The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Id.*; Rule 55(c), SCRCP.

arl
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The time to respond to the Summons and Complaint expired November 7, 2016. On November 14, 2016, Defendants' counsel received a copy of the Affidavit of Default and a Motion for Default Judgment. Defendants sent their Answer to the Summons and Complaint by email to Plaintiff later that same day and asked Plaintiff to set aside the entry of Default, which Plaintiff declined. Defendants mailed their answer on November 15, 2016. Defendants filed their Motion to Set Aside Entry of Default on November 18, 2016. A default judgment was entered against Defendants on that same day. Plaintiff was not obligated to consent to set aside Defendants' entry of default when Defendants failed to timely respond to the Summons and Complaint by responding nine days after the due date.

The Judgment of Default was signed by the Court prior to any knowledge that a Motion to Set Aside Entry of Default had been or was filed. However, this Court in the motion hearing considered both the Motion to Set Aside Entry of Default and the Motion to Set Aside Judgment. Defendants have not put forth a satisfactory explanation to show good cause. Defendants also have not provide this Court with a sufficient reason for why vacation of the entry of default would serve the interests of justice.

Concerning the alleged statutory defect in the Order of Publication, a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994). Defendants clearly could have raised the matter concerning the alleged statutory defect in the Order of Publication in their Motion to Set Aside the Default Judgment but failed to do so. Accordingly, this issue is not preserved for review. See *McClurg v. Deaton*, 380 S.C. 563, 579–80, 671 S.E.2d 87, 96 (Ct. App. 2008). Accordingly, this Court hereby **DENIES** Defendants' Motion to Alter or Amend the Court's Order to Set Aside Entry of Default. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
October 30, 2017



Summons and Complaint filed on June 16, 2016

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Neal Truslow

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

2016-CP -40 - 03728

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant(s)

Submitted By: Harvey M. Watson III

Address: Post Office Box 6338, West Columbia, SC 29171

SC Bar #: 74053

Telephone #: 803.796.9299

Fax #: 803.796.1066

Other:

E-mail: harvey@desaballard.com

service@desaballard.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

☐ Contracts	☐ Torts - Professional Malpractice	☐ Torts - Personal Injury	☐ Real Property
☐ Construction (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☒ Breach of Contract (140)	20 -NI-	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
☐ Inmate Petitions	☐ Administrative Law/Relief	☐ Judgments/Settlements	☐ Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
☐ Special/Complex/Other	☐ Pharmaceuticals (630)	☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Unfair Trade Practices (640)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Out-of State Depositions (650)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		☐ Other (999)
☐ Other (699)			

☐ Sexual Predator (510)

Submitting Party Signature: _____



Date: 6-16-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow

Plaintiff

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendants

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

CASE NO.: 2016-CP-40-

SUMMONS

RICHLAND COUNTY
FILED
2016 JUN 16 PM 4:39
CLARENCE W. MCBRIDE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the plaintiff's counsel at his office at P.O. Box 6338, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

June 16, 2016

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
	)	Case No. 2016-CP-40 -
Neal Truslow	)	
	)	
	)	COMPLAINT
	)	(Non-Jury)
	)	
Plaintiff	)	
vs.	)	
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	

RICHLAND COUNTY
 FILED
 2016 JUN 16 PM 4:39
 JEANNETTE W. MCBRIDE
 C.C.P. & G.S.

The Plaintiff herein, complaining of the Defendants, would respectfully show unto this Honorable Court the following:

1. Plaintiff Neal Truslow is a citizen and resident of Richland County, South Carolina, and engages in the practice of law throughout the state.
2. Defendant Stephen Bretzinger (hereinafter "Bretzinger") is, upon information and belief, a citizen and resident of the State of Florida.
3. Defendant Lindsey Holsinger (hereinafter "Holsinger") is, upon information and belief, a citizen and resident of the State of Florida.
4. Defendant Rikard & Protopapas, LLC (hereinafter "Protopapas") is, upon information and belief, a domestic limited liability company organized and existing under the laws of the State of South Carolina, and is engaged in the practice of law in the State of South Carolina with a principal place of business located in Richland County, South Carolina. This Court has jurisdiction both over the parties hereto and the subject matter herein and venue is proper in Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Bretzinger and Holsinger purchased a home from Crestwood Homes, LLC ("Crestwood") in 2008 in York County, South Carolina. They later sued Crestwood

for alleged defects in the purchased home, and in July 2011 obtained a judgment against Crestwood in the amount of \$876,000.

6. Bretzinger and Holsinger later hired the firm of Nosal & Jeter, LLP via written and signed fee agreement (hereinafter "Fee Agreement"), in February 2013 to pursue collection of that amount from Crestwood and related parties. **Exhibit A.** The Fee Agreement was freely and voluntarily entered, is wholly compliant with state law regarding contracts generally, and consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar.
7. As referenced in the Fee Agreement, Plaintiff was associated on the matter and thereafter acted as legal counsel on behalf of Defendants.
8. Following execution of the Fee Agreement, Plaintiff began efforts to collect that sum on behalf of Bretzinger and Holsinger. Those efforts included filing suit in October 2013 in the Federal District Court (Civil Action No. 0:13-cv-02771-JMC).
9. That suit (the "Federal Action") alleged numerous causes of action, including but not limited to: breach of contract, breach of fiduciary duties, negligence, violation of the SC Unfair Trade Practices Act, and to pierce the corporate veil. The defendants in the Federal Action were Crestwood and six individual persons associated with Crestwood.
10. The Federal Action required extensive effort on the part of Plaintiff by way of legal representation and counsel. A motion for summary judgment by the defendants in the Federal Action was defendant and later denied via order dated September 5, 2014.
11. On September 26, 2014, the parties to the Federal Action reached an informal settlement agreement to fully resolve the claims between all parties in exchange for payment from the Federal Action defendants to Bretzinger and Holsinger in the amount¹ of \$100,000.

¹ Settlement offers prior to litigation were for approximately \$1,000. Accordingly, this offer to conclude the Federal Action represented a substantial improvement and significant beneficial result obtained by the efforts of Plaintiff on behalf of Defendants Bretzinger and Holsinger.

12. Defendants Bretzinger and Holsinger later attempted to back out of settlement and reject a more formal settlement agreement that had been prepared to memorialize the informal settlement between the parties to the Federal Action.
13. At that time, Plaintiff sought relief as counsel for Bretzinger and Holsinger in the Federal Action. Defendant Protopapas assumed representation of Bretzinger and Holsinger in November 2014 and remained as counsel through conclusion of the Federal Action.
14. Upon appearance as counsel by Defendant Protopapas, Plaintiff notified Bretzinger, Holsinger, and Protopapas that Plaintiff was asserting a charging lien for attorney's fees and costs against the first \$100,000 of any recovery made by Defendants Bretzinger and Holsinger in connection with the Federal Action, pursuant to the terms of the Fee Agreement.
15. The Federal Action concluded shortly thereafter after a motion to compel settlement filed in November 2014 was ultimately granted by order of the Federal District Court on May 7, 2015. **Exhibit B.**
16. Defendant Protopapas received \$100,000 in payment from the Federal Action defendants on or about June 5, 2015, and subsequently deposited the funds into its firm trust account.
17. Plaintiff contends that he has fully earned, and is immediately owed, an amount of attorney fees equal to 33% of that gross recovery (\$33,000), plus costs incurred in the amount of \$2,132.55, for a total of \$35,132.55 due to him under the terms of the Fee Agreement.
18. Requests to Defendant Protopapas for disbursement in that amount have been denied on the basis of Bretzinger and Holsinger refusing to authorize the release of those funds from trust.
19. Nevertheless, Defendant Protopapas has indicated an amount of funds sufficient to resolve the amounts due as claimed by Plaintiff remains held in its trust account. It remains held in trust pending resolution of competing claims as to entitlement to those

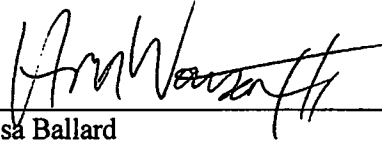
funds, as required by Rule 1.15(e) of the SC Rules of Professional Conduct (Rule 407, SCACR).

20. Nosal & Jeter, LLP has fully and permanently assigned to Plaintiff any and all interest it may have in the funds held by Defendant Protopapas.
21. By their refusal to authorize disbursement of funds held in Defendant Protopapas' trust account to resolve amounts due and owing to Plaintiff, Defendants Bretzinger and Holsinger are in material breach of their obligations under the terms of the Fee Agreement.
22. Plaintiff has suffered damages as a direct and proximate result of that breach. Damages are in the amount of earned fees and costs wrongfully denied to them, plus interest therein, in addition to fees and costs incurred by Plaintiff associated with efforts to secure release of the funds held in trust, including those associated with this legal action.
23. Plaintiff is therefore informed and believe he is entitled to judgment against Defendants Bretzinger and Holsinger in an amount equal to \$35,132.55, plus costs associated with this action.
24. Further, Plaintiff is informed and believes that judgment against Defendants Bretzinger and Holsinger should include a directive to Defendant Protopapas to release an amount equal to \$35,132.55 from funds held on behalf of Defendants Bretzinger and Holsinger in his trust account as necessary and appropriate specific performance under the terms provided by the Fee Agreement that has been breached.

WHEREFORE, Plaintiff prays for an Order of this Court:

- A. For judgment in favor of Plaintiff against Defendants Bretzinger and Holsinger in the amount of
 - (i) \$35,132.55, representing combined attorney fees and reimbursement costs under the terms of the subject Fee Agreement, together with
 - (ii) fees and costs incurred in this action;

- B. Directing that Defendant Rikard and Protopapas disburse the amount of \$35,132.55 plus awarded fees and costs from any funds held in its trust account on behalf of Defendants Bretzinger and Holsinger to resolve amounts owed by Defendants Bretzinger and Holsinger;
- C. Providing for such other and further relief as the Court may deem appropriate.

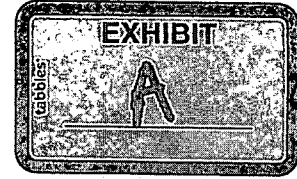


Desa Ballard
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Facsimile 803.796.1066
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ATTORNEYS FOR PLAINTIFF

June 16, 2016



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peter@nosajeterlaw.com
(Licensed in S.C.)

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1235 W. Morehead St.
Charlotte, NC 28208
Telephone (704) 608-3429
Fax (803) 403-9515
thomas@nosajeterlaw.com
(Licensed in N.C.)

LEGAL SERVICES AGREEMENT

1. IDENTIFICATION OF PARTIES. This agreement is made between Nosal & Jeter, LLP, hereafter referred to as "Law Firm," and Stephen Bretzinger and Lindsay Holsinger hereafter referred to as "Client."

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Law Firm to Client are limited to the following: Representation of Client to assist in collection of \$876,250.00 Judgment.

3. RESPONSIBILITIES OF ATTORNEY AND CLIENT. Law Firm will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client's address, telephone numbers and whereabouts; and timely make any payments required by this agreement.

4. LAW FIRM MAY ASSOCIATE OUTSIDE COUNSEL. Client agrees Law Firm may associate with other firms to perform representation for their case. Law Firm will associate Truslow and Truslow, PA to assist ~~with~~ all litigation.

5. ATTORNEY'S FEES. Client will pay Law Firm for attorney's fees for the legal services provided under this agreement at the respective hourly rates. The rates fall within the following ranges:

ATTORNEY RATES – Client has elected to enter into a contingency contract for these services. The attorney's fee will be 33% of any gross amount collected prior to the deduction of costs. No promises or guarantees of any financial recovery have been made regarding this claim. However, even if there is no pecuniary award or settlement, Client agrees to reimburse all agreed upon costs expended in this case. Attorney(s) agree to consult with client prior to agreeing to any abnormal costs. Normal "costs" include court filing fees, medical record charges, shipping charges, and deposition/ discovery charges. In the event that other attorneys participate in this

case, it is agreed that there will be no additional legal fees charged to Client. Any ultimate attorney fee generated will be shared equally amongst attorneys.

6. **COSTS.** Client will pay all "costs" in connection with Law Firm's representation of Client under this agreement. Costs will be advanced by Law Firm and then billed to Client unless the costs can be met out of client deposits that are applicable toward costs. Costs include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, postage, shipping charges, long-distance telephone charges, messenger service fees, photocopying expenses, legal research costs (i.e. Westlaw), and process server fees.

7. **RETAINER.** Client will pay to Law Firm an initial retainer of \$00.00, which will be deposited into Law Firm trust account and is not subject to refund, unless required to be refunded by the Rules of Professional Conduct. Law Firm will bill against this amount at the hourly rates provided for herein. Client authorizes Law Firm to withdraw the principal from the trust account to pay attorney's fees as they are incurred by Client. If, at the termination of services under this agreement, the total amount incurred by Client for attorney's fees is less than the amount of any funds held in trust the difference will be refunded to Client.

Law Firm will notify Client whenever the full amount of any deposit has been applied to attorney's fees incurred by Client. Within 15 days after each notification is mailed, Client will pay to Law Firm an additional deposit in the same amount as the initial one. Client authorizes Law Firm to withdraw the principal from the trust account to pay attorney's fees as they are incurred by Client. Such additional deposits will be fully refundable. If, at the termination of services under this agreement, there have been two or more deposits and the total amount incurred by Client for attorney's fees is less than the total amount of all deposits, the difference will be refunded to Client.

8. **STATEMENTS AND PAYMENTS.** Law Firm will send Client monthly statements indicating attorney's fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorney's fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month. Any balance will be paid in full within 30 days after the statement is mailed.

9. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

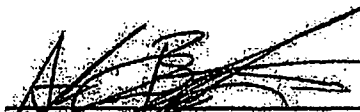
10. **DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Rock Hill, SC.

11. **NON-ASSIGNABLE.** The rights and duties as contained herein shall not be transferable or assignable by the parties.

12. ENTIRE AGREEMENT. This agreement is the entire agreement among the parties with respect to the subject matter hereof, and no representations or covenants, whether oral or written, have been made regarding the subject matter hereof except as expressly provided herein.

This the 4th day of February, 2013.

The foregoing is agreed to by:


Stephen Brezinger


Lindsay Holsinger


Nosal & Jeter, LLP
By: Peter J. Nosal

Truslow & Truslow, PA
Post Office Box 1465
Columbia, SC 29202-1465

www.truslowlaw.com

Ph: (803) 256-6276

Fax: (803) 256-7659

Stephen Bretzinger
2879 Highway 160 W 4322
Fort Mill, SC
29708

September 18, 2014

File #: 13-003

Inv #: 1841

Attention: Peter Nosal

Please remit payment within ten (10) days or contact us
within ten (10) days to arrange a payment plan.

RE: Bretzinger vs. Crestwood Homes et al

DISBURSEMENTS

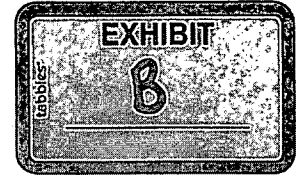
	Filing Fee	\$400.00
	Photocopies	\$466.80
	Postage	\$184.27
3/26/13	USDC Pacer Copies	\$73.90
	SC Secretary of State	\$3.50
10/25/13	NC Secretary of State Process Fee	\$10.00
11/15/13	Process Service and Skip Trace	\$314.00
12/16/13	Process Service and Skip Trace	\$442.00
12/17/13	Memorandum Binding and Copies	\$21.70
5/27/14	Mileage - travel to/from property - 154.4 miles	\$86.46
8/27/14	Mileage - travel to/from Anderson for Mediation - 232 miles	\$129.92
	Total	\$2,132.55

Total Fee & Disbursements \$2,132.55

Balance Now Due

\$2,132.55

For your convenience we accept Visa, MasterCard, and Discover.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsey Holsinger,	)	Civil Action No. 0:13-cv-02771-JMC
	)	
Plaintiffs,	)	
v.	)	
	)	
Crestwood Homes, LLC d/b/a Scenic	)	<u>ORDER AND OPINION</u>
Homes, Paul Meng, James Ray, Reggie	)	
Lee McGaugh, Susan Meng, Mary Beth	)	
McGaugh, and Susan Ray,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Stephen Bretzinger and Lindsey Holsinger (collectively "Plaintiffs") filed this action seeking damages from Defendants Crestwood Homes, LLC d/b/a Scenic Homes, Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray (collectively "Defendants") resulting from their construction and sale to Plaintiffs of an allegedly defective house located at 2055 Covered Bridge Court, York County, South Carolina (the "Property"). (ECF No. 1.) Plaintiffs assert claims under state law against Defendants for breach of contract to construct an improvement to real property, breach of fiduciary duties, breach of the implied covenant of good faith and fair dealing, fraud, breach of contract accompanied by a fraudulent act, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -560 (1985 & Supp. 2011), fraudulent conveyance, unjust enrichment, civil conspiracy, breach of warranty, negligent construction, negligence per se, gross negligence, rescission, to void a contract for unconscionability, aiding and abetting wrongdoing, to pierce the corporate veil, and to collect on a judgment. (*Id.* at 7-22.)

This matter is before the court pursuant to Defendants' Motion to Enforce Settlement Agreement. (ECF No. 55.) Plaintiffs oppose the pending Motion to Enforce Settlement. (ECF

No. 62.) For the reasons set forth below, the court GRANTS Defendants' Motion to Enforce Settlement.

I. RELEVANT BACKGROUND TO PENDING MOTION

The following relevant facts taken from the complaint are assumed to be true only for the purposes of the pending motion. Crestwood Homes, LLC ("Crestwood") is an "association of persons" that includes "Individual Defendants" Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray. (ECF No. 1 at 6 ¶ 44.) This action arises from a course of events that allegedly resulted in Plaintiffs entering into a residential contract with Crestwood on or about June 28, 2008 to purchase the Property. (*Id.* at 3 ¶ 24.) After closing on and receiving title to the Property, Plaintiffs became aware of specified defects in the Property. (*Id.* at 4 ¶¶ 27-28.) Plaintiffs allege that after they provided notice of the defects in the Property to Crestwood, it failed to remedy said defects in the Property thereby resulting in the Property sustaining significant additional damage. (*Id.* at 4 ¶ 29, 5 ¶¶ 31-32.)

On July 29, 2010, Plaintiffs filed a lawsuit against Crestwood in the York County (South Carolina) Court of Common Pleas. (ECF No. 1-2.) Crestwood did not answer or otherwise respond to the lawsuit. After entering default against Crestwood on or about January 18, 2011, the state court entered judgment for Plaintiffs on July 8, 2011 in the amount of \$876,000.00 against Crestwood. (ECF No. 1-4.)

Thereafter, on October 10, 2013, Plaintiffs filed a Complaint in this court alleging the aforementioned causes of action against Defendants. (ECF No. 1.) On November 5, 2013, Crestwood answered the Complaint generally denying its allegations. (ECF No. 9.) On November 18, 2013, Individual Defendants filed Motions to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2). (ECF No. 16.) On September 5, 2014, the court denied

without prejudice Individual Defendants' Motions to Dismiss with leave to re-file after a period of limited jurisdictional discovery. (ECF No. 44.)

On September 26, 2014, the parties allegedly reached an agreement for the complete and final resolution and settlement of this case (the "Settlement Agreement"). (See ECF No. 55-1 at 5 ("They [Plaintiffs] accept and will settle for \$100,000.00" in exchange for a global release).) The Settlement Agreement and essential terms of the same were memorialized using the following language in an e-mail sent by Plaintiffs' counsel of record, Neal Truslow ("Truslow"), to Defendants' counsel on September 29, 2014:

To confirm the status of where we are:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(Id. at 2.) On or about October 7, 2014, Defendants' counsel prepared more formal settlement and release documents and provided the same to Plaintiffs' counsel. (ECF No. 55-2 at 3.) On October 29, 2014, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs "desire[d] to nullify the settlement" and dismiss the case without prejudice. (ECF No. 55-3 at 2.)

On November 5, 2014, Defendants filed the instant Motion to Enforce Settlement. (ECF No. 55.) Plaintiffs filed their Response in Opposition to Defendants' Motion to Enforce Settlement on November 24, 2014. (ECF No. 62.) On December 9, 2014, the court heard argument from the parties on the pending Motion to Enforce Settlement. (ECF No. 71.)

II. LEGAL STANDARD AND ANALYSIS

A. Standard for Enforcing Settlement

“Settlement agreements are matters of contract law, and contract law principles apply.” Patel v. Barot, 15 F. Supp. 3d 648, 653 (E.D. Va. 2014). “Because exercise of the authority to enforce settlement agreements depends on the parties’ agreement to a complete settlement, the court cannot enforce a settlement until it concludes that a complete agreement has been reached and determines the terms and conditions of that agreement.” Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002) (citing Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Therefore, “to exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions.” Id. at 540–41 (citing Moore v. Beaufort Cnty., 936 F.2d 159, 162 (4th Cir. 1991); Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Accordingly, “if an agreement for complete settlement of the underlying litigation, or part of it, has been reached and its terms and conditions can be determined, the court may enforce the agreement summarily as long as the excuse for nonperformance of the agreement is ‘comparatively insubstantial.’” Id. at 540 (quoting Millner v. Norfolk & W. Ry. Co., 643 F.2d 1005, 1009 (4th Cir. 1981)). However, “[i]f there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreement’s terms, the district court may not enforce a settlement agreement summarily,” and it must instead conduct a hearing in order to resolve that dispute and make factual findings. Id. at 541 (citations omitted).

B. The Parties’ Arguments

1. *Defendants*

Defendants move the court to enforce an alleged settlement with Plaintiffs containing the

following terms and conditions:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(ECF No. 55-1 at 2.) In support of their Motion to Enforce Settlement, Defendants argue that Plaintiffs' counsel "irrefutably confirmed the clear and ambiguous terms of the [S]ettlement [A]greement," and the acts of an attorney are binding on the client. (ECF No. 55 at 1, 3 (citing Sadighi v. Daghighfekr, 66 F. Supp. 2d 752, 761 (D.S.C. 1999) (citation omitted)).) Defendants further argue that "[t]he writings between counsel of record in this case unequivocally demonstrate that: (1) the parties reached a complete agreement; and (2) the writings set forth the essential terms and conditions of the Settlement Agreement." (ECF No. 55 at 3.) As a result, "Plaintiffs are bound by the actions of their attorneys" and the "Settlement Agreement is binding and enforceable upon the Plaintiffs." (Id. at 3-4.) Based on the foregoing, Defendants request that the court enforce the Settlement Agreement and dismiss this action. (Id. at 4.)

2. Plaintiffs

Plaintiffs oppose the Motion to Enforce Settlement asserting that it should be denied because the emails attached to Defendants' motion only "demonstrate that there was no commitment [to a settlement] and that critical terms were to be negotiated prior to any commitment." (ECF No. 62 at 1.) Plaintiffs next assert that their counsel "did not have authority to bind either of the Plaintiffs to a settlement agreement" or "forfeit an outstanding State Court judgment against the Defendants." (Id. at 7.) Finally, Plaintiffs assert that Defendants' evidence

does not support a finding that Plaintiffs displayed the intent “to be bound to any purported settlement.” (*Id.* at 8.) As a result, Plaintiffs beseech the court to deny Defendants’ Motion to Enforce Settlement. (*Id.*)

C. The Court’s Review

Upon consideration of the parties’ arguments, the court finds that the terms of the parties’ alleged settlement are clearly set forth in the parties’ exhibits¹ and, therefore, the court should enforce the settlement unless it determines that the parties failed to reach a complete agreement. As to this issue, Plaintiffs argue that their counsel did not have either actual authority or apparent authority to settle the matter. (ECF No. 62 at 7.) As support for their argument, Plaintiffs submitted affidavits, which specifically stated that their attorneys were not authorized to settle the case (ECF Nos. 62-4 & 62-5), and cited to Rule 43(k), SCRPC, which rule provides that “[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.”

In assessing the merits of Plaintiffs’ argument, the court observes that an attorney’s “authority to negotiate” on behalf of his client “is far different from the authority to agree to a specific settlement.” *Auvil v. Grafton Homes, Inc.*, 92 F.3d 226, 231 (4th Cir. 1996). “It is generally accepted that when a client retains an attorney to represent him in litigation, absent an express agreement to the contrary, the attorney has implied authority to conduct the litigation and to negotiate its resolution.” *Id.* at 229–230. Moreover, under South Carolina law, absent fraud or mistake, counsel of record has the authority to settle litigation on behalf of their client.

¹ Defendants will pay \$100,000.00 to Plaintiffs in exchange for a full release of all claims. (ECF No. 55-1 at 2.)

Arnold v. Yarborough, 316 S.E.2d 416, 417 (S.C. Ct. App. 1984) (“Acts of an attorney are directly attributable to and binding upon the client.”) (Citation omitted); see also Poore v. Poore, 89 S.E. 569, 571 (S.C. 1916) (“It will never do, in the absence of fraud, to allow the undoubted attorneys of record for a party to a suit to enter into a solemn agreement to settle and adjust the issues and subject-matter of a suit and then later, if it is done, because for any reason the party is dissatisfied, to allow him to repudiate this agreement and employ different counsel to upset and set aside what his first counsel has done.”).

Upon review, the court finds that Truslow, Plaintiffs’ attorney of record, bound Plaintiffs when he stated his acknowledgement to the agreed upon terms of the settlement.² (See ECF No. 55-1 at 2 (“To confirm the status of where we are: Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case . . . I’ll be sure to consent [to a stipulation of dismissal] once we’ve got funds and you’ve got a signed release.”).) Under South Carolina law, Truslow’s actions bind Plaintiffs since there has not been a showing of fraud. Arnold, 316 S.E. 2d at 417 (“Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud.”) (Citation omitted). In this regard, neither Plaintiffs’ affidavits nor Rule 43(k), SCRCP, require the court to find otherwise. See, e.g., Surety Ins. Co. of Cal. v. Williams, 729 F.2d 581, 583 (8th Cir. 1984) (“We think that in meeting that burden the Williamses may not rely on their conclusory affidavit,

² There were communications relevant to the settlement made by an attorney, Peter Nosal, who was not counsel of record for Plaintiffs in this matter. (See, e.g., ECF No. 55-1 at 4 (“I understand your concerns. I have explained to them that the settlement will be contingent of a full release of any and all claims against all defendants. Pete.”) & 5 (“They accept and will settle for \$100,000.00. They have some concerns about the language in the release, but I am confident we can work that out. Pete.”).) The court does not rely on Nosal’s communications to establish Plaintiffs’ agreement to settle the matter. See, e.g., Andrulonis v. United States, No. 79-CV-847, 1995 WL 46331, at 2 (N.D.N.Y. Jan. 25, 1995) (“First, the court holds that no binding settlement agreement existed. Attorney Buskus was not the attorney of record in the district court, and counsel for the United States should have realized that agreement of the counsel of record was required before a settlement became binding.”).

but must establish through competent evidence that their attorney lacked actual, implied, or apparent authority to stipulate to an entry of judgment.”); Nationwide Mut. Ins. Co. v. Ruff, C/A No. 0:11-1011-CMC, 2011 WL 2491345, at *3 (D.S.C. June 22, 2011) (“[T]he South Carolina Rules of Civil Procedure govern actions brought in South Carolina courts, not federal courts, ...”); United States v. Hemmons, 774 F. Supp. 346, 350 (E.D. Pa. 1991) (“State rules of civil procedure do not apply in a federal court.”) (citing, e.g., U.S. Const. art. IV). Accordingly, the court concludes that the parties did reach a complete agreement to settle this matter, and the terms of that agreement are clearly discernible from the record.

III. CONCLUSION

For the reasons set forth above, the court hereby **GRANTS** Defendants’ Motion to Enforce Settlement Agreement. (ECF No. 55.) The court further **ORDERS** the parties to fulfill their obligations under the Settlement Agreement within 30 days of the date of entry of this Order. This action is hereby **DISMISSED**.

IT IS SO ORDERED.



United States District Judge

May 7, 2015
Columbia, South Carolina

Answer of Rikard & Protopapas filed on July 11, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO:2016-CP-40-03728

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger
and Rikard & Protopapas,

Defendants

ANSWER

RICHLAND COUNTY
FILED
2016 JUL 11 AM 10:19
JEANETTE W. MCBRIDE
C.C.P. & G.S.

COMES NOW the Defendant, Rikard & Protopapas, answers the Complaint filed against it as follows:

1. This Defendant denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.
2. As to paragraph 1, 2, and 3, this Defendant would admit same upon information and belief.
3. As to paragraphs 4, admitted.
4. As to paragraph 5, 6, 7, 8, 9, 10, 11, and 12, this Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish a liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.
5. As to paragraph 13, this Defendant admits they assumed representation of Bretzinger and Holsinger and remained as counsel through conclusion of the Federal

Action. In so far as the remaining allegations attempt to establish a liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. As to paragraph 14, 15, and 16, admitted.

7. As to paragraph 17, this Defendant admits to maintaining \$35,132.55 in its trust account. As to the remaining allegations, this Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish a liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

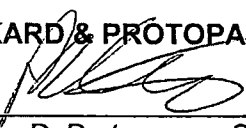
8. As to paragraphs 18 and 19, admitted.

9. As to paragraph 20, this Defendant is without knowledge, therefore denied.

10. As to paragraph 21, 22, 23, 24, this Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish a liability on the part of this Defendant, this

WHEREFORE, having fully answered the Complaint, this Defendant prays that it be directed by the Court as to what actions should be taken in regards the monies safeguarded in his trust account and for such other and further relief as the Court deems just and proper.

RIKARD & PROTOPAPAS, LLC


Peter D. Protopapas, SCB #68304
Email: pdp@rplegalgroup.com
1329 Blanding Street
Post Office Box 5640 (29250)

Columbia, South Carolina 29201
Telephone: 803.978.6111
Facsimile: 803.978.6112

Attorneys for Defendants, Rikard & Protopapas

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO:2016-CP-40-03728

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger
and Rikard & Protopapas,

Defendants

CERTIFICATE OF SERVICE

2016 JUL 11 AM 10:19
JENNETTE W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

I, Jo-Elaine Boyd, state that I am a paralegal for Rikard & Protopapas, L.L.C., with offices at 1329 Blanding Street, Post Office Box 5640, Columbia, South Carolina; that on the 8th day of July, 2016, I delivered a copy of the following documents to the following parties:

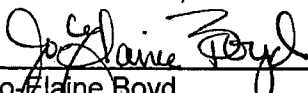
Documents:

Defendant, Rikard & Protopapas, Answer to Complaint

Parties Served:

VIA U.S MAIL

Desa Ballard
Ballard & Watson
P.O. Box 6338
West Columbia, SC 29171


Jo-Elaine Boyd
jboyd@rplegalgroup.com

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CIVIL ACTION NO:2016-CP-40-03728

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger
and Rikard & Protopapas,

Defendants

CERTIFICATE OF SERVICE

2016 JUL 11 AM 10:19
JEANETTE W. MCBRIDE
C.C.P. & C.S.
RICHLAND COUNTY
FILED

I, Jo-Elaine Boyd, state that I am a paralegal for Rikard & Protopapas, L.L.C., with offices at 1329 Blanding Street, Post Office Box 5640, Columbia, South Carolina; that on the ¹¹8th day of July, 2016, I delivered a copy of the following documents to the following parties:

Documents:

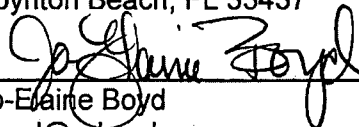
Defendant, Rikard & Protopapas, Answer to Complaint

Parties Served:

VIA U.S MAIL

Desa Ballard
Ballard & Watson
P.O. Box 6338
West Columbia, SC 29171

Stephen Bretzinger
Lindsay Holsinger
7686 Corkwood Avenue
Boynton Beach, FL 33437


Jo-Elaine Boyd
jboyd@rplegalgroup.com

Motion for Service by Publication filed on September 12, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-03728

Neal Truslow,

Plaintiff,

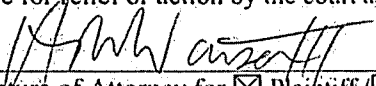
vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant.)

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

RICHLAND COUNTY
FILED
2016 SEP 12 PM 1:12
JEANNETTE W. HODGINS
C.C.P. & U.S.

Plaintiff's Attorney: Harvey M. Watson III, Bar No. 74053 Address: Post Office Box 6338, West Columbia, SC 29171 Phone: 803.796.9299 Fax 803.796.1066 E-mail: harvey@desaballard.com Other: service@desaballard.com		Defendant's Attorney: Peter Protopapas, Bar No. 68304 Address: Post Office Box 5640, Columbia, SC 29250 Phone: 803.978.6111 Fax _____ E-mail: pdp@rplegalgroup.com Other: _____ Stephen Bretzinger and Lindsey Holsinger <i>Pro Se</i> 7686 Corkwood Avenue Boynton Beach, FL 33437	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Estimated Time Needed: _____	
		Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order			
I hereby move for relief or action by the court as set forth in the attached proposed order.			
 _____ Signature of Attorney for ☒ Plaintiff/ ☐ Defendant		September 8, 2016 Date submitted	
SECTION III: Motion Fee			
☐ PAID - AMOUNT: \$ _____			
☒ EXEMPT: (check reason)			
☐ Rule to Show Cause in Child or Spousal Support			
☐ Domestic Abuse or Abuse and Neglect			
☐ Indigent Status ☐ State Agency v. Indigent Party			
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief			
☐ Motion for Stay in Bankruptcy			
☒ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)			
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions			
Name of Court Reporter: _____			
☐ Other: _____			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order.		JUDGE CODE _____	
☐ Other: _____		Date: _____	

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

vs.

Stephen Bretzinger,

Lindsey Holsinger, and

Rikard & Protopapas, LLC

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NO.:2016-CP-40-03728

**MOTION FOR SERVICE
BY PUBLICATION**

RICHLAND COUNTY
FILED
2016 SEP 12 PM 1:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned, as counsel for Plaintiff, moves this Court for an Order for Service by Publication as to the Defendants Stephen Bretzinger and Lindsey Holsinger, jointly and severally pursuant to South Carolina Code of Laws, §15-9-710. Plaintiff shows the following in support of the Motion:

1. The Defendant(s) Stephen Bretzinger and Lindsey Holsinger cannot, after due diligence, be found within the State of South Carolina.
2. A cause of action exists against Defendant(s) Stephen Bretzinger and Lindsey Holsinger because of their claimed interest in disputed funds currently held in a lawyer's trust account in South Carolina by Defendant Rikard & Protopapas.
3. A copy of the Summons and Complaint in the above-captioned matter, which more particular describes the claim made and relevant parties, is attached hereto and incorporated herein by reference.
4. The Defendants Stephen Bretzinger and Lindsey Holsinger are necessary and proper parties to this action.
5. Attached to this motion is the Affidavit of Mara Ballard which includes documents

showing attempted Service provided by the Palm Beach County Sheriff's Office and United Parcel Service (UPS), a commercial delivery service. Neither means of service were successful.

6. Service by publication is therefore justified and authorized pursuant to S.C. Code § 15-9-710(4) and (5).¹

WHEREFORE, the Plaintiff prays that the Court allow service upon Stephen Bretzinger and Lindsey Holsinger by way of publication, and for such other and further relief as the Court deems just and proper.

Respectfully submitted,


Harvey M. Watson III

BALLARD & WATSON
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
(T) 803.796.9299
(F) 803.796.1066
harvey@desaballard.com

ATTORNEY FOR THE PLAINTIFF

September 8, 2016

¹ S.C. Code § 15-3-710:

(4) when the defendant is not a resident of this State but has property therein and the court has jurisdiction of the subject of the action;

(5) when the subject of the action is real or personal property in this State and the defendant has or claims a lien or interest, actual or contingent, therein or the relief demanded consists wholly or partly in excluding the defendant from any interest or lien therein;

STATE OF SOUTH CAROLINA

COUNTY OF Richland

Neal Truslow

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s)

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant(s)

Submitted By: Harvey M. Watson III

Address: Post Office Box 6338, West Columbia, SC 29171

SC Bar #: 74053

Telephone #: 803.796.9299

Fax #: 803.796.1066

Other:

E-mail: harvey@desaballard.com

service@desaballard.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts	Torts - Professional Malpractice	Torts - Personal Injury	Real Property
☐ Constructions (100)	☐ Dental Malpractice (200)	☐ Assault/Slander/Libel (300)	☐ Claim & Delivery (400)
☐ Debt Collection (110)	☐ Legal Malpractice (210)	☐ Conversion (310)	☐ Condemnation (410)
☐ Employment (120)	☐ Medical Malpractice (220)	☐ Motor Vehicle Accident (320)	☐ Foreclosure (420)
☐ General (130)	Previous Notice of Intent Case #	☐ Premises Liability (330)	☐ Mechanic's Lien (430)
☒ Breach of Contract (140)	20 <u>-NI-</u>	☐ Products Liability (340)	☐ Partition (440)
☐ Other (199)	☐ Notice/ File Med Mal (230)	☐ Personal Injury (350)	☐ Possession (450)
	☐ Other (299)	☐ Wrongful Death (360)	☐ Building Code Violation (460)
		☐ Other (399)	☐ Other (499)
Inmate Petitions	Administrative Law/Relief	Judgments/Settlements	Appeals
☐ PCR (500)	☐ Reinstate Drv. License (800)	☐ Death Settlement (700)	☐ Arbitration (900)
☐ Mandamus (520)	☐ Judicial Review (810)	☐ Foreign Judgment (710)	☐ Magistrate-Civil (910)
☐ Habeas Corpus (530)	☐ Relief (820)	☐ Magistrate's Judgment (720)	☐ Magistrate-Criminal (920)
☐ Other (599)	☐ Permanent Injunction (830)	☐ Minor Settlement (730)	☐ Municipal (930)
	☐ Forfeiture-Petition (840)	☐ Transcript Judgment (740)	☐ Probate Court (940)
	☐ Forfeiture-Consent Order (850)	☐ Lis Pendens (750)	☐ SCDOT (950)
	☐ Other (899)	☐ Transfer of Structured Settlement Payment Rights Application (760)	☐ Worker's Comp (960)
Special/Complex /Other		☐ Confession of Judgment (770)	☐ Zoning Board (970)
☐ Environmental (600)	☐ Pharmaceuticals (630)	☐ Petition for Workers Compensation Settlement Approval (780)	☐ Public Service Comm. (990)
☐ Automobile Arb. (610)	☐ Unfair Trade Practices (640)	☐ Other (799)	☐ Employment Security Comm (991)
☐ Medical (620)	☐ Out-of State Depositions (650)		
☐ Other (699)	☐ Motion to Quash Subpoena in an Out-of-County Action (660)		

☐ Sexual Predator (510)

Submitting Party Signature:



Date: 6-16-16

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow

Plaintiff

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendants

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

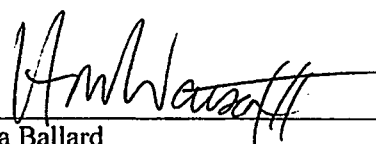
CASE NO.: 2016-CP-40-

SUMMONS

RICHLAND COUNTY
FILED
2016 JUN 16 PM 4:39
ANNETTE W. MCRIE
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the plaintiff's counsel at his office at P.O. Box 6338, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

June 16, 2016

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
	)	Case No. 2016-CP-40 -
Neal Truslow	)	
	)	
	)	COMPLAINT
Plaintiff	)	(Non-Jury)
vs.	)	
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	

RICHLAND COUNTY
 FILED
 2016 JUN 16 PM 4:39
 JENNIFER W. MORRIS
 C.C.P. & G.S.

The Plaintiff herein, complaining of the Defendants, would respectfully show unto this Honorable Court the following:

1. Plaintiff Neal Truslow is a citizen and resident of Richland County, South Carolina, and engages in the practice of law throughout the state.
2. Defendant Stephen Bretzinger (hereinafter "Bretzinger") is, upon information and belief, a citizen and resident of the State of Florida.
3. Defendant Lindsey Holsinger (hereinafter "Holsinger") is, upon information and belief, a citizen and resident of the State of Florida.
4. Defendant Rikard & Protopapas, LLC (hereinafter "Protopapas") is, upon information and belief, a domestic limited liability company organized and existing under the laws of the State of South Carolina, and is engaged in the practice of law in the State of South Carolina with a principal place of business located in Richland County, South Carolina. This Court has jurisdiction both over the parties hereto and the subject matter herein and venue is proper in Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Bretzinger and Holsinger purchased a home from Crestwood Homes, LLC ("Crestwood") in 2008 in York County, South Carolina. They later sued Crestwood

for alleged defects in the purchased home, and in July 2011 obtained a judgment against Crestwood in the amount of \$876,000.

6. Bretzinger and Holsinger later hired the firm of Nosal & Jeter, LLP via written and signed fee agreement (hereinafter "Fee Agreement"), in February 2013 to pursue collection of that amount from Crestwood and related parties. Exhibit A. The Fee Agreement was freely and voluntarily entered, is wholly compliant with state law regarding contracts generally, and consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar.
7. As referenced in the Fee Agreement, Plaintiff was associated on the matter and thereafter acted as legal counsel on behalf of Defendants.
8. Following execution of the Fee Agreement, Plaintiff began efforts to collect that sum on behalf of Bretzinger and Holsinger. Those efforts included filing suit in October 2013 in the Federal District Court (Civil Action No. 0:13-cv-02771-JMC).
9. That suit (the "Federal Action") alleged numerous causes of action, including but not limited to: breach of contract, breach of fiduciary duties, negligence, violation of the SC Unfair Trade Practices Act, and to pierce the corporate veil. The defendants in the Federal Action were Crestwood and six individual persons associated with Crestwood.
10. The Federal Action required extensive effort on the part of Plaintiff by way of legal representation and counsel. A motion for summary judgment by the defendants in the Federal Action was defendant and later denied via order dated September 5, 2014.
11. On September 26, 2014, the parties to the Federal Action reached an informal settlement agreement to fully resolve the claims between all parties in exchange for payment from the Federal Action defendants to Bretzinger and Holsinger in the amount¹ of \$100,000.

¹ Settlement offers prior to litigation were for approximately \$1,000. Accordingly, this offer to conclude the Federal Action represented a substantial improvement and significant beneficial result obtained by the efforts of Plaintiff on behalf of Defendants Bretzinger and Holsinger.

12. Defendants Bretzinger and Holsinger later attempted to back out of settlement and reject a more formal settlement agreement that had been prepared to memorialize the informal settlement between the parties to the Federal Action.
13. At that time, Plaintiff sought relief as counsel for Bretzinger and Holsinger in the Federal Action. Defendant Protopapas assumed representation of Bretzinger and Holsinger in November 2014 and remained as counsel through conclusion of the Federal Action.
14. Upon appearance as counsel by Defendant Protopapas, Plaintiff notified Bretzinger, Holsinger, and Protopapas that Plaintiff was asserting a charging lien for attorney's fees and costs against the first \$100,000 of any recovery made by Defendants Bretzinger and Holsinger in connection with the Federal Action, pursuant to the terms of the Fee Agreement.
15. The Federal Action concluded shortly thereafter after a motion to compel settlement filed in November 2014 was ultimately granted by order of the Federal District Court on May 7, 2015. **Exhibit B.**
16. Defendant Protopapas received \$100,000 in payment from the Federal Action defendants on or about June 5, 2015, and subsequently deposited the funds into its firm trust account.
17. Plaintiff contends that he has fully earned, and is immediately owed, an amount of attorney fees equal to 33% of that gross recovery (\$33,000), plus costs incurred in the amount of \$2,132.55, for a total of \$35,132.55 due to him under the terms of the Fee Agreement.
18. Requests to Defendant Protopapas for disbursement in that amount have been denied on the basis of Bretzinger and Holsinger refusing to authorize the release of those funds from trust.
19. Nevertheless, Defendant Protopapas has indicated an amount of funds sufficient to resolve the amounts due as claimed by Plaintiff remains held in its trust account. It remains held in trust pending resolution of competing claims as to entitlement to those

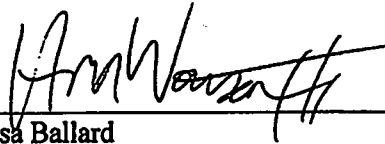
funds, as required by Rule 1.15(e) of the SC Rules of Professional Conduct (Rule 407, SCACR).

20. Nosal & Jeter, LLP has fully and permanently assigned to Plaintiff any and all interest it may have in the funds held by Defendant Protopapas.
21. By their refusal to authorize disbursement of funds held in Defendant Protopapas' trust account to resolve amounts due and owing to Plaintiff, Defendants Bretzinger and Holsinger are in material breach of their obligations under the terms of the Fee Agreement.
22. Plaintiff has suffered damages as a direct and proximate result of that breach. Damages are in the amount of earned fees and costs wrongfully denied to them, plus interest therein, in addition to fees and costs incurred by Plaintiff associated with efforts to secure release of the funds held in trust, including those associated with this legal action.
23. Plaintiff is therefore informed and believe he is entitled to judgment against Defendants Bretzinger and Holsinger in an amount equal to \$35,132.55, plus costs associated with this action.
24. Further, Plaintiff is informed and believes that judgment against Defendants Bretzinger and Holsinger should include a directive to Defendant Protopapas to release an amount equal to \$35,132.55 from funds held on behalf of Defendants Bretzinger and Holsinger in his trust account as necessary and appropriate specific performance under the terms provided by the Fee Agreement that has been breached.

WHEREFORE, Plaintiff prays for an Order of this Court:

- A. For judgment in favor of Plaintiff against Defendants Bretzinger and Holsinger in the amount of
 - (i) \$35,132.55, representing combined attorney fees and reimbursement costs under the terms of the subject Fee Agreement, together with
 - (ii) fees and costs incurred in this action;

- B. Directing that Defendant Rikard and Protopapas disburse the amount of \$35,132.55 plus awarded fees and costs from any funds held in its trust account on behalf of Defendants Bretzinger and Holsinger to resolve amounts owed by Defendants Bretzinger and Holsinger;
- C. Providing for such other and further relief as the Court may deem appropriate.

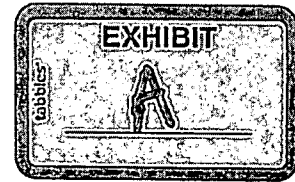


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ATTORNEYS FOR PLAINTIFF

June 16, 2016



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thomas@nosaljeterlaw.com
(Licensed in N.C.)

LEGAL SERVICES AGREEMENT

1. IDENTIFICATION OF PARTIES. This agreement is made between Nosal & Jeter, LLP, hereafter referred to as "Law Firm," and Stephen Bretzinger and Lindsay Holsinger hereafter referred to as "Client."

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Law Firm to Client are limited to the following: Representation of Client to assist in collection of \$876,250.00 Judgment.

3. RESPONSIBILITIES OF ATTORNEY AND CLIENT. Law Firm will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client's address, telephone numbers and whereabouts; and timely make any payments required by this agreement.

4. LAW FIRM MAY ASSOCIATE OUTSIDE COUNSEL. Client agrees Law Firm may associate with other firms to perform representation for their case. Law Firm will associate Truslow and Truslow, PA to assist ~~with~~ all litigation.

5. ATTORNEY'S FEES. Client will pay Law Firm for attorney's fees for the legal services provided under this agreement at the respective hourly rates. The rates fall within the following ranges:

ATTORNEY RATES – Client has elected to enter into a contingency contract for these services. The attorney's fee will be 33% of any gross amount collected prior to the deduction of costs. No promises or guarantees of any financial recovery have been made regarding this claim. However, even if there is no pecuniary award or settlement, Client agrees to reimburse all agreed upon costs expended in this case. Attorney(s) agree to consult with client prior to agreeing to any abnormal costs. Normal "costs" include court filing fees, medical record charges, shipping charges, and deposition/ discovery charges. In the event that other attorneys participate in this

case, it is agreed that there will be no additional legal fees charged to Client. Any ultimate attorney fee generated will be shared equally amongst attorneys.

6. **COSTS.** Client will pay all "costs" in connection with Law Firm's representation of Client under this agreement. Costs will be advanced by Law Firm and then billed to Client unless the costs can be met out of client deposits that are applicable toward costs. Costs include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, postage, shipping charges, long-distance telephone charges, messenger service fees, photocopying expenses, legal research costs (i.e. Westlaw), and process server fees.

7. **RETAINER.** Client will pay to Law Firm an initial retainer of \$00.00, which will be deposited into Law Firm trust account and is not subject to refund, unless required to be refunded by the Rules of Professional Conduct. Law Firm will bill against this amount at the hourly rates provided for herein. Client authorizes Law Firm to withdraw the principal from the trust account to pay attorney's fees as they are incurred by Client. If, at the termination of services under this agreement, the total amount incurred by Client for attorney's fees is less than the amount of any funds held in trust the difference will be refunded to Client.

Law Firm will notify Client whenever the full amount of any deposit has been applied to attorney's fees incurred by Client. Within 15 days after each notification is mailed, Client will pay to Law Firm an additional deposit in the same amount as the initial one. Client authorizes Law Firm to withdraw the principal from the trust account to pay attorney's fees as they are incurred by Client. Such additional deposits will be fully refundable. If, at the termination of services under this agreement, there have been two or more deposits and the total amount incurred by Client for attorney's fees is less than the total amount of all deposits, the difference will be refunded to Client.

8. **STATEMENTS AND PAYMENTS.** Law Firm will send Client monthly statements indicating attorney's fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorney's fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month. Any balance will be paid in full within 30 days after the statement is mailed.

9. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

10. **DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Rock Hill, SC.

11. **NON-ASSIGNABLE.** The rights and duties as contained herein shall not be transferable or assignable by the parties.

12. ENTIRE AGREEMENT. This agreement is the entire agreement among the parties with respect to the subject matter hereof, and no representations or covenants, whether oral or written, have been made regarding the subject matter hereof except as expressly provided herein.

This the 4th day of February, 2013.

The foregoing is agreed to by:


Stephen Brezinger


Lindsay Holstinger


Nosal & Jeter, LLP
By: Peter J. Nosal

Truslow & Truslow, PA
Post Office Box 1466
Columbia, SC 29202-1466

www.truslowlaw.com

Ph:(803) 256-6276

Fax:(803) 256-7659

Stephen Bretzinger
2879 Highway 160 W 4322
Fort Mill, SC
29708

September 18, 2014

File #: 13-003

Inv #: 1841

Attention: Peter Nosal

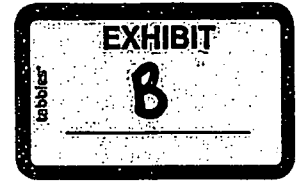
Please remit payment within ten (10) days or contact us
within ten (10) days to arrange a payment plan.

RE: Bretzinger vs. Crestwood Homes et al

DISBURSEMENTS

	Filing Fee	\$400.00
	Photocopies	\$466.80
	Postage	\$184.27
3/26/13	USDC Pacer Copies	\$73.90
	SC Secretary of State	\$3.50
10/25/13	NC Secretary of State Process Fee	\$10.00
11/15/13	Process Service and Skip Trace	\$314.00
12/16/13	Process Service and Skip Trace	\$442.00
12/17/13	Memorandum Binding and Copies	\$21.70
5/27/14	Mileage - travel to/from property - 154.4 miles	\$86.46
8/27/14	Mileage - travel to/from Anderson for Mediation - 232 miles	\$129.92
	Total	\$2,132.55
	Total Fee & Disbursements	\$2,132.55
	<u>Balance Now Due</u>	<u>\$2,132.55</u>

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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsey Holsinger,	)	Civil Action No. 0:13-cv-02771-JMC
	)	
Plaintiffs,	)	
v.	)	
	)	
Crestwood Homes, LLC d/b/a Scenic	)	<u>ORDER AND OPINION</u>
Homes, Paul Meng, James Ray, Reggie	)	
Lee McGaugh, Susan Meng, Mary Beth	)	
McGaugh, and Susan Ray,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Stephen Bretzinger and Lindsey Holsinger (collectively "Plaintiffs") filed this action seeking damages from Defendants Crestwood Homes, LLC d/b/a Scenic Homes, Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray (collectively "Defendants") resulting from their construction and sale to Plaintiffs of an allegedly defective house located at 2055 Covered Bridge Court, York County, South Carolina (the "Property"). (ECF No. 1.) Plaintiffs assert claims under state law against Defendants for breach of contract to construct an improvement to real property, breach of fiduciary duties, breach of the implied covenant of good faith and fair dealing, fraud, breach of contract accompanied by a fraudulent act, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -560 (1985 & Supp. 2011), fraudulent conveyance, unjust enrichment, civil conspiracy, breach of warranty, negligent construction, negligence per se, gross negligence, rescission, to void a contract for unconscionability, aiding and abetting wrongdoing, to pierce the corporate veil, and to collect on a judgment. (*Id.* at 7-22.)

This matter is before the court pursuant to Defendants' Motion to Enforce Settlement Agreement. (ECF No. 55.) Plaintiffs oppose the pending Motion to Enforce Settlement. (ECF

No. 62.) For the reasons set forth below, the court GRANTS Defendants' Motion to Enforce Settlement.

I. RELEVANT BACKGROUND TO PENDING MOTION

The following relevant facts taken from the complaint are assumed to be true only for the purposes of the pending motion. Crestwood Homes, LLC ("Crestwood") is an "association of persons" that includes "Individual Defendants" Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray. (ECF No. 1 at 6 ¶ 44.) This action arises from a course of events that allegedly resulted in Plaintiffs entering into a residential contract with Crestwood on or about June 28, 2008 to purchase the Property. (*Id.* at 3 ¶ 24.) After closing on and receiving title to the Property, Plaintiffs became aware of specified defects in the Property. (*Id.* at 4 ¶¶ 27-28.) Plaintiffs allege that after they provided notice of the defects in the Property to Crestwood, it failed to remedy said defects in the Property thereby resulting in the Property sustaining significant additional damage. (*Id.* at 4 ¶ 29, 5 ¶¶ 31-32.)

On July 29, 2010, Plaintiffs filed a lawsuit against Crestwood in the York County (South Carolina) Court of Common Pleas. (ECF No. 1-2.) Crestwood did not answer or otherwise respond to the lawsuit. After entering default against Crestwood on or about January 18, 2011, the state court entered judgment for Plaintiffs on July 8, 2011 in the amount of \$876,000.00 against Crestwood. (ECF No. 1-4.)

Thereafter, on October 10, 2013, Plaintiffs filed a Complaint in this court alleging the aforementioned causes of action against Defendants. (ECF No. 1.) On November 5, 2013, Crestwood answered the Complaint generally denying its allegations. (ECF No. 9.) On November 18, 2013, Individual Defendants filed Motions to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2). (ECF No. 16.) On September 5, 2014, the court denied

without prejudice Individual Defendants' Motions to Dismiss with leave to re-file after a period of limited jurisdictional discovery. (ECF No. 44.)

On September 26, 2014, the parties allegedly reached an agreement for the complete and final resolution and settlement of this case (the "Settlement Agreement"). (See ECF No. 55-1 at 5 ("They [Plaintiffs] accept and will settle for \$100,000.00" in exchange for a global release).) The Settlement Agreement and essential terms of the same were memorialized using the following language in an e-mail sent by Plaintiffs' counsel of record, Neal Truslow ("Truslow"), to Defendants' counsel on September 29, 2014:

To confirm the status of where we are:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(Id. at 2.) On or about October 7, 2014, Defendants' counsel prepared more formal settlement and release documents and provided the same to Plaintiffs' counsel. (ECF No. 55-2 at 3.) On October 29, 2014, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs "desire[d] to nullify the settlement" and dismiss the case without prejudice. (ECF No. 55-3 at 2.)

On November 5, 2014, Defendants filed the instant Motion to Enforce Settlement. (ECF No. 55.) Plaintiffs filed their Response in Opposition to Defendants' Motion to Enforce Settlement on November 24, 2014. (ECF No. 62.) On December 9, 2014, the court heard argument from the parties on the pending Motion to Enforce Settlement. (ECF No. 71.)

II. LEGAL STANDARD AND ANALYSIS

A. Standard for Enforcing Settlement

“Settlement agreements are matters of contract law, and contract law principles apply.” Patel v. Barot, 15 F. Supp. 3d 648, 653 (E.D. Va. 2014). “Because exercise of the authority to enforce settlement agreements depends on the parties’ agreement to a complete settlement, the court cannot enforce a settlement until it concludes that a complete agreement has been reached and determines the terms and conditions of that agreement.” Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002) (citing Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Therefore, “to exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions.” Id. at 540–41 (citing Moore v. Beaufort Cnty., 936 F.2d 159, 162 (4th Cir. 1991); Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Accordingly, “if an agreement for complete settlement of the underlying litigation, or part of it, has been reached and its terms and conditions can be determined, the court may enforce the agreement summarily as long as the excuse for nonperformance of the agreement is ‘comparatively insubstantial.’” Id. at 540 (quoting Millner v. Norfolk & W. Ry. Co., 643 F.2d 1005, 1009 (4th Cir. 1981)). However, “[i]f there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreement’s terms, the district court may not enforce a settlement agreement summarily,” and it must instead conduct a hearing in order to resolve that dispute and make factual findings. Id. at 541 (citations omitted).

B. The Parties’ Arguments

1. *Defendants*

Defendants move the court to enforce an alleged settlement with Plaintiffs containing the

following terms and conditions:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(ECF No. 55-1 at 2.) In support of their Motion to Enforce Settlement, Defendants argue that Plaintiffs' counsel "irrefutably confirmed the clear and ambiguous terms of the [S]ettlement [A]greement," and the acts of an attorney are binding on the client. (ECF No. 55 at 1, 3 (citing Sadighi v. Daghighfekr, 66 F. Supp. 2d 752, 761 (D.S.C. 1999) (citation omitted)).) Defendants further argue that "[t]he writings between counsel of record in this case unequivocally demonstrate that: (1) the parties reached a complete agreement; and (2) the writings set forth the essential terms and conditions of the Settlement Agreement." (ECF No. 55 at 3.) As a result, "Plaintiffs are bound by the actions of their attorneys" and the "Settlement Agreement is binding and enforceable upon the Plaintiffs." (*Id.* at 3–4.) Based on the foregoing, Defendants request that the court enforce the Settlement Agreement and dismiss this action. (*Id.* at 4.)

2. *Plaintiffs*

Plaintiffs oppose the Motion to Enforce Settlement asserting that it should be denied because the emails attached to Defendants' motion only "demonstrate that there was no commitment [to a settlement] and that critical terms were to be negotiated prior to any commitment." (ECF No. 62 at 1.) Plaintiffs next assert that their counsel "did not have authority to bind either of the Plaintiffs to a settlement agreement" or "forfeit an outstanding State Court judgment against the Defendants." (*Id.* at 7.) Finally, Plaintiffs assert that Defendants' evidence

does not support a finding that Plaintiffs displayed the intent “to be bound to any purported settlement.” (*Id.* at 8.) As a result, Plaintiffs beseech the court to deny Defendants’ Motion to Enforce Settlement. (*Id.*)

C. The Court’s Review

Upon consideration of the parties’ arguments, the court finds that the terms of the parties’ alleged settlement are clearly set forth in the parties’ exhibits¹ and, therefore, the court should enforce the settlement unless it determines that the parties failed to reach a complete agreement. As to this issue, Plaintiffs argue that their counsel did not have either actual authority or apparent authority to settle the matter. (ECF No. 62 at 7.) As support for their argument, Plaintiffs submitted affidavits, which specifically stated that their attorneys were not authorized to settle the case (ECF Nos. 62-4 & 62-5), and cited to Rule 43(k), SCRCP, which rule provides that “[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.”

In assessing the merits of Plaintiffs’ argument, the court observes that an attorney’s “authority to negotiate” on behalf of his client “is far different from the authority to agree to a specific settlement.” Auvil v. Grafton Homes, Inc., 92 F.3d 226, 231 (4th Cir. 1996). “It is generally accepted that when a client retains an attorney to represent him in litigation, absent an express agreement to the contrary, the attorney has implied authority to conduct the litigation and to negotiate its resolution.” *Id.* at 229–230. Moreover, under South Carolina law, absent fraud or mistake, counsel of record has the authority to settle litigation on behalf of their client.

¹ Defendants will pay \$100,000.00 to Plaintiffs in exchange for a full release of all claims. (ECF No. 55-1 at 2.)

Arnold v. Yarborough, 316 S.E.2d 416, 417 (S.C. Ct. App. 1984) (“Acts of an attorney are directly attributable to and binding upon the client.”) (Citation omitted); see also Poore v. Poore, 89 S.E. 569, 571 (S.C. 1916) (“It will never do, in the absence of fraud, to allow the undoubted attorneys of record for a party to a suit to enter into a solemn agreement to settle and adjust the issues and subject-matter of a suit and then later, if it is done, because for any reason the party is dissatisfied, to allow him to repudiate this agreement and employ different counsel to upset and set aside what his first counsel has done.”).

Upon review, the court finds that Truslow, Plaintiffs’ attorney of record, bound Plaintiffs when he stated his acknowledgement to the agreed upon terms of the settlement.² (See ECF No. 55-1 at 2 (“To confirm the status of where we are: Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case I’ll be sure to consent [to a stipulation of dismissal] once we’ve got funds and you’ve got a signed release.”).) Under South Carolina law, Truslow’s actions bind Plaintiffs since there has not been a showing of fraud. Arnold, 316 S.E. 2d at 417 (“Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud.”) (Citation omitted). In this regard, neither Plaintiffs’ affidavits nor Rule 43(k), SCRCF, require the court to find otherwise. See, e.g., Surety Ins. Co. of Cal. v. Williams, 729 F.2d 581, 583 (8th Cir. 1984) (“We think that in meeting that burden the Williamses may not rely on their conclusory affidavit,

² There were communications relevant to the settlement made by an attorney, Peter Nosal, who was not counsel of record for Plaintiffs in this matter. (See, e.g., ECF No. 55-1 at 4 (“I understand your concerns. I have explained to them that the settlement will be contingent of a full release of any and all claims against all defendants. Pete.”) & 5 (“They accept and will settle for \$100,000.00. They have some concerns about the language in the release, but I am confident we can work that out. Pete.”).) The court does not rely on Nosal’s communications to establish Plaintiffs’ agreement to settle the matter. See, e.g., Androlonis v. United States, No. 79-CV-847, 1995 WL 46331, at 2 (N.D.N.Y. Jan. 25, 1995) (“First, the court holds that no binding settlement agreement existed. Attorney Buskus was not the attorney of record in the district court, and counsel for the United States should have realized that agreement of the counsel of record was required before a settlement became binding.”).

but must establish through competent evidence that their attorney lacked actual, implied, or apparent authority to stipulate to an entry of judgment.”); Nationwide Mut. Ins. Co. v. Ruff, C/A No. 0:11-1011-CMC, 2011 WL 2491345, at *3 (D.S.C. June 22, 2011) (“[T]he South Carolina Rules of Civil Procedure govern actions brought in South Carolina courts, not federal courts, ...”); United States v. Hemmons, 774 F. Supp. 346, 350 (E.D. Pa. 1991) (“State rules of civil procedure do not apply in a federal court.”) (citing, e.g., U.S. Const. art. IV). Accordingly, the court concludes that the parties did reach a complete agreement to settle this matter, and the terms of that agreement are clearly discernible from the record.

III. CONCLUSION

For the reasons set forth above, the court hereby **GRANTS** Defendants’ Motion to Enforce Settlement Agreement. (ECF No. 55.) The court further **ORDERS** the parties to fulfill their obligations under the Settlement Agreement within 30 days of the date of entry of this Order. This action is hereby **DISMISSED**.

IT IS SO ORDERED.



United States District Judge

May 7, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-03728

Neal Truslow,)
Plaintiff,)

**AFFIDAVIT OF
MARA BALLARD**

vs.)

Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)

Defendant.

Personally appeared before me, Mara Ballard, being duly sworn, deposes and says:

1. I am over the age of eighteen (18) years and am competent to state the matters set forth herein. I have personal knowledge of the matters stated, except as to those matters stated upon information and belief, and as to those, I have a good faith basis for believing them to be true.
2. I am an employee of the law firm Ballard & Watson, who represent the Plaintiff Truslow in the above-captioned action.
3. Upon information and belief, the Defendants Bretzinger and Holsinger live at 7686 Corkwood Ave., Boynton Beach, Florida. That address is located in the county of Palm Beach.
4. On June 30, 2016, I forwarded two copies of the filed Summons and Complaint in this action to the Palm Beach County Sheriff's Department, together with the appropriate fee, for personal service upon Defendants Bretzinger and Holsinger.



5. On or about August 5, 2016, the Palm Beach County Sheriff's Department returned copies of the Summons and Complaint with their completed form, captioned as "Palm Beach County Sheriff's Office Original Return." Exhibit A. That form provides details regarding the eight (8) attempts made at personal service by the sheriff's department. There was a form for both Defendant Bretzinger and Defendant Holsinger.
6. The enclosed forms contain information from Officer O'Rourke,¹ the signatory on the form, wherein he notes witnessed activity that suggests Defendants may be avoiding service of process.
7. Relying upon information from Officer O'Rourke that Defendant Holsinger had picked up a UPS package, I prepared two UPS Overnight delivery packages, each containing a cover letter and a copy of the filed Summons and Complaint. I purchased a restriction on the delivery to require adult signature upon delivery. The tracking numbers for these packages were 1ZF6997AA492807820 (Holsinger) and 1ZF6697AA490539212 (Bretzinger).
8. I placed the UPS packages in the UPS drop box located at the Bank of America Building (440 Knox Abbott Dr. Cayce, SC) on the evening of August 17, 2016, prior to the last published pick up time for that location.
9. Attached as Exhibit B are the UPS tracking information sheets for both packages. As noted, four attempts were made to deliver the overnight packages, without success.

¹ Dennis O'Rourke, Badge Number 7505.



The packages were returned to me by UPS on August 29, 2016, and I received them on August 31, 2016.

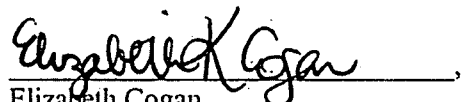
10. I have located a newspaper in Palm Beach County, the SunSentinel, which would be suitable for service and be most likely to give notice to the Defendants to be served.

Further affiant sayeth not.


Mara T. Ballard, CFE, CMA

September 8, 2016

SWORN to and Subscribed before me,
This 8th day of September, 2016


Elizabeth Cogan
Notary Public for South Carolina.
My Commission expires: 11/01/2023.

PALM BEACH COUNTY SHERIFF'S OFFICE ORIGINAL RETURN



Court: COMMON PLEAS
Case No.: 2016CP4003728
County: RICHLAND

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LINDSEY HOLSINGER

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WEST COLUMBIA, SC 29171

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SUMMONS & COPY & COPY
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STEPHEN BRETZINGER, LINDSEY
HOLSINGER, ETC.

Received this Writ on July 18, 2016 at 10:21 AM and was unexecuted on August 5, 2016, in Palm Beach County, Florida, a true copy of this Writ, endorsed thereon by me, Dennis O'Rourke.

Attempts:

7/20/2016 @ 7:23 AM
7/21/2016 @ 8:07 AM
7/25/2016 @ 9:15 AM
7/27/2016 @ 8:31 AM
7/30/2016 @ 9:25 AM
8/4/2016 @ 5:36 PM
8/5/2016 @ 7:01 AM

Notes:

8/5/2016 @ 10:06 AM
7/21 attempt I observed a vehicle in the driveway, FL 475-HLY, with no driver information. 7/25 attempt I observed a UPS package at the door addressed to Ms. Holsinger. 7/27 attempt package retrieved. Maybe avoiding service.

By: 
Dennis O'Rourke 7505

PALM BEACH COUNTY SHERIFF'S OFFICE ORIGINAL RETURN

Court: COMMON PLEAS
Case No.: 2016CP4003728
County: RICHLAND

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STEPHEN BRETZINGER

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HARVEY M. WATSON, III, ESQ.
P.O. BOX 6338
WEST COLUMBIA, SC 29171

SUMMONS & COPY & COPY
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NEAL TRUSLOW

STEPHEN BRETZINGER, LINDSEY
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By: 
Dennis O'Rourke 7505



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Tracking Detail

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Email

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1ZF6697AA490539212

Updated: 08/31/2016 10:59 A.M. Eastern Time

Alternate Tracking Number : 1ZF6697AA790539216

Returned

Returning to Sender

Scheduled Delivery:

Scheduled delivery information is not available at this time. Please check back later.

[Notify me with Updates »](#)
[Change Delivery »](#)
Last Location:

Riviera Beach, FL, United States, Monday, 08/29/2016

Special Instructions:**Adult Signature Required**

What time will your package
be delivered to your home?

Get FREE estimated

Delivery Windows on most
UPS packages.

Continue
[I am already a UPS My Choice® Member](#)

Need more
information?

[Get Help](#)
Shipping Information

To:
WEST COLUMBIA, SC, US

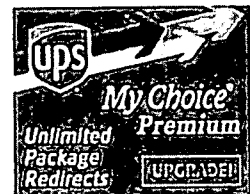
Service

**UPS Next Day
Air Saver®**

Shipment Progress

Pages 1 to 3

Location	Date	Local Time	Activity
Riviera Beach, FL, United States	08/29/2016	10:07 A.M.	The receiver was not available at the time of the final delivery attempt. / The package will be returned to the sender. Alternate Tracking Number 1ZF6697AA790539216
Riviera Beach, FL, United States	08/22/2016	7:09 P.M.	The receiver was not available at the time of the final delivery attempt. / We've contacted the receiver to request additional information.
	08/22/2016	11:46 A.M.	The receiver was not available at the time of the final delivery attempt.
Riviera Beach, FL, United States	08/19/2016	12:25 P.M.	The receiver was not available at the time of the second delivery attempt. A final attempt will be made.
	08/19/2016	1:33 A.M.	Out For Delivery
Riviera Beach, FL, United States	08/18/2016	1:06 P.M.	The receiver was not available at the time of the first delivery attempt. A second attempt will be made.
	08/18/2016	7:51 A.M.	Out For Delivery
	08/18/2016	7:16 A.M.	Arrival Scan
West Palm Beach, FL, United States	08/18/2016	6:50 A.M.	Departure Scan
	08/18/2016	6:16 A.M.	Arrival Scan
Louisville, KY, United States	08/18/2016	4:13 A.M.	Departure Scan
Louisville, KY, United States	08/17/2016	11:12 P.M.	Arrival Scan



8/31/2016

UPS: Tracking Information

West Columbia, SC, United States	08/17/2016 10:09 P.M.	Departure Scan
	08/17/2016 9:05 P.M.	Origin Scan
	08/17/2016 5:55 P.M.	Pickup Scan
United States	08/17/2016 5:06 P.M.	Order Processed: Ready for UPS

Additional Information

Shipment Category: Package
Shipped/Billed On: 08/17/2016
Weight: 1.50 lbs

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Mara Ballard

From: UPS Quantum View <pkginfo@ups.com>
Sent: August 22, 2016 7:22 PM
To: Mara Ballard
Subject: UPS Exception Notification, Tracking Number 1ZF6697AA490539212



The status of your package has changed.

Exception Reason: The receiver was not available at the time of the final delivery attempt.



At the request of DESA BALLARD, PA, this notice alerts you that the status of the shipment listed below has changed.

Signature Required: Adult must be at least 21 years of age

Shipment Detail

Tracking Number:	<u>1ZF6697AA490539212</u>
Ship To:	Stephen Bretzinger 7686 Corkwood Ave BOYNTON BEACH, FL 334377560 US
UPS Service:	UPS NEXT DAY AIR SAVER
Package Weight:	1.5 LBS
Reference Number 1:	151031-002



United States

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Tracking Number

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Tracking Detail

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1ZF6697AA492807820

Updated: 08/31/2016 10:56 A.M. Eastern Time

Alternate Tracking Number : 1ZF6697AA792807824

Returned

Returning to Sender

Scheduled Delivery:

Scheduled delivery information is not available at this time. Please check back later.

[Notify me with Updates »](#)[Change Delivery »](#)**Last Location:**

Riviera Beach, FL, United States, Monday, 08/29/2016

Special Instructions:**Adult Signature Required**

What time will your package
be delivered to your home?

Get FREE estimated

Delivery Windows on most
UPS packages.

[I am already a UPS My Choice[®] Member](#)**Continue**

Need more
information?

[Get Help](#)**Shipping Information**

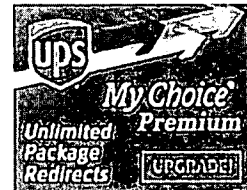
To:
WEST COLUMBIA, SC, US

Service

**UPS Next Day
Air Saver[®]**

Shipment Progress[Details](#)

Location	Date	Local Time	Activity
Riviera Beach, FL, United States	08/29/2016	10:06 A.M.	The receiver was not available at the time of the final delivery attempt. / The package will be returned to the sender. Alternate Tracking Number 1ZF6697AA792807824
Riviera Beach, FL, United States	08/22/2016	7:09 P.M.	The receiver was not available at the time of the final delivery attempt. / We've contacted the receiver to request additional information.
	08/22/2016	11:46 A.M.	The receiver was not available at the time of the final delivery attempt.
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	08/19/2016	1:33 A.M.	Out For Delivery
Riviera Beach, FL, United States	08/18/2016	1:06 P.M.	The receiver was not available at the time of the first delivery attempt. A second attempt will be made.
	08/18/2016	7:29 A.M.	Out For Delivery
	08/18/2016	7:16 A.M.	Arrival Scan
West Palm Beach, FL, United States	08/18/2016	6:50 A.M.	Departure Scan
	08/18/2016	6:16 A.M.	Arrival Scan
Louisville, KY, United States	08/18/2016	4:13 A.M.	Departure Scan
Louisville, KY, United States	08/17/2016	11:12 P.M.	Arrival Scan



8/31/2016

UPS: Tracking Information

West Columbia, SC, United States	08/17/2016 10:09 P.M.	Departure Scan
	08/17/2016 8:59 P.M.	Origin Scan
	08/17/2016 5:55 P.M.	Pickup Scan
United States	08/17/2016 5:09 P.M.	Order Processed: Ready for UPS

Additional Information

Shipment Category:	Package
Shipped/Billed On:	08/17/2016
Weight:	1.50 lbs

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Mara Ballard

From: UPS Quantum View <pkginfo@ups.com>
Sent: August 22, 2016 7:22 PM
To: Mara Ballard
Subject: UPS Exception Notification, Tracking Number 1ZF6697AA492807820



The status of your package has changed.

Exception Reason: The receiver was not available at the time of the final delivery attempt.



At the request of DESA BALLARD PA, this notice alerts you that the status of the shipment listed below has changed.

Signature Required: Adult must be at least 21 years of age

Shipment Detail

Tracking Number:	<u>1ZF6697AA492807820</u>
Ship To:	Lindsey Holsinger 7686 Corkwood Ave BOYNTON BEACH, FL 334377560 US
UPS Service:	UPS NEXT DAY AIR SAVER
Package Weight:	1.5 LBS
Reference Number 1:	151031-002

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
Neal Truslow.)
)
Plaintiff,)
)
vs.)
)
Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)
)
Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-03728

CERTIFICATE
SERVICE

RICHLAND COUNTY
FILED
2016 SEP 12 PM 1:12
JEANETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned certifies that she, on September 8, 2016 caused to be served a copy of the
**Motion for Service by Publication, Affidavit of Mara Ballard and proposed Order for
Service by Publication** by depositing all in the United States Mail, with sufficient first class
postage affixed, addressed as follows:

Peter D. Protopapas, Esquire
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia SC 29201

Lindsey Holsinger
7686 Corkwood Avenue
Boynton Beach, FL 33437

Stephen Bretzinger
7686 Corkwood Avenue
Boynton Beach, FL 33437


Mara T. Ballard, CRE, CMA

September 8, 2016

Affidavit of Mara Ballard filed on September 12, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-03728

Neal Truslow,)
Plaintiff,)

**AFFIDAVIT OF
MARA BALLARD**

vs.)

Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)

Defendant.

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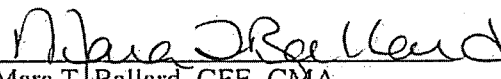
¹ Dennis O'Rourke, Badge Number 7505.

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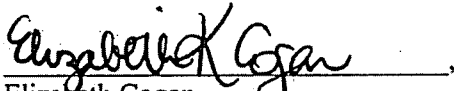
10. I have located a newspaper in Palm Beach County, the SunSentinel, which would be suitable for service and be most likely to give notice to the Defendants to be served.

Further affiant sayeth not.


Mara T. Ballard, CFE, CMA

September 8, 2016

SWORN to and Subscribed before me,
This 8th day of September, 2016


Elizabeth Cogan
Notary Public for South Carolina.
My Commission expires: 11/01/2023.



PALM BEACH COUNTY SHERIFF'S OFFICE ORIGINAL RETURN



Court: COMMON PLEAS
Case No.: 2016CP4003728
County: RICHLAND

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LINDSEY HOLSINGER

7686 CORKWOOD AVENUE
BOYNTON BEACH, FL 33437

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HARVEY M. WATSON, III, ESQ.
P.O. BOX 6338
WEST COLUMBIA, SC 29171

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OF COMPLAINT

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NEAL TRUSLOW

STEPHEN BRETZINGER, LINDSEY
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Notes:

8/5/2016 @ 10:06 AM
7/21 attempt I observed a vehicle in the driveway, FL 475-HLY, with no driver information. 7/25 attempt I observed a UPS package at the door addressed to Ms. Holsinger. 7/27 attempt package retrieved. Maybe avoiding service.

By: 
Dennis O'Rourke 7505

PALM BEACH COUNTY SHERIFF'S OFFICE ORIGINAL RETURN

Court: COMMON PLEAS
Case No.: 2016CP4003728
County: RICHLAND

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STEPHEN BRETZINGER

7686 CORKWOOD AVENUE
BOYNTON BEACH, FL 33437

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HARVEY M. WATSON, III, ESQ.
P.O. BOX 6338
WEST COLUMBIA, SC 29171

SUMMONS & COPY & COPY
OF COMPLAINT

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NEAL TRUSLOW

STEPHEN BRETZINGER, LINDSEY
HOLSINGER, ETC.

Received this Writ on July 18, 2016 at 10:21 AM and was unexecuted on August 5, 2016, in Palm Beach County, Florida, a true copy of this Writ, endorsed thereon by me, Dennis O'Rourke.

Attempts:

7/20/2016 @ 7:23 AM
7/21/2016 @ 8:07 AM
7/25/2016 @ 9:15 AM
7/27/2016 @ 8:31 AM
7/30/2016 @ 9:25 AM
8/4/2016 @ 5:36 PM
8/5/2016 @ 7:01 AM

Notes:

8/5/2016 @ 10:06 AM
7/21 attempt I observed a vehicle in the driveway, FL 475-HLY, with no driver information. 7/25 attempt I observed a UPS package at the door addressed to Ms. Holsinger. 7/27 attempt package retrieved. Maybe avoiding service.

By: 
Dennis O'Rourke 7505



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Tracking Number

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Tracking Detail

File

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ATAA

1ZF6697AA490539212

Updated: 08/31/2016 10:59 A.M. Eastern Time

Alternate Tracking Number : 1ZF6697AA790539216

Returned

Returning to Sender

Scheduled Delivery:

Scheduled delivery information is not available at this time. Please check back later.

[Notify me with Updates »](#)
Last Location:

Riviera Beach, FL, United States, Monday, 08/29/2016

[Change Delivery »](#)
Special Instructions:**Adult Signature Required**

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be delivered to your home?

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UPS packages.

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Shipping Information

To:
WEST COLUMBIA, SC, US

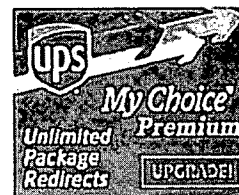
Service

**UPS Next Day
Air Saver[®]**

Shipment Progress

Print & Save

Location	Date	Local Time	Activity
Riviera Beach, FL, United States	08/29/2016	10:07 A.M.	The receiver was not available at the time of the final delivery attempt. / The package will be returned to the sender. Alternate Tracking Number 1ZF6697AA790539216
Riviera Beach, FL, United States	08/22/2016	7:09 P.M.	The receiver was not available at the time of the final delivery attempt. / We've contacted the receiver to request additional information.
	08/22/2016	11:46 A.M.	The receiver was not available at the time of the final delivery attempt.
Riviera Beach, FL, United States	08/19/2016	12:25 P.M.	The receiver was not available at the time of the second delivery attempt. A final attempt will be made.
	08/19/2016	1:33 A.M.	Out For Delivery
Riviera Beach, FL, United States	08/18/2016	1:06 P.M.	The receiver was not available at the time of the first delivery attempt. A second attempt will be made.
	08/18/2016	7:51 A.M.	Out For Delivery
	08/18/2016	7:16 A.M.	Arrival Scan
West Palm Beach, FL, United States	08/18/2016	6:50 A.M.	Departure Scan
	08/18/2016	6:16 A.M.	Arrival Scan
Louisville, KY, United States	08/18/2016	4:13 A.M.	Departure Scan
Louisville, KY, United States	08/17/2016	11:12 P.M.	Arrival Scan



8/31/2016

UPS: Tracking Information

West Columbia, SC, United States	08/17/2016 10:09 P.M.	Departure Scan
	08/17/2016 9:05 P.M.	Origin Scan
	08/17/2016 5:55 P.M.	Pickup Scan
United States	08/17/2016 5:06 P.M.	Order Processed: Ready for UPS

Additional Information

Shipment Category:	Package
Shipped/Billed On:	08/17/2016
Weight:	1.50 lbs

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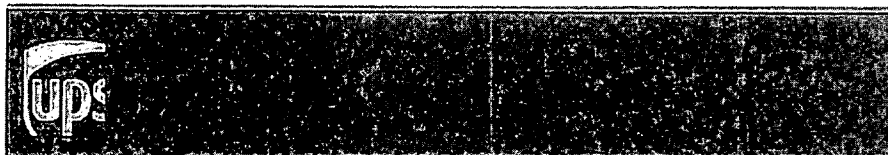
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Mara Ballard

From: UPS Quantum View <pkginfo@ups.com>
Sent: August 22, 2016 7:22 PM
To: Mara Ballard
Subject: UPS Exception Notification, Tracking Number 1ZF6697AA490539212



The status of your package has changed.

Exception Reason: The receiver was not available at the time of the final delivery attempt.



At the request of DESA BALLARD PA, this notice alerts you that the status of the shipment listed below has changed.

Signature Required: Adult must be at least 21 years of age

Shipment Detail

Tracking Number:	<u>1ZF6697AA490539212</u>
Ship To:	Stephen Bretzinger 7686 Corkwood Ave BOYNTON BEACH, FL 334377560 US
UPS Service:	UPS NEXT DAY AIR SAVER
Package Weight:	1.5 LBS
Reference Number 1:	151031-002



United States

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Tracking Number

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Tracking Detail

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1ZF6697AA492807820

Updated: 08/31/2016 10:56 A.M. Eastern Time

 Alternate Tracking Number : [1ZF6697AA792807824](#)

Returned

Returning to Sender

Scheduled Delivery:

Scheduled delivery information is not available at this time. Please check back later.

Last Location:

Riviera Beach, FL, United States, Monday, 08/29/2016

Special Instructions:
Adult Signature Required

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be delivered to your home?

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UPS packages.

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To:
WEST COLUMBIA, SC, US

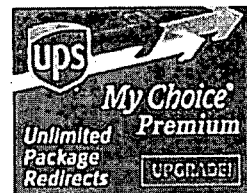
Service

**UPS Next Day
Air Saver®**

Shipment Progress

View a Map

Location	Date	Local Time	Activity
Riviera Beach, FL, United States	08/29/2016	10:06 A.M.	The receiver was not available at the time of the final delivery attempt. / The package will be returned to the sender. Alternate Tracking Number 1ZF6697AA792807824
Riviera Beach, FL, United States	08/22/2016	7:09 P.M.	The receiver was not available at the time of the final delivery attempt. / We've contacted the receiver to request additional information.
	08/22/2016	11:46 A.M.	The receiver was not available at the time of the final delivery attempt.
Riviera Beach, FL, United States	08/19/2016	12:25 P.M.	The receiver was not available at the time of the second delivery attempt. A final attempt will be made.
	08/19/2016	1:33 A.M.	Out For Delivery
Riviera Beach, FL, United States	08/18/2016	1:06 P.M.	The receiver was not available at the time of the first delivery attempt. A second attempt will be made.
	08/18/2016	7:29 A.M.	Out For Delivery
	08/18/2016	7:16 A.M.	Arrival Scan
West Palm Beach, FL, United States	08/18/2016	6:50 A.M.	Departure Scan
	08/18/2016	6:16 A.M.	Arrival Scan
Louisville, KY, United States	08/18/2016	4:13 A.M.	Departure Scan
Louisville, KY, United States	08/17/2016	11:12 P.M.	Arrival Scan



8/31/2016

UPS: Tracking Information

West Columbia, SC, United States	08/17/2016 10:09 P.M.	Departure Scan
	08/17/2016 8:59 P.M.	Origin Scan
	08/17/2016 5:55 P.M.	Pickup Scan
United States	08/17/2016 5:09 P.M.	Order Processed: Ready for UPS

Additional Information

Shipment Category:	Package
Shipped/Billed On:	08/17/2016
Weight:	1.50 lbs

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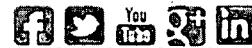
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Mara Ballard

From: UPS Quantum View <pkginfo@ups.com>
Sent: August 22, 2016 7:22 PM
To: Mara Ballard
Subject: UPS Exception Notification, Tracking Number 1ZF6697AA492807820



The status of your package has changed.

Exception Reason:

The receiver was not available at the time of the final delivery attempt.



[Change Delivery](#)

[Manage Settings](#)

[View Delivery Planner](#)

At the request of DESA BALLARD PA, this notice alerts you that the status of the shipment listed below has changed.

Signature Required:

Adult must be at least 21 years of age

Shipment Detail

Tracking Number:	<u>1ZF6697AA492807820</u>
Ship To:	Lindsey Holsinger 7686 Corkwood Ave BOYNTON BEACH, FL 334377560 US
UPS Service:	UPS NEXT DAY AIR SAVER
Package Weight:	1.5 LBS
Reference Number 1:	151031-002

Affidavit of Publication filed on October 14, 2016

SUN-SENTINEL
Published Daily
Fort Lauderdale, Broward County, Florida
Boca Raton, Palm Beach County, Florida
Miami, Miami-Dade County, Florida

STATE OF FLORIDA

COUNTY OF: BROWARD/PALM BEACH/MIAMI-DADE

Before the undersigned authority personally appeared
MARK KUZNITZ, who on oath says that he or she is a duly authorized representative of the SUN-
SENTINEL, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County,
Florida; that the attached copy of advertisement, being a Legal Notice in:

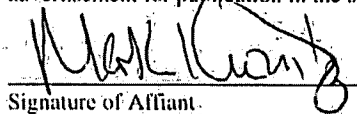
The matter of 11710-Notice of Administration

Ballard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171

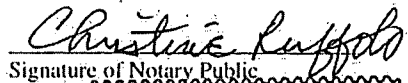
Was published in said newspaper in the issues of: Sep 22, 2016; Sep 29, 2016; Oct 06, 2016;

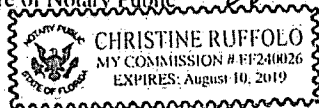
4471901

Affiant further says that the said SUN-SENTINEL is a newspaper published in said
BROWARD/PALM BEACH/MIAMI-DADE County, Florida, and that the said newspaper has
heretofore been continuously published in said BROWARD/PALM BEACH/MIAMI-DADE County,
Florida, each day and has been entered as second class matter at the post office in BROWARD
County, Florida, for a period of one year next preceding the first publication of the attached copy of
advertisement; and affiant further says that he or she has neither paid nor promised, any person, firm
or corporation, any discount, rebate, commission or refund, for the purpose of securing this
advertisement for publication in the said newspaper.


Signature of Affiant

Sworn to and subscribed before me this: October 06, 2016.


Signature of Notary Public



Name of Notary, Typed, Printed, or Stamped
Personally Known (X) or Produced Identification ()

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Affiant of Publication
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

Date: 10-12-16 Signed: Mara Ballard

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-40-03728
SUMMONS
(BREACH OF CONTRACT CLAIM - NO
JURY TRIAL REQUESTED)

Neal Truslow,
Plaintiff,
v.
Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopoulos, LLC,
Defendants.

TO: THE ABOVE-NAMED DEFENDANTS

YOU MAY PLEASE TAKE NOTICE that you
are hereby summoned and required to
answer the Complaint in this action; said
Complaint being filed with the Clerk of
Court in Richland County on June 16,
2016, and herewith served upon you, and
you are to serve a copy of your Answer
on the attorney for the Plaintiff listed
below at his office at P. O. Box 6338,
West Columbia, SC, 29171, within thirty
(30) days after service hereof, excluding
the date of such service. IF YOU FAIL TO
ANSWER THE COMPLAINT WITHIN THE
TIME AFORESAID, PLAINTIFF WILL APPLY
TO THE COURT FOR A JUDGMENT BY
DEFAULT FOR THE RELIEF DEMANDED IN
THE COMPLAINT AND ANY OTHER RELIEF
DEEMED APPROPRIATE.

BALLARD & WATSON
By: Harvey M. Watson III
Attorney at Law
P. O. Box 6338
West Columbia, SC, 29171

Dated: 09/20/2016
09/26/2016 10/03/2016 10/10/2016

Motion for Default Judgment filed on November 14, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-03728

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Harvey M. Watson III, Bar No. 74053

Address:

Post Office Box 6338, West Columbia, SC
29171

Phone: 803.796.9299 Fax 803.796.1066

E-mail: harvey@desaballard.com Other:
service@desaballard.com

Defendant's Attorney:

Peter Protopapas, Bar No. 68304

Address:

Post Office Box 5640, Columbia, SC 29250

Phone: 803.978.6111 Fax

E-mail: pdp@rplegalgroup.com Other:

Stephen Bretzinger and Lindsey Holsinger *Pro Se*
7686 Corkwood Avenue
Boynton Beach, FL 33437

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

November 14, 2016

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$ 25.00

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____	

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03728

Neal Truslow)

Plaintiff)

vs.)

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC)

Defendants)

**MOTION FOR DEFAULT JUDGMENT
AGAINST DEFENDANTS BRETZINGER
AND HOLSINGER**

RICHLAND COUNTY
FILED
2016 NOV 14 PM 2:21
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

For the Plaintiff's Motion for Default Judgment, the undersigned certifies that this

Motion for Default Judgment, pursuant to Rule 55 of the SC Rules of Civil Procedure against

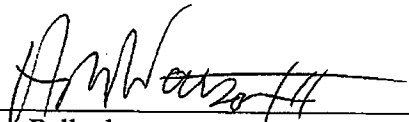
Stephen Bretzinger and Lindsey Holsinger is based upon a complaint alleging a cause of action
which seeks an award of judgment for liquidated damages as set forth in the Complaint.

Plaintiff's counsel further certifies that the following documents have been filed with the
Clerk of Court in support of the foregoing to wit:

1. Summons and Complaint;
2. Proper proof of legal service upon the defendant;
3. Proper documentation supporting liquidated demand in the amount of Thirty Five
Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55) as set forth in the
Complaint as provided by statute;

Wherefore, having fully set forth the grounds for relief requested herein, and incorporating the Affidavit of Default (with attachments), Affidavit of Service via Publication and Summons and Complaint in this action, Plaintiff moves for an order:

- A. Entering judgment by default against the defendants Bretzinger and Holsinger in the amount of Thirty Five Thousand One Hundred Thirty two and 55/100 dollars (\$35,132.55);
- B. Authorizing defendant Rikard and Protopapas LLC to release the sum of Thirty Five Thousand One Hundred Thirty two and 55/100 dollars (\$35,132.55) to the Plaintiff and/or his representative named herein.
- C. For such other and further relief as the court deems just and proper.


Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

November 14, 2016

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Order for Judgment on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

Date: 11.14.16 Signed: Mara Ballard

Affidavit of Default filed on November 14, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03728

Neal Truslow)

Plaintiff)

vs.)

Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)

Defendants)

AFFIDAVIT OF DEFAULT

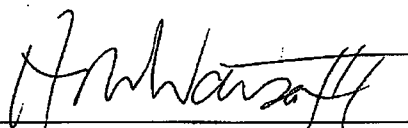
RICHLAND COUNTY
FILED
2016 NOV 14 PM 2:21
JEANNETTE M. MCBRIDE
C.C.P. & G.S.

PERSONALLY appeared before me Harvey M. Watson III who, being duly sworn, states that

1. I am over the age of eighteen years and am competent to set forth the matters herein. I have personal knowledge of the matters stated, except as to those matters stated on information and belief and as to those, I have a good faith belief that they are true.
2. I am the Attorney for the Plaintiff in this matter.
3. Defendants were served with the Summons and Complaint pursuant to the Order for Service by Publication dated September 12, 2016 in this matter, a cop of which is attached hereto and incorporated herein by reference as Exhibit A.
4. Service of the Summons and Complaint upon both defendants was accomplished by publication as evidenced in the Affidavit of Publication filed with this Court, a cop of which is attached hereto and incorporated herein by reference as Exhibit B.
5. More than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the date of service, upon the Defendants Stephen Bretzinger and Lindsey Holsinger, and that no Answer, Demurrer or Notice of Appearance has been served upon counsel for plaintiff as required by the Summons in this action. On information and belief,

Defendants are not members of the military service; and the Defendants are in default.

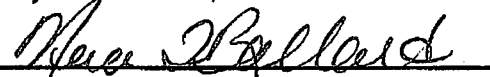
6. The sum due to Plaintiff is a liquidated amount as set forth Paragraph 17 of the Complaint, in the amount of \$35,132.55, which full amount is due to Plaintiffs. A copy of the Complaint is attached hereto and incorporated herein by reference as Exhibit C.
7. On information and belief, defendant Rikard & Protopapas, LLC, are holding in trust the funds which are due to Plaintiffs in the amount of \$35,132.55, as set forth in Paragraph 7 of the Answer of Rikard and Protopapas, LLC. A copy of the answer of Rikard & Protopapas LLC is attached hereto and incorporated by reference as Exhibit D.
8. On information and belief, Plaintiff is entitled to an order of judgment against defendants Bretzinger and Holsinger in the amount of \$35,132.55, as well as an order directing defendant Rikard and Protopapas, LLC to release the funds being held to plaintiff.
9. As counsel for Plaintiff, the undersigned submits this Affidavit in support of Plaintiff's Motion for Default Judgement in favor of Plaintiff.



Harvey M. Watson III
BALLARD & WATSON
P.O. Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
harvey@desaballard.com

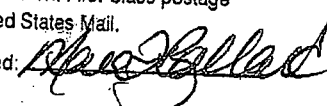
ATTORNEYS FOR PLAINTIFF

Sworn to and Subscribed before me this
14th day of November, 2016


Notary Public of South Carolina
My Commission expires 11.28.2017

2

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Robert G. Gault on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

Date: 11.14.16 Signed: 

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-03728

Neal Truslow

Plaintiff,

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant.

**ORDER
FOR SERVICE
BY PUBLICATION**

RICHLAND COUNTY
FILED
2016 SEP 12 PM 1:12
JEANETTE W. MCBRIDE
C.C.P. & G.S.

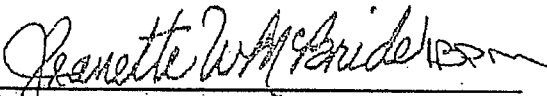
This matter comes before me upon the Motion of the attorney for Plaintiff, Harvey M.

Watson III, for an Order for Service by Publication pursuant to S.C. Code § 15-9-710.

It appears that there is just cause for granting this Motion, therefore,

IT IS HEREBY ORDERED that service upon the Defendants Stephen Bretzinger and Lindsey Holsinger be made by publication in the SunSentinel newspaper located in Palm Beach County, FL, once a week for three weeks.

IT IS SO ORDERED.


Jeanette W. McBride
Clerk of Court

Dated: 9-12-16
Richland County, South Carolina

Order # - 4482956

SUN-SENTINEL
Published Daily
Fort Lauderdale, Broward County, Florida
Boca Raton, Palm Beach County, Florida
Miami, Miami-Dade County, Florida

STATE OF FLORIDA

COUNTY OF: BROWARD/PALM BEACH/MIAMI-DADE

Before the undersigned authority personally appeared

MARK KUZNITZ, who on oath says that he or she is a duly authorized representative of the SUN-SENTINEL, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice in:

The matter of 11710-Notice of Administration

Ballard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171

Was published in said newspaper in the issues of: Sep 22, 2016; Sep 29, 2016; Oct 06, 2016

4471901

Affiant further says that the said SUN-SENTINEL is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida, and that the said newspaper has heretofore been continuously published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida, each day and has been entered as second class matter at the post office in BROWARD County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised, any person, firm or corporation, any discount, rebate, commission or refund, for the purpose of securing this advertisement for publication in the said newspaper.

Signature of Affiant

Sworn to and subscribed before me this: October 06, 2016.

Signature of Notary Public



CHRISTINE RUFFOLO
MY COMMISSION # 111240026
EXPIRES: August 10, 2019

Name of Notary, Typed, Printed, or Stamped

Personally Known (X) or Produced Identification ()

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-40-03726
SUMMONS
(BREACH OF CONTRACT CLAIM - NO
JURY TRIAL REQUESTED)

Heat Treaters

Printed

v.
Stephen Dietzinger,
Lindsay Holsinger, and
Rikard & Photographs, LLC,

Defendants

TO: THE ABOVE-NAMED DEFENDANTS

YOU MAY PLEASE TAKE NOTICE that you are hereby summoned and required to answer the Complaint in this action, said Complaint being filed with the Clerk of Court in Richland County on June 16, 2016 and filed/served upon you, and you are to serve a copy of your Answer on the attorney for the Plaintiff named below at his office at P.O. Box 6338, West Columbia, S.C. 29171, within thirty (30) days after service hereof, excluding the date of such service. IF YOU FAIL TO ANSWER THE COMPLAINT WITHIN THE TIME AFORESAID, PLAINTIFF WILL APPLY TO THE COURT FOR A JUDGMENT BY DEFAULT FOR THE RELIEF DEMANDED IN THE COMPLAINT AND ANY OTHER RELIEF DEEMED APPROPRIATE.

BALLARD & WATSON
By: Harvey M. Watson III
Attorney at Law
P.O. Box 6338
West Columbia, SC 29171

Dated: 09/20/2016

09/26/2016; 10/03/2016; 10/10/2016

I, Mara Ballard, an employee of the Ballard & Watson Attorneys at Law certify that I have this date served a copy of Affidavit of Publication counsel of record and Pro Se parties by depositing a copy properly addressed, with sufficient First Class postage affixed, to each, in the United States Mail.

Date: 10-12-16 signed: Mara Ballard

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow

Plaintiff

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendants

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

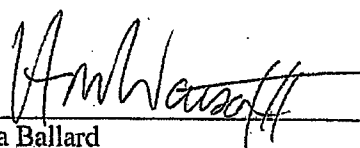
CASE NO.: 2016-CP-40-

SUMMONS

RICHLAND COUNTY
FILED
2016 JUN 16 PM 4:39
ANNETTE M. MCDONNELL
C.C.P. & G.S.

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the plaintiff's counsel at his office at P.O. Box 6338, West Columbia, South Carolina 29171, within thirty (30) days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.


Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

June 16, 2016

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
	)	Case No. 2016-CP-40 -
Neal Truslow	)	
	)	
	)	COMPLAINT
Plaintiff	)	(Non-Jury)
vs.	)	
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	

RICHLAND COUNTY
 FILED
 2016 JUN 16 PM 4:39
 JEANETTE W. HOBBS
 C.C.P. & G.S.

The Plaintiff herein, complaining of the Defendants, would respectfully show unto this Honorable Court the following:

1. Plaintiff Neal Truslow is a citizen and resident of Richland County, South Carolina, and engages in the practice of law throughout the state.
2. Defendant Stephen Bretzinger (hereinafter "Bretzinger") is, upon information and belief, a citizen and resident of the State of Florida.
3. Defendant Lindsey Holsinger (hereinafter "Holsinger") is, upon information and belief, a citizen and resident of the State of Florida.
4. Defendant Rikard & Protopapas, LLC (hereinafter "Protopapas") is, upon information and belief, a domestic limited liability company organized and existing under the laws of the State of South Carolina, and is engaged in the practice of law in the State of South Carolina with a principal place of business located in Richland County, South Carolina. This Court has jurisdiction both over the parties hereto and the subject matter herein and venue is proper in Richland County, South Carolina.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

5. Bretzinger and Holsinger purchased a home from Crestwood Homes, LLC ("Crestwood") in 2008 in York County, South Carolina. They later sued Crestwood

for alleged defects in the purchased home, and in July 2011 obtained a judgment against Crestwood in the amount of \$876,000.

6. Bretzinger and Holsinger later hired the firm of Nosal & Jeter, LLP via written and signed fee agreement (hereinafter "Fee Agreement"), in February 2013 to pursue collection of that amount from Crestwood and related parties. **Exhibit A.** The Fee Agreement was freely and voluntarily entered, is wholly compliant with state law regarding contracts generally, and consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar.
7. As referenced in the Fee Agreement, Plaintiff was associated on the matter and thereafter acted as legal counsel on behalf of Defendants.
8. Following execution of the Fee Agreement, Plaintiff began efforts to collect that sum on behalf of Bretzinger and Holsinger. Those efforts included filing suit in October 2013 in the Federal District Court (Civil Action No. 0:13-cv-02771-JMC).
9. That suit (the "Federal Action") alleged numerous causes of action, including but not limited to: breach of contract, breach of fiduciary duties, negligence, violation of the SC Unfair Trade Practices Act, and to pierce the corporate veil. The defendants in the Federal Action were Crestwood and six individual persons associated with Crestwood.
10. The Federal Action required extensive effort on the part of Plaintiff by way of legal representation and counsel. A motion for summary judgment by the defendants in the Federal Action was defendant and later denied via order dated September 5, 2014.
11. On September 26, 2014, the parties to the Federal Action reached an informal settlement agreement to fully resolve the claims between all parties in exchange for payment from the Federal Action defendants to Bretzinger and Holsinger in the amount¹ of \$100,000.

¹ Settlement offers prior to litigation were for approximately \$1,000. Accordingly, this offer to conclude the Federal Action represented a substantial improvement and significant beneficial result obtained by the efforts of Plaintiff on behalf of Defendants Bretzinger and Holsinger.

12. Defendants Bretzinger and Holsinger later attempted to back out of settlement and reject a more formal settlement agreement that had been prepared to memorialize the informal settlement between the parties to the Federal Action.
13. At that time, Plaintiff sought relief as counsel for Bretzinger and Holsinger in the Federal Action. Defendant Protopapas assumed representation of Bretzinger and Holsinger in November 2014 and remained as counsel through conclusion of the Federal Action.
14. Upon appearance as counsel by Defendant Protopapas, Plaintiff notified Bretzinger, Holsinger, and Protopapas that Plaintiff was asserting a charging lien for attorney's fees and costs against the first \$100,000 of any recovery made by Defendants Bretzinger and Holsinger in connection with the Federal Action, pursuant to the terms of the Fee Agreement.
15. The Federal Action concluded shortly thereafter after a motion to compel settlement filed in November 2014 was ultimately granted by order of the Federal District Court on May 7, 2015. **Exhibit B.**
16. Defendant Protopapas received \$100,000 in payment from the Federal Action defendants on or about June 5, 2015, and subsequently deposited the funds into its firm trust account.
17. Plaintiff contends that he has fully earned, and is immediately owed, an amount of attorney fees equal to 33% of that gross recovery (\$33,000), plus costs incurred in the amount of \$2,132.55, for a total of \$35,132.55 due to him under the terms of the Fee Agreement.
18. Requests to Defendant Protopapas for disbursement in that amount have been denied on the basis of Bretzinger and Holsinger refusing to authorize the release of those funds from trust.
19. Nevertheless, Defendant Protopapas has indicated an amount of funds sufficient to resolve the amounts due as claimed by Plaintiff remains held in its trust account. It remains held in trust pending resolution of competing claims as to entitlement to those

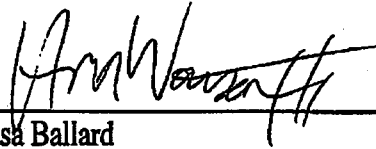
funds, as required by Rule 1.15(e) of the SC Rules of Professional Conduct (Rule 407, SCACR).

20. Nosal & Jeter, LLP has fully and permanently assigned to Plaintiff any and all interest it may have in the funds held by Defendant Protopapas.
21. By their refusal to authorize disbursement of funds held in Defendant Protopapas' trust account to resolve amounts due and owing to Plaintiff, Defendants Bretzinger and Holsinger are in material breach of their obligations under the terms of the Fee Agreement.
22. Plaintiff has suffered damages as a direct and proximate result of that breach. Damages are in the amount of earned fees and costs wrongfully denied to them, plus interest therein, in addition to fees and costs incurred by Plaintiff associated with efforts to secure release of the funds held in trust, including those associated with this legal action.
23. Plaintiff is therefore informed and believe he is entitled to judgment against Defendants Bretzinger and Holsinger in an amount equal to \$35,132.55, plus costs associated with this action.
24. Further, Plaintiff is informed and believes that judgment against Defendants Bretzinger and Holsinger should include a directive to Defendant Protopapas to release an amount equal to \$35,132.55 from funds held on behalf of Defendants Bretzinger and Holsinger in his trust account as necessary and appropriate specific performance under the terms provided by the Fee Agreement that has been breached.

WHEREFORE, Plaintiff prays for an Order of this Court:

- A. For judgment in favor of Plaintiff against Defendants Bretzinger and Holsinger in the amount of
 - (i) \$35,132.55, representing combined attorney fees and reimbursement costs under the terms of the subject Fee Agreement, together with
 - (ii) fees and costs incurred in this action;

- B. Directing that Defendant Rikard and Protopapas disburse the amount of \$35,132.55 plus awarded fees and costs from any funds held in its trust account on behalf of Defendants Bretzinger and Holsinger to resolve amounts owed by Defendants Bretzinger and Holsinger;
- C. Providing for such other and further relief as the Court may deem appropriate.

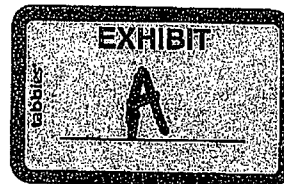


Desa Ballard
Harvey M. Watson III

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West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
harvey@desaballard.com

ATTORNEYS FOR PLAINTIFF

June 16, 2016



PETER J. NOSAL, Esq.
2879 Hwy 160 West # 4322
Fort Mill, SC 29708
Telephone (803) 351-3597
Fax (803) 403-9515
peter@nosaljeterlaw.com
(Licensed in S.C.)

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1235 W. Morehead St.
Charlotte, NC 28208
Telephone (704) 608-3429
Fax (803) 403-9515
thomas@nosaljeterlaw.com
(Licensed in N.C.)

LEGAL SERVICES AGREEMENT

1. IDENTIFICATION OF PARTIES. This agreement is made between Nosal & Jeter, LLP, hereafter referred to as "Law Firm," and Stephen Bretzinger and Lindsay Holsinger hereafter referred to as "Client."

2. LEGAL SERVICES TO BE PROVIDED. The legal services to be provided by Law Firm to Client are limited to the following: Representation of Client to assist in collection of \$876,250.00 Judgment.

3. RESPONSIBILITIES OF ATTORNEY AND CLIENT. Law Firm will perform the legal services called for under this agreement, keep Client informed of progress and developments, and respond promptly to Client's inquiries and communications. Client will be truthful and cooperative with Law Firm; keep Law Firm reasonably informed of developments and of Client's address, telephone numbers and whereabouts; and timely make any payments required by this agreement.

4. LAW FIRM MAY ASSOCIATE OUTSIDE COUNSEL. Client agrees Law Firm may associate with other firms to perform representation for their case. Law Firm will associate Truslow and Truslow, PA to assist ~~with~~ all litigation.

5. ATTORNEY'S FEES. Client will pay Law Firm for attorney's fees for the legal services provided under this agreement at the respective hourly rates. The rates fall within the following ranges:

ATTORNEY RATES – Client has elected to enter into a contingency contract for these services. The attorney's fee will be 33% of any gross amount collected prior to the deduction of costs. No promises or guarantees of any financial recovery have been made regarding this claim. However, even if there is no pecuniary award or settlement, Client agrees to reimburse all agreed upon costs expended in this case. Attorney(s) agree to consult with client prior to agreeing to any abnormal costs. Normal "costs" include court filing fees, medical record charges, shipping charges, and deposition/ discovery charges. In the event that other attorneys participate in this

case, it is agreed that there will be no additional legal fees charged to Client. Any ultimate attorney fee generated will be shared equally amongst attorneys.

6. **COSTS.** Client will pay all "costs" in connection with Law Firm's representation of Client under this agreement. Costs will be advanced by Law Firm and then billed to Client unless the costs can be met out of client deposits that are applicable toward costs. Costs include, but are not limited to, court filing fees, deposition costs, expert fees and expenses, investigation costs, postage, shipping charges, long-distance telephone charges, messenger service fees, photocopying expenses, legal research costs (i.e. Westlaw), and process server fees.

7. **RETAINER.** Client will pay to Law Firm an initial retainer of \$00.00, which will be deposited into Law Firm trust account and is not subject to refund, unless required to be refunded by the Rules of Professional Conduct. Law Firm will bill against this amount at the hourly rates provided for herein. Client authorizes Law Firm to withdraw the principal from the trust account to pay attorney's fees as they are incurred by Client. If, at the termination of services under this agreement, the total amount incurred by Client for attorney's fees is less than the amount of any funds held in trust the difference will be refunded to Client.

Law Firm will notify Client whenever the full amount of any deposit has been applied to attorney's fees incurred by Client. Within 15 days after each notification is mailed, Client will pay to Law Firm an additional deposit in the same amount as the initial one. Client authorizes Law Firm to withdraw the principal from the trust account to pay attorney's fees as they are incurred by Client. Such additional deposits will be fully refundable. If, at the termination of services under this agreement, there have been two or more deposits and the total amount incurred by Client for attorney's fees is less than the total amount of all deposits, the difference will be refunded to Client.

8. **STATEMENTS AND PAYMENTS.** Law Firm will send Client monthly statements indicating attorney's fees and costs incurred and their basis, any amounts applied from deposits, and any current balance owed. If no attorney's fees or costs are incurred for a particular month, or if they are minimal, the statement may be held and combined with that for the following month. Any balance will be paid in full within 30 days after the statement is mailed.

9. **GOVERNING LAW.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of South Carolina. The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

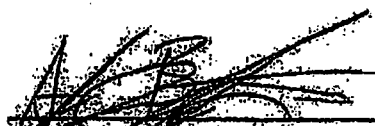
10. **DISPUTE RESOLUTION.** Any dispute, controversy or claim arising out of or in connection with, or relating to, this Agreement or any breach or alleged breach hereof shall, upon the request of any party involved, be submitted to, and settled by, arbitration in the City of Rock Hill, SC.

11. **NON-ASSIGNABLE.** The rights and duties as contained herein shall not be transferable or assignable by the parties.

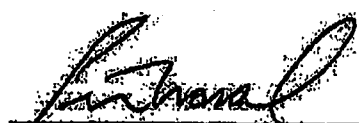
12. **ENTIRE AGREEMENT.** This agreement is the entire agreement among the parties with respect to the subject matter hereof, and no representations or covenants, whether oral or written, have been made regarding the subject matter hereof except as expressly provided herein.

This the 4th day of February, 2013.

The foregoing is agreed to by:


Stephen Bretzinger


Lindsay Holsinger


Nosal & Jeter, LLP
By: Peter J. Nosal

Truslow & Truslow, PA
Post Office Box 1465
Columbia, SC 29202-1465

www.truslowlaw.com

Ph:(803) 256-6276

Fax:(803) 256-7659

Stephen Bretzinger
2879 Highway 160 W 4322
Fort Mill, SC
29708

September 18, 2014

File #: 13-003

Inv #: 1841

Attention: Peter Nosal

Please remit payment within ten (10) days or contact us
within ten (10) days to arrange a payment plan.

RE: Bretzinger vs. Crestwood Homes et al

DISBURSEMENTS

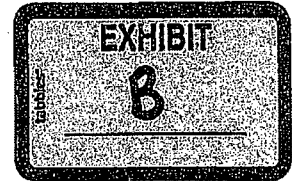
	Filing Fee	\$400.00
	Photocopies	\$466.80
	Postage	\$184.27
3/26/13	USDC Pacer Copies	\$73.90
	SC Secretary of State	\$3.50
10/25/13	NC Secretary of State Process Fee	\$10.00
11/15/13	Process Service and Skip Trace	\$314.00
12/16/13	Process Service and Skip Trace	\$442.00
12/17/13	Memorandum Binding and Copies	\$21.70
5/27/14	Mileage - travel to/from property - 154.4 miles	\$86.46
8/27/14	Mileage - travel to/from Anderson for Mediation - 232 miles	\$129.92
	Total	\$2,132.55

Total Fee & Disbursements \$2,132.55

Balance Now Due

\$2,132.55

For your convenience we accept Visa, MasterCard, and Discover.



UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsey Holsinger,	)	Civil Action No. 0:13-cv-02771-JMC
	)	
Plaintiffs,	)	
v.	)	
	)	
Crestwood Homes, LLC d/b/a Scenic	)	<u>ORDER AND OPINION</u>
Homes, Paul Meng, James Ray, Reggie	)	
Lee McGaugh, Susan Meng, Mary Beth	)	
McGaugh, and Susan Ray,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Stephen Bretzinger and Lindsey Holsinger (collectively "Plaintiffs") filed this action seeking damages from Defendants Crestwood Homes, LLC d/b/a Scenic Homes, Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray (collectively "Defendants") resulting from their construction and sale to Plaintiffs of an allegedly defective house located at 2055 Covered Bridge Court, York County, South Carolina (the "Property"). (ECF No. 1.) Plaintiffs assert claims under state law against Defendants for breach of contract to construct an improvement to real property, breach of fiduciary duties, breach of the implied covenant of good faith and fair dealing, fraud, breach of contract accompanied by a fraudulent act, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -560 (1985 & Supp. 2011), fraudulent conveyance, unjust enrichment, civil conspiracy, breach of warranty, negligent construction, negligence per se, gross negligence, rescission, to void a contract for unconscionability, aiding and abetting wrongdoing, to pierce the corporate veil, and to collect on a judgment. (*Id.* at 7-22.)

This matter is before the court pursuant to Defendants' Motion to Enforce Settlement Agreement. (ECF No. 55.) Plaintiffs oppose the pending Motion to Enforce Settlement. (ECF

No. 62.) For the reasons set forth below, the court GRANTS Defendants' Motion to Enforce Settlement.

I. RELEVANT BACKGROUND TO PENDING MOTION

The following relevant facts taken from the complaint are assumed to be true only for the purposes of the pending motion. Crestwood Homes, LLC ("Crestwood") is an "association of persons" that includes "Individual Defendants" Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray. (ECF No. 1 at 6 ¶ 44.) This action arises from a course of events that allegedly resulted in Plaintiffs entering into a residential contract with Crestwood on or about June 28, 2008 to purchase the Property. (*Id.* at 3 ¶ 24.) After closing on and receiving title to the Property, Plaintiffs became aware of specified defects in the Property. (*Id.* at 4 ¶¶ 27-28.) Plaintiffs allege that after they provided notice of the defects in the Property to Crestwood, it failed to remedy said defects in the Property thereby resulting in the Property sustaining significant additional damage. (*Id.* at 4 ¶ 29, 5 ¶¶ 31-32.)

On July 29, 2010, Plaintiffs filed a lawsuit against Crestwood in the York County (South Carolina) Court of Common Pleas. (ECF No. 1-2.) Crestwood did not answer or otherwise respond to the lawsuit. After entering default against Crestwood on or about January 18, 2011, the state court entered judgment for Plaintiffs on July 8, 2011 in the amount of \$876,000.00 against Crestwood. (ECF No. 1-4.)

Thereafter, on October 10, 2013, Plaintiffs filed a Complaint in this court alleging the aforementioned causes of action against Defendants. (ECF No. 1.) On November 5, 2013, Crestwood answered the Complaint generally denying its allegations. (ECF No. 9.) On November 18, 2013, Individual Defendants filed Motions to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2). (ECF No. 16.) On September 5, 2014, the court denied

without prejudice Individual Defendants' Motions to Dismiss with leave to re-file after a period of limited jurisdictional discovery. (ECF No. 44.)

On September 26, 2014, the parties allegedly reached an agreement for the complete and final resolution and settlement of this case (the "Settlement Agreement"). (See ECF No. 55-1 at 5 ("They [Plaintiffs] accept and will settle for \$100,000.00" in exchange for a global release).) The Settlement Agreement and essential terms of the same were memorialized using the following language in an e-mail sent by Plaintiffs' counsel of record, Neal Truslow ("Truslow"), to Defendants' counsel on September 29, 2014:

To confirm the status of where we are:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(Id. at 2.) On or about October 7, 2014, Defendants' counsel prepared more formal settlement and release documents and provided the same to Plaintiffs' counsel. (ECF No. 55-2 at 3.) On October 29, 2014, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs "desire[d] to nullify the settlement" and dismiss the case without prejudice. (ECF No. 55-3 at 2.)

On November 5, 2014, Defendants filed the instant Motion to Enforce Settlement. (ECF No. 55.) Plaintiffs filed their Response in Opposition to Defendants' Motion to Enforce Settlement on November 24, 2014. (ECF No. 62.) On December 9, 2014, the court heard argument from the parties on the pending Motion to Enforce Settlement. (ECF No. 71.)

II. LEGAL STANDARD AND ANALYSIS

A. Standard for Enforcing Settlement

"Settlement agreements are matters of contract law, and contract law principles apply." Patel v. Barot, 15 F. Supp. 3d 648, 653 (E.D. Va. 2014). "Because exercise of the authority to enforce settlement agreements depends on the parties' agreement to a complete settlement, the court cannot enforce a settlement until it concludes that a complete agreement has been reached and determines the terms and conditions of that agreement." Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002) (citing Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Therefore, "to exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions." Id. at 540–41 (citing Moore v. Beaufort Cnty., 936 F.2d 159, 162 (4th Cir. 1991); Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Accordingly, "if an agreement for complete settlement of the underlying litigation, or part of it, has been reached and its terms and conditions can be determined, the court may enforce the agreement summarily as long as the excuse for nonperformance of the agreement is 'comparatively insubstantial.'" Id. at 540 (quoting Millner v. Norfolk & W. Ry. Co., 643 F.2d 1005, 1009 (4th Cir. 1981)). However, "[i]f there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreement's terms, the district court may not enforce a settlement agreement summarily," and it must instead conduct a hearing in order to resolve that dispute and make factual findings. Id. at 541 (citations omitted).

B. The Parties' Arguments

1. *Defendants*

Defendants move the court to enforce an alleged settlement with Plaintiffs containing the

following terms and conditions:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(ECF No. 55-1 at 2.) In support of their Motion to Enforce Settlement, Defendants argue that Plaintiffs' counsel "irrefutably confirmed the clear and ambiguous terms of the [S]ettlement [A]greement," and the acts of an attorney are binding on the client. (ECF No. 55 at 1, 3 (citing Sadighi v. Daghighfekr, 66 F. Supp. 2d 752, 761 (D.S.C. 1999) (citation omitted)).) Defendants further argue that "[t]he writings between counsel of record in this case unequivocally demonstrate that: (1) the parties reached a complete agreement; and (2) the writings set forth the essential terms and conditions of the Settlement Agreement." (ECF No. 55 at 3.) As a result, "Plaintiffs are bound by the actions of their attorneys" and the "Settlement Agreement is binding and enforceable upon the Plaintiffs." (Id. at 3–4.) Based on the foregoing, Defendants request that the court enforce the Settlement Agreement and dismiss this action. (Id. at 4.)

2. *Plaintiffs*

Plaintiffs oppose the Motion to Enforce Settlement asserting that it should be denied because the emails attached to Defendants' motion only "demonstrate that there was no commitment [to a settlement] and that critical terms were to be negotiated prior to any commitment." (ECF No. 62 at 1.) Plaintiffs next assert that their counsel "did not have authority to bind either of the Plaintiffs to a settlement agreement" or "forfeit an outstanding State Court judgment against the Defendants." (Id. at 7.) Finally, Plaintiffs assert that Defendants' evidence

does not support a finding that Plaintiffs displayed the intent "to be bound to any purported settlement." (Id. at 8.) As a result, Plaintiffs beseech the court to deny Defendants' Motion to Enforce Settlement. (Id.)

C. The Court's Review

Upon consideration of the parties' arguments, the court finds that the terms of the parties' alleged settlement are clearly set forth in the parties' exhibits¹ and, therefore, the court should enforce the settlement unless it determines that the parties failed to reach a complete agreement.

As to this issue, Plaintiffs argue that their counsel did not have either actual authority or apparent authority to settle the matter. (ECF No. 62 at 7.) As support for their argument, Plaintiffs submitted affidavits, which specifically stated that their attorneys were not authorized to settle the case (ECF Nos. 62-4 & 62-5), and cited to Rule 43(k), SCRCP, which rule provides that "[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel."

In assessing the merits of Plaintiffs' argument, the court observes that an attorney's "authority to negotiate" on behalf of his client "is far different from the authority to agree to a specific settlement." Auvil v. Grafton Homes, Inc., 92 F.3d 226, 231 (4th Cir. 1996). "It is generally accepted that when a client retains an attorney to represent him in litigation, absent an express agreement to the contrary, the attorney has implied authority to conduct the litigation and to negotiate its resolution." Id. at 229-230. Moreover, under South Carolina law, absent fraud or mistake, counsel of record has the authority to settle litigation on behalf of their client.

¹ Defendants will pay \$100,000.00 to Plaintiffs in exchange for a full release of all claims. (ECF No. 55-1 at 2.)

Arnold v. Yarborough, 316 S.E.2d 416, 417 (S.C. Ct. App. 1984) (“Acts of an attorney are directly attributable to and binding upon the client.”) (Citation omitted); see also Poore v. Poore, 89 S.E. 569, 571 (S.C. 1916) (“It will never do, in the absence of fraud, to allow the undoubted attorneys of record for a party to a suit to enter into a solemn agreement to settle and adjust the issues and subject-matter of a suit and then later, if it is done, because for any reason the party is dissatisfied, to allow him to repudiate this agreement and employ different counsel to upset and set aside what his first counsel has done.”).

Upon review, the court finds that Truslow, Plaintiffs’ attorney of record, bound Plaintiffs when he stated his acknowledgement to the agreed upon terms of the settlement.² (See ECF No. 55-1 at 2 (“To confirm the status of where we are: Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case I’ll be sure to consent [to a stipulation of dismissal] once we’ve got funds and you’ve got a signed release.”).) Under South Carolina law, Truslow’s actions bind Plaintiffs since there has not been a showing of fraud. Arnold, 316 S.E. 2d at 417 (“Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud.”) (Citation omitted). In this regard, neither Plaintiffs’ affidavits nor Rule 43(k), SCRPC, require the court to find otherwise. See, e.g., Surety Ins. Co. of Cal. v. Williams, 729 F.2d 581, 583 (8th Cir. 1984) (“We think that in meeting that burden the Williamses may not rely on their conclusory affidavit,

² There were communications relevant to the settlement made by an attorney, Peter Nosal, who was not counsel of record for Plaintiffs in this matter. (See, e.g., ECF No. 55-1 at 4 (“I understand your concerns. I have explained to them that the settlement will be contingent of a full release of any and all claims against all defendants. Pete.”) & 5 (“They accept and will settle for \$100,000.00. They have some concerns about the language in the release, but I am confident we can work that out. Pete.”).) The court does not rely on Nosal’s communications to establish Plaintiffs’ agreement to settle the matter. See, e.g., Androlonis v. United States, No. 79-CV-847, 1995 WL 46331, at 2 (N.D.N.Y. Jan. 25, 1995) (“First, the court holds that no binding settlement agreement existed. Attorney Buskus was not the attorney of record in the district court, and counsel for the United States should have realized that agreement of the counsel of record was required before a settlement became binding.”).

but must establish through competent evidence that their attorney lacked actual, implied, or apparent authority to stipulate to an entry of judgment.”); Nationwide Mut. Ins. Co. v. Ruff, C/A No. 0:11-1011-CMC, 2011 WL 2491345, at *3 (D.S.C. June 22, 2011) (“[T]he South Carolina Rules of Civil Procedure govern actions brought in South Carolina courts, not federal courts, ...”); United States v. Hemmons, 774 F. Supp. 346, 350 (E.D. Pa. 1991) (“State rules of civil procedure do not apply in a federal court.”) (citing, e.g., U.S. Const. art. IV). Accordingly, the court concludes that the parties did reach a complete agreement to settle this matter, and the terms of that agreement are clearly discernible from the record.

III. CONCLUSION

For the reasons set forth above, the court hereby **GRANTS** Defendants’ Motion to Enforce Settlement Agreement. (ECF No. 55.) The court further **ORDERS** the parties to fulfill their obligations under the Settlement Agreement within 30 days of the date of entry of this Order. This action is hereby **DISMISSED**.

IT IS SO ORDERED.



United States District Judge

May 7, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO:2016-CP-40-03728

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger
and Rikard & Protopapas,

Defendants

ANSWER

COMES NOW the Defendant, Rikard & Protopapas, answers the Complaint filed against it as follows:

1. This Defendant denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted, qualified, or explained.
2. As to paragraph 1, 2, and 3, this Defendant would admit same upon information and belief.
3. As to paragraphs 4, admitted.
4. As to paragraph 5, 6, 7, 8, 9, 10, 11, and 12, this Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish a liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.
5. As to paragraph 13, this Defendant admits they assumed representation of Bretzinger and Holsinger and remained as counsel through conclusion of the Federal

Action. In so far as the remaining allegations attempt to establish a liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

6. As to paragraph 14, 15, and 16, admitted.

7. As to paragraph 17, this Defendant admits to maintaining \$35,132.55 in its trust account. As to the remaining allegations, this Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish a liability on the part of this Defendant, this Defendant would deny same and demand strict proof thereof.

8. As to paragraphs 18 and 19, admitted.

9. As to paragraph 20, this Defendant is without knowledge, therefore denied.

10. As to paragraph 21, 22, 23, 24, this Defendant would allege that such allegations are directed to co-defendants which require no response on the part of this Defendant. In so far as such allegations attempt to establish a liability on the part of this Defendant, this

WHEREFORE, having fully answered the Complaint, this Defendant prays that it be directed by the Court as to what actions should be taken in regards the monies safeguarded in his trust account and for such other and further relief as the Court deems just and proper.

RIKARD & PROTOPAPAS, LLC


Peter D. Protopapas, SCB #68304
Email: pdp@rplegalgroup.com
1329 Blanding Street
Post Office Box 5640 (29250)

Columbia, South Carolina 29201
Telephone: 803.978.6111
Facsimile: 803.978.6112

Attorneys for Defendants, Rikard & Protopapas

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO:2016-CP-40-03728

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger
and Rikard & Protopapas,

Defendants

CERTIFICATE OF SERVICE

I, Jo-Elaine Boyd, state that I am a paralegal for Rikard & Protopapas, L.L.C., with offices at 1329 Blanding Street, Post Office Box 5640, Columbia, South Carolina; that on the 8th day of July, 2016, I delivered a copy of the following documents to the following parties:

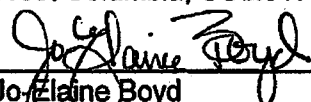
Documents:

Defendant, Rikard & Protopapas, Answer to Complaint

Parties Served:

VIA U.S MAIL

Desa Ballard
Ballard & Watson
P.O. Box 6338
West Columbia, SC 29171


Jo-Elaine Boyd
jboyd@rplegalgroup.com

Motion to Set Aside Entry of Default, with Exhibits, filed on November 18, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

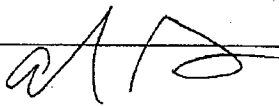
Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE ENTRY
OF DEFAULT**

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Entry of Default Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

2016 NOV 18 PM 12:03
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

 Signature of Attorney for ☐ Plaintiff/ X Defendant 4/16/16	
SECTION III: Motion Fee	
X PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Convection Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE ENTRY
OF DEFAULT**

2016 NOV 18 PM 12:03
RICHLAND COUNTY
FILED
JEANETTE W. MCBRIDE
CLERK, P. & G.S.

Pursuant to Rule 55(c), and for good cause shown, Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to set aside entry of default. In support of their motion, Defendants show the Court as follows:

1. Plaintiff's Complaint seeks recovery of money damages for an alleged breach of contract by Defendants.
2. On October 24, 2016, counsel for Defendants contacted Plaintiff's counsel via e-mail notifying her of his representation and requesting a copy of all pleadings. A true and accurate copy of the e-mail is attached hereto as **Exhibit A**.
3. Plaintiff's counsel responded that same day and provided a copy of the pleadings and an order for service via publication. A true and accurate copy of the e-mail is attached hereto as **Exhibit B**.
4. As such, Plaintiff's counsel had actual knowledge that Defendants had retained counsel in this matter.
5. On November 14, 2016, Plaintiff's counsel emailed Defendants' counsel a copy of Plaintiff's Affidavit of Default, Motion for Default Judgment and proposed

Order for Default Judgment. A true and accurate copy of that e-mail is attached hereto as **Exhibit C**.

6. On November 15, 2016 Defendants' counsel emailed Plaintiff's counsel a copy Defendants' Answer and requested that Plaintiff consent to set aside the entry of default. A true and accurate copy of that e-mail is attached hereto as **Exhibit D**.

7. Plaintiff's counsel responded via e-mail that Plaintiff would not consent to set aside the default because "your clients have been impossible to deal with" and that Plaintiff "assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you)." A true and accurate copy of that e-mail is attached hereto as **Exhibit E**.

8. Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

9. In considering whether good cause exists, the Court should consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607–08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct.App.1989).

10. At all times, Defendants have endeavored to act promptly and swiftly to defend their rights in this case. Defendants' counsel notified Plaintiff of his representation and that he was reviewing the pleadings. Plaintiff knew of this

representation because his counsel responded to the initial notice of representation and sent him a copy of the Affidavit of Default and Motion for Default Judgment.

11. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer filed contemporaneously with this motion.

12. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. Moreover, less than less than 45 days has passed since the alleged service of the Complaint. Common practice in Richland County is for a responding party to receive a 30-day extension to respond to a Complaint, so Defendants' Answer is being filed well within the typical 60-day period to respond.

13. Moreover, Rule 55(b)(4) provides, in pertinent part, that:

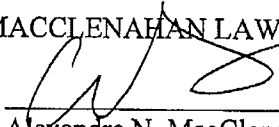
"[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent **at or before the time of making the application for judgment** shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication." (emphasis added)

14. Upon information and belief, no such examination occurred at or before the time of making the application for judgment, as such Plaintiff cannot proceed with default.

For the reasons set forth herein, Defendants request that the Court set aside entry of default and allow this case to proceed on its merits.

This the 16th day of November, 2016

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT A

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 9:41 AM
To: desab@desaballard.com



Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT B

From: **Desa Ballard** Desab@desaballard.com
Subject: RE: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 10:52 AM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Mara Ballard mara@desaballard.com, Beth Cogan Beth@desaballard.com

Alex:

Thanks for contacting me. Attached are the pleadings filed to date. This is a fee collection. Your clients did not want to pay the fees after my client settled their case. Peter is holding the money, and he has filed an answer just saying "yeah, I have the money, tell me what to do with it." The clients have already received their money.

Look forward to hearing from you.

db

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Monday, October 24, 2016 10:02 AM
To: Desa Ballard <Desab@desaballard.com>
Subject: Re: Bretzinger 2016-CP-40-3728

Thanks

On Oct 24, 2016, at 10:01 AM, Desa Ballard <Desab@desaballard.com> wrote:

Sure. I am traveling at the moment. Will be at your desk in a few hours.

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: Alex MacClenahan <alex@macclenahanlaw.com>
Date: 10/24/16 9:42 AM (GMT-05:00)
To: Desa Ballard <Desab@desaballard.com>
Subject: Bretzinger 2016-CP-40-3728

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340

Fax: 864-751-2963
alex@macclenahanlaw.com

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Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

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2016.6.16 (filed)
Summ...int.pdf



2016.09.12
Order f...ion.pdf

Order # : 448346

SUN-SENTINEL
Published Daily
Fort Lauderdale, Broward County, Florida
Boca Raton, Palm Beach County, Florida
Miami, Miami-Dade County, Florida

STATE OF FLORIDA

COUNTY OF BROWARD/PALM BEACH/MIAMI-DADE

Before the undersigned authority personally appeared

MARK KUZNETZ, who on oath says that he or she is a duly authorized representative of the **SUN-SENTINEL**, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice is:

The matter of 11715-Notice of Administration

Bullard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171

Was published in said newspaper in the issues of: Sep 21, 2016; Sep 29, 2016; Oct 06, 2016.

4471001

Attest further says that the said **SUN-SENTINEL**, is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida; and that the said advertisement is:

2016 OCT 14 PM 12:20
NOT RECORDED

2016 OCT 14 PM 12:20
NOT RECORDED

EXHIBIT C

From: Mara Ballard mara@desaballard.com
Subject: Truslow, Neal (Bretzinger);
Date: November 14, 2016 at 3:45 PM
To: pdp@rplegalgroup.com, alex@macclenahanlaw.com
Cc: Desa Ballard Desab@desaballard.com, Harvey Watson Harvey@desaballard.com



Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com



2016.11.14 Filed
Affidav...ent.pdf

EXHIBIT D

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Re: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 11:22 AM
To: Desa Ballard desab@desaballard.com
Cc: Peter Protopapas pdp@rplegalgroup.com



Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex



Bretzinger -
Answer.pdf

On Nov 14, 2016, at 3:45 PM, Mara Ballard <maraballard@desaballard.com> wrote:

Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com
<image003.jpg>

<2016.11.14 Filed Affidavit of Default and Motion for Judgment.pdf>

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

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Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT E

From: Desa Ballard Desab@desaballard.com
Subject: RE: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 12:06 PM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Peter Protopapas pdp@rplegalgroup.com, Beth Cogan Beth@desaballard.com



No I can't consent to setting aside the default. Nothing personal I assure you, I'm sure you understand, but your clients have been impossible to deal with. They ducked service by several methods and we had to resort to service by publication. They didn't answer in time. I assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you).

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Tuesday, November 15, 2016 11:23 AM
To: Desa Ballard <Desab@desaballard.com>
Cc: Peter Protopapas <pdp@rplegalgroup.com>
Subject: Re: Truslow, Neal (Bretzinger);

Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Neal Truslow,)

Plaintiff,)

vs.)

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.)

Defendants.)

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing **Motion to Set Aside Entry of Default** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 16th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

Answer of Stephen Bretzinger and Lindsey Holsinger filed on November 18, 2016

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow,	)	Case No.: 2016-CP-40-03728
	)	
Plaintiff,	)	
	)	
vs.	)	ANSWER OF DEFENDANTS
	)	STEPHEN BRETZINGER and
Stephen Bretzinger, Lindsey Holsinger,	)	LINDSEY HOLSINGER
and Rikard & Protopapas, LLC.	)	[Jury Trial Demanded]
	)	
Defendants.	)	

RICHLAND COUNTY
 FILED
 2016 NOV 18 AM 10:23
 JEFFREY B. HOSKINS

Defendants Stephen Bretzinger and Lindsey Holsinger (hereinafter collectively referred to as "Defendants") answer Plaintiff's Complaint as follows:

FIRST DEFENSE
[Motion to Dismiss – Rule 12(b)(6)]

1. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.
2. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants move to dismiss the Complaint on the grounds that Plaintiff failed to state facts sufficient to constitute a cause of action.
3. Plaintiff alleges that Defendants associated him in a federal action pursuant to a written Fee Agreement attached as **Exhibit A** to Plaintiff's Complaint.
4. Plaintiff was not associated in the Fee Agreement.
5. Pursuant to Paragraph 4 of the Fee Agreement, the law firm of Truslow and Truslow, P.A. was associated to assist with all litigation.
6. On the face of Plaintiff's own pleadings, he is not a party to any contract with Defendants and, therefore, failed to state a claim for breach of contract.

7. Defendants request that the Court dismiss Plaintiff's complaint pursuant to Rule 12(b)(6).

SECOND DEFENSE
[Alternatively – Judgment on the Pleadings]

8. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

9. Alternatively, if the Court denies Defendants Rule 12(b)(6) Motion to Dismiss, Defendants move the Court for a judgment on the pleadings on the grounds that Plaintiff's own pleadings show that Plaintiff never entered into a contract with Defendants.

THIRD DEFENSE
[Unclean Hands]

10. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

11. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOURTH DEFENSE
[Misrepresentation]

12. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

13. Defendants plead fraud and misrepresentation as a defense to the Complaint.

FIFTH DEFENSE
[Failure to Mitigate]

14. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

15. Plaintiff failed to mitigate his damages, if any.

SIXTH DEFENSE
[Estoppel]

16. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

17. Defendants plead the doctrine of estoppel.

SEVENTH DEFENSE
[Offset]

18. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

19. To the extent Plaintiff is owed any damages, which is denied, Defendants are entitled to an offset in an amount equal to the damages caused by Truslow & Truslow, P.A.'s failure to comply with the terms of the Fee Agreement.

EIGHTH DEFENSE
[Answer]

20. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

21. Defendants admit the allegations of Paragraph 1 upon information and belief.

22. Defendants admit the allegations of Paragraphs 2 and 3.

23. Defendants admit the allegations of Paragraph 4 upon information and belief.

First Cause of Action
[Breach of Contract]

24. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

25. Defendants admit the allegations of Paragraph 5.

26. Defendants admit they entered into a written fee agreement with Nosal & Jeter, LLP. Defendants are not lawyers and therefore lack sufficient knowledge as to whether the fee agreement is compliant with state law and/or consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar, and, therefore, Defendants deny those allegations. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 6.

27. Defendants admit that the fee agreement associated the law firm of Truslow and Truslow, P.A. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 7.

28. Defendants admit that a lawsuit was filed in federal court. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 8.

29. Defendants admit that the Federal Action alleged numerous causes of action against multiple defendants. Defendant admits the allegations of Paragraph 9 to the extent they comply with the express terms of the Complaint in the Federal Action. To the extent the allegations of Paragraph 9 differ from the express terms of the Complaint filed in the Federal Action, those allegations are denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 9.

30. Defendants admit that a motion for summary judgment was filed by defendants in the Federal Action and that motion was denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 10.

31. Defendants deny that they agreed to or entered into a settlement agreement in the Federal Action. Defendants admit that Truslow and Truslow, P.A entered into a settlement agreement for \$100,000.00 without consulting with Defendants and without their consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 11.

32. Defendants admit that they refused to consent to the settlement agreement that Truslow and Truslow, P.A negotiated without their knowledge or consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 12.

33. Defendants admit that Truslow and Truslow, P.A ceased representing them and that they retained the law firm of Rikard and Protopapas, LLC to take over their representation in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 13.

34. Defendants admit that they were notified of Truslow and Truslow, P.A's charging lien for costs and fees. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 14.

35. Defendants admit that the Federal Court granted a motion to compel settlement in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 15.

36. Defendants admit the allegations of Paragraph 16 upon information and belief.

37. Defendants deny the allegations of Paragraph 17.

38. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 18, and, therefore, denies those allegations.

39. Defendants admit, upon information and belief, that Rikard & Protopapas, LLC is holding the disputed funds in trust pending the outcome of this litigation. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 19.

40. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 20, and, therefore, denies those allegations.

41. Defendants deny the allegations of Paragraphs 21, 22, 23, and 24.

PRAYER FOR RELIEF

WHEREFORE, Defendants Stephen Bretzinger and Lindsey Holsinger request the following relief:

1. That the Court dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) or alternatively pursuant to Rule 12(c).
2. That Plaintiff have an recover nothing from Defendants Stephen Bretzinger and Lindsey Holsinger;
3. A **trial by jury**; and
4. All other relief that the Court deems just and proper under the circumstance.

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

2016 NOV 18 AM 10:23
RICHLAND COUNTY
FILED
CLERK OF COURT

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing **Answer** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

Motion to Set Aside Default Judgment, with Exhibits, filed on September 28, 2016

STATE OF SOUTH CAROLINA)

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Neal Truslow,)

Case No.: 2016-CP-40-03728

Plaintiff,)

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE
DEFAULT JUDGMENT**

vs.)

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.)

Defendants.)

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Default Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

RICHLAND COUNTY
FILED

2016 DEC 28 PM 3:12

JEANNETTE W. MCBRIDE
C.C.P. & G.S.

Signature of Attorney for ☐ Plaintiff/ ☒ Defendant

SECTION III: Motion Fee

X PAID – AMOUNT: \$25.00

- ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

12/28/16

Collected by: Mett

☐ MOTION FEE COLLECTED: _____

☐ AMOUNT DUE: _____

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow,	)	Case No.: 2016-CP-40-03728
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS STEPHEN
	)	BRETZINGER and LINDSEY
Stephen Bretzinger, Lindsey Holsinger,	)	HOLSINGER'S MOTION
and Rikard & Protopapas, LLC.	)	TO SET ASIDE
	)	DEFAULT JUDGMENT
Defendants.	)	

2016 DEC 28 PM 3:13
 FILED
 RICHLAND COUNTY
 JEFFREY E. MCBRIDE

Pursuant to Rules 55(c) and 60(b), Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to set aside default judgment. In support of their motion, Defendants show the Court as follows:

1. Plaintiff's Complaint seeks recovery of money damages for an alleged breach of contract by Defendants.

2. As set forth in more detail in Defendants' Motion to Set Aside Entry of Default, counsel for Defendants contacted Plaintiff's counsel on October 24, 2016 via e-mail notifying her of his representation and requesting a copy of all pleadings. Plaintiff's counsel responded that same day and provided a copy of the pleadings and an order for service via publication.

3. On November 14, 2016, Plaintiff's counsel emailed Defendants' counsel a copy of Plaintiff's Affidavit of Default, Motion for Default Judgment and proposed Order for Default Judgment. The following day Defendants' counsel emailed Plaintiff's counsel a copy Defendants' Answer and requested that Plaintiff consent to set aside the

entry of default. Plaintiff's counsel responded via e-mail that Plaintiff would not consent to set aside the default.

4. On November 16, 2016, Defendants served Plaintiff with their Motion to Set Aside Entry of Default and the clerk filed the Motion on November 18, 2016. A true and accurate copy of the filed Motion to Set Aside Entry of Default is attached hereto as **Exhibit A**.

5. On December 5, 2016 counsel for Defendants learned that the Court entered a default judgment against Defendants. The Order is signed November 18, 2016 but was not filed by the clerk until November 29, 2016. A true and accurate copy of the Order is attached hereto as **Exhibit B**.

6. Given that the default judgment was entered after Defendants' counsel had appeared and filed an Answer and Motion to Set Aside Entry of Default, the default judgment should be set aside for mistake, inadvertence, surprise, or excusable neglect.

7. At all times, Defendants have endeavored to act promptly and swiftly to defend their rights in this case. Defendants' counsel notified Plaintiff of his representation and that he was reviewing the pleadings. Upon learning of the entry of default, Defendants' counsel made a formal appearance and promptly filed an Answer and Motion to Set aside Entry of Default.

8. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer filed contemporaneously with this motion.

9. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. At the time the judgment was entered, Defendants' had served and filed an Answer and Motion to Set Aside Entry of Default. Justice would require that

the pending Motion to Set Aside Entry of Default be heard prior to entering the default judgment.

10. Moreover, Rule 55(b)(4) provides, in pertinent part, that:

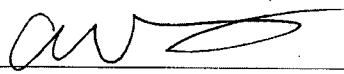
“[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent **at or before the time of making the application for judgment** shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.” (emphasis added)

11. Upon information and belief, no such examination occurred at or before the time of making the application for judgment, as such Plaintiff cannot proceed with default.

For the reasons set forth herein, Defendants request that the Court set aside the default judgment and allow this case to proceed on its merits.

This the 22nd day of December, 2016

THE MACCLENAHAN LAW FIRM, LLC


Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

RICHLAND COUNTY
FILED
2016 DEC 28 PM 3:13
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on December 22, 2016 he served a copy of the forgoing **Motion to Set Aside Default Judgment** via United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 22nd day of December, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

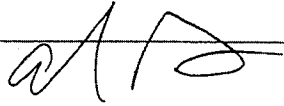
EXHIBIT A

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow,	)	Case No.: 2016-CP-40-03728
	)	
Plaintiff,	)	
	)	DEFENDANTS STEPHEN
vs.	)	BRETZINGER and LINDSEY
	)	HOLSINGER'S MOTION
Stephen Bretzinger, Lindsey Holsinger,	)	TO SET ASIDE ENTRY
and Rikard & Protopapas, LLC.	)	OF DEFAULT
	)	
Defendants.	)	

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Entry of Default Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

2016 NOV 18 PM 12:03
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

RICHLAND COUNTY
 FILED

 Signature of Attorney for ☐ Plaintiff/ ☒ Defendant 11/16/16	
SECTION III: Motion Fee	
X PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow,	)	Case No.: 2016-CP-40-03728
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS STEPHEN
	)	BRETZINGER and LINDSEY
Stephen Bretzinger, Lindsey Holsinger,	)	HOLSINGER'S MOTION
and Rikard & Protopapas, LLC.	)	TO SET ASIDE ENTRY
	)	OF DEFAULT
Defendants.	)	

2016 NOV 18 PM 12:03
 RICHLAND COUNTY
 FILED
 JESSICA M. HODGINS
 CLERK

Pursuant to Rule 55(c), and for good cause shown, Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to set aside entry of default. In support of their motion, Defendants show the Court as follows:

1. Plaintiff's Complaint seeks recovery of money damages for an alleged breach of contract by Defendants.
2. On October 24, 2016, counsel for Defendants contacted Plaintiff's counsel via e-mail notifying her of his representation and requesting a copy of all pleadings. A true and accurate copy of the e-mail is attached hereto as **Exhibit A**.
3. Plaintiff's counsel responded that same day and provided a copy of the pleadings and an order for service via publication. A true and accurate copy of the e-mail is attached hereto as **Exhibit B**.
4. As such, Plaintiff's counsel had actual knowledge that Defendants had retained counsel in this matter.
5. On November 14, 2016, Plaintiff's counsel emailed Defendants' counsel a copy of Plaintiff's Affidavit of Default, Motion for Default Judgment and proposed

Order for Default Judgment. A true and accurate copy of that e-mail is attached hereto as **Exhibit C**.

6. On November 15, 2016 Defendants' counsel emailed Plaintiff's counsel a copy Defendants' Answer and requested that Plaintiff consent to set aside the entry of default. A true and accurate copy of that e-mail is attached hereto as **Exhibit D**.

7. Plaintiff's counsel responded via e-mail that Plaintiff would not consent to set aside the default because "your clients have been impossible to deal with" and that Plaintiff "assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you)." A true and accurate copy of that e-mail is attached hereto as **Exhibit E**.

8. Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

9. In considering whether good cause exists, the Court should consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct.App.1989).

10. At all times, Defendants have endeavored to act promptly and swiftly to defend their rights in this case. Defendants' counsel notified Plaintiff of his representation and that he was reviewing the pleadings. Plaintiff knew of this

representation because his counsel responded to the initial notice of representation and sent him a copy of the Affidavit of Default and Motion for Default Judgment.

11. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer filed contemporaneously with this motion.

12. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. Moreover, less than less than 45 days has passed since the alleged service of the Complaint. Common practice in Richland County is for a responding party to receive a 30-day extension to respond to a Complaint, so Defendants' Answer is being filed well within the typical 60-day period to respond.

13. Moreover, Rule 55(b)(4) provides, in pertinent part, that:

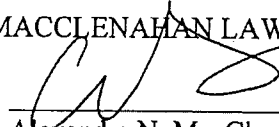
“[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.” (emphasis added)

14. Upon information and belief, no such examination occurred at or before the time of making the application for judgment, as such Plaintiff cannot proceed with default.

For the reasons set forth herein, Defendants request that the Court set aside entry of default and allow this case to proceed on its merits.

This the 16th day of November, 2016

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan

SC Bar # 72507

223 W. Stone Avenue

Greenville, SC 29609

864-382-3340/FAX 864-331-3058

alex@macclenahanlaw.com

Attorney for Defendants

Stephen Bretzinger and

Lindsey Holsinger

EXHIBIT A

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 9:41 AM
To: desab@desaballard.com

MA

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT B

From: **Desa Ballard** Desab@desaballard.com
Subject: RE: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 10:52 AM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Mara Ballard mara@desaballard.com, Beth Cogan Beth@desaballard.com

Alex:

Thanks for contacting me. Attached are the pleadings filed to date. This is a fee collection. Your clients did not want to pay the fees after my client settled their case. Peter is holding the money, and he has filed an answer just saying "yeah, I have the money, tell me what to do with it." The clients have already received their money.

Look forward to hearing from you.

db

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Monday, October 24, 2016 10:02 AM
To: Desa Ballard <Desab@desaballard.com>
Subject: Re: Bretzinger 2016-CP-40-3728

Thanks

On Oct 24, 2016, at 10:01 AM, Desa Ballard <Desab@desaballard.com> wrote:

Sure. I am traveling at the moment. Will be at your desk in a few hours.

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: Alex MacClenahan <alex@macclenahanlaw.com>
Date: 10/24/16 9:42 AM (GMT-05:00)
To: Desa Ballard <Desab@desaballard.com>
Subject: Bretzinger 2016-CP-40-3728

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340

Fax: 864-751-2963
alex@macclenahanlaw.com

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Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.



2016.6.16 (filed)
Summ...int.pdf



2016.09.12
Order f...ion.pdf

Order # : 448286

SUN-SENTINEL
Published Daily
Fort Lauderdale, Broward County, Florida
Boca Raton, Palm Beach County, Florida
Miami, Miami-Dade County, Florida

STATE OF FLORIDA

COUNTY OF: BROWARD/PALM BEACH/MIAMI-DADE

Before the undersigned authority personally appeared
MARK KUZNETZ, who on oath says that he or she is a duly authorized representative of the **SUN-SENTINEL**, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice in:

The matter of 11710-Notice of Administration

Ballard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171

Was published in said newspaper in the issues of: Sep 22, 2016; Sep 29, 2016; Oct 06, 2016

4471901

Affiant further says that the said **SUN-SENTINEL** is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida; and that the said newspaper has

2016 OCT 14 PM 12:20
STATE OF SOUTH CAROLINA
COUNTY OF BROWARD
IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2016-CP-08-41701
JULIUS
DEALING OF CONSUMER CLAIM - NO
ANY OTHER REQUESTS

advertisement for publication in the

Mark L. Kwan

Signature of Affiant

Sworn to and subscribed before me this: October 06, 2016,



CHRISTINE RUFFOLO
 NY COMMISSIONER OF INSURANCE
 EXPIRES August 30, 2011

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Affidavit of Publication on
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.
Date: 10.12.11 Signed: Mara Ballard

09-717014-10213004 09/10/2014

EXHIBIT C

From: **Mara Ballard** mara@desaballard.com
Subject: Truslow, Neal (Bretzinger);
Date: November 14, 2016 at 3:45 PM
To: pdp@rplegalgroup.com, alex@macclenahanlaw.com
Cc: Desa Ballard Desab@desaballard.com, Harvey Watson Harvey@desaballard.com

MB

Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com



2016.11.14 Filed
Affidav...ent.pdf

EXHIBIT D

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Re: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 11:22 AM
To: Desa Ballard desab@desaballard.com
Cc: Peter Protopapas pdp@rplegalgroup.com



Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex



Bretzinger -
Answer.pdf

On Nov 14, 2016, at 3:45 PM, Mara Ballard <maraballard@desaballard.com> wrote:

Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com
<image003.jpg>

<2016.11.14 Filed Affidavit of Default and Motion for Judgment.pdf>

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT E

From: **Desa Ballard** Desab@desaballard.com
Subject: RE: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 12:06 PM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Peter Protopapas pdp@rplegalgroup.com, Beth Cogan Beth@desaballard.com

DB

No I can't consent to setting aside the default. Nothing personal I assure you, I'm sure you understand, but your clients have been impossible to deal with. They ducked service by several methods and we had to resort to service by publication. They didn't answer in time. I assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you).

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Tuesday, November 15, 2016 11:23 AM
To: Desa Ballard <Desab@desaballard.com>
Cc: Peter Protopapas <pdp@rplegalgroup.com>
Subject: Re: Truslow, Neal (Bretzinger);

Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:04
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing **Motion to Set Aside Entry of Default** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 16th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT B

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003728

Neal Truslow

Stephen Bretzinger

PLAINTIFF(S)

Lindsey Holsinger

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Dismissal);
☐ 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 _____
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$
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.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Nov, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 29 November 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Harvey M. Watson III

Peter Demos Protopapas

Alexandre Nicolas MacClenahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Jeanette W. McBride

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Neal Truslow)
)
Plaintiff)
vs.)
Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)
)
Defendants)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03728

**DEFAULT JUDGMENT
AGAINST DEFENDANTS BRETZINGER
AND HOLSINGER**

FILED
2016 NOV 29 AM 11:44
JENNIFER A. MCGRIDE
C.C.P. & G.S.

Plaintiff moves for entry of a default judgment against defendants Stephen Bretzinger and Lindsey Holsinger. It appears that the defendants Bretzinger and Holsinger were served with the summons and complaint in this matter via publication in the Sun Sentinel on September 22, 2016., September 29, 2016 and lastly on October 06, 2016 (see Affidavit of Publication filed by the Clerk of Court in this matter on October 14, 2016). No responsive pleadings were filed and an Affidavit of Default was submitted with a Motion for Default Judgment and a proposed Order of Judgment on November 8, 2016.

Therefore, IT IS ORDERED that judgment shall be entered in favor of the plaintiff against the defendants Stephen Bretzinger and Lindsey Holsinger in the amount of Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55).

It is further ORDERED that defendant Rikard & Protopapas LLC are authorized to release the sum Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55) to Plaintiff or his designee. This judgment shall bear interest at the legal rate.

[signature next page]

IT IS SO ORDERED.


Honorable DeAndrea G. Benjamin
Chief Administrative Judge

November 18, 2016

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Proposed Order on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

Date: 11/14/16 Signed: Mara Ballard

Motion to Compel Answers to Discovery filed on March 31, 2017

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger,

Lindsey Holsinger, and

Rikard & Protopapas, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-03728

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Harvey M. Watson III, Bar No. 74053

Address:

Post Office Box 6338, West Columbia, SC
29171

Phone: 803.796.9299 Fax 803.796.1066

E-mail: harvey@desaballard.com Other:

service@desaballard.com

Defendant Rikard & Protopapas, LLC:

Peter Protopapas, Bar No. 68304

Address:

Post Office Box 5640, Columbia, SC 29250

Phone: 803.978.6111 Fax

E-mail: pdp@rplegalgroup.com Other:

Defendants Bretzinger and Holsinger

Alex MacClenahan Bar No. 72507

Address:

223 W. Stone Avenue

Greenville SC 29606

Phone: 864.382.3340 Fax: 864.751.2963

Email: alex@macclenahanlaw.com

☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Compel

Estimated Time Needed: 15 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☐ Defendant 03/29/2017
Date submitted

SECTION III: Motion Fee

☒ **PAID - AMOUNT: \$ 25.00**

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

metts v 3/29/17

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: \$ _____ ☐ CONTESTED – AMOUNT DUE: \$ _____		

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
)
Neal Truslow)
)
)
Plaintiff,)
vs.)
)
Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)
Defendants)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-3728

**MOTION TO COMPEL
ANSWERS TO DISCOVERY**

RICHLAND COUNTY
FILED
2017 MAR 31 AM 9:47
JEANNETTE W. MORRIS
C.C.P. & G.S.

Counsel for the Plaintiff moves this Honorable Court for an order compelling full and complete responses to interrogatories and requests to produce, as set forth herein, and also seeks appropriate sanctions, including but not limited to attorney's fees, allowable under Rule 37, SCRPC.

This Motion is based on the following grounds:

1. This matter was filed June 16, 2016 after Defendants Bretzinger and Holsinger refused to authorize Defendant Rikard & Protopapas, LLC to release earned attorneys' fees to Plaintiff.
2. These fees are due to Plaintiff under a fee agreement entered into for collection of amounts due to Defendants Bretzinger and Holsinger from Crestwood Homes, LLC. That action was filed in US District Court in 2013 (Civil Action No. 0:13-cv-02771-JMC).

3. Upon filing of the Summons and Complaint, Plaintiff's Counsel made numerous attempts at service upon the Defendant's Bretzinger and Holsinger¹ and eventually obtained an order permitting service via publication. Service by publication was accomplished on October 8, 2016 and proof of service was filed with this Court on October 14, 2016.
4. On October 24, 2016, Plaintiff's Counsel was contacted via email by attorney Alex MacClenahan, who advised he had been retained by Defendants Bretzinger and Holsinger and that he understood "you are in the process of obtaining service by publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?" (Exhibit A).
5. On the same date, Plaintiff's counsel emailed to MacClenahan copies of the summons and complaint, order for service by publication and filed affidavit of publication, which indicated the date on which service has been accomplished on defendants Bretzinger and Holsinger. (Exhibit B).
6. After proper service via publication and filing of proof of service, Plaintiff filed for and obtained a default judgment against Defendants². (Exhibit C). Defendants moved to set aside the default judgment.

¹ The affidavit of non-service filed by the Palm Beach County Sheriff's office shows 7 attempts at service and the following note: "7/25 attempt I observed a UPS package at the door addressed to Ms. Holsinger. 07/27 attempt package retrieved. Maybe avoiding service".

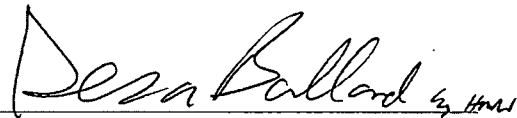
² On November 15, 2016, 9 days after their answer was due, Defendants Bretzinger and Holsinger filed an answer which was received by counsel on November 17, 2016. Defendants have moved to set aside the default judgment but that motion has not yet been heard. Meanwhile, the Court entered default judgment against defendants Bretzinger and Holsinger on November 19, 2016.

7. Motions were scheduled to be heard on January 6, 2017, but at the last minute, counsel for Defendants obtained a continuance of the hearing. (Exhibit D).
8. On January 6, 2017 Plaintiff's counsel mailed Defendants' Counsel, Plaintiff's Requests for Production which were directly relevant to the issues raised in the motion to set aside default. Copies of the requests are attached as Exhibit E.
9. On February 24, 2017 Defendants' Counsel served Responses to Plaintiff's Request to Produce without the privilege log. Final responses were received via email on March 2, 2017. (Exhibit F – Excerpts of Responses to Requests to Produce).
10. Defendants' responses were deemed inadequate as to question number 4 and on March 6, 2017, Plaintiff's Counsel sent the attached email so stating.
11. On March 20, 2017, Defendants provided a supplemental response to RFP No. 4, which provided no additional information. (Exhibit G).

RULE 11(a) AFFIRMATION

12. Plaintiff's counsel affirms that they have consulted with opposing counsel prior to filing this Motion and attempted in good faith to resolve the matter contained herein, but have been unable to do so. While opposing counsel has provided a supplemental response, the substance of the supplemental and original response is inadequate.
13. Plaintiff seeks an order compelling and requiring that the defendants provide complete and full responses to Request No. 4.

14. As evidenced by their recalcitrance in avoiding service of the complaint in this action, these defendants have indicated their lack of respect for this court and its process. For that reason, Plaintiff also seeks an award of sanctions be entered against the defendants for the reasonable attorney fees and cost incurred in connection with the filing of this motion.



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone: 803.796.9299
Facsimile: 803.796.1066
desab@desaballard.com
harvey@desaballard.com

COUNSEL FOR PLAINTIFF

March 29, 2017

RICHLAND COUNTY
FILED
2017 MAR 31 AM 9:47
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

I, Mara Ballard, an employee of the Ballard & Watson Attorneys at Law certify that I have this date served a copy of Motion to Compel on all counsel of record and Pro Se parties by depositing a copy properly addressed, with sufficient First Class postage affixed, to each, in the United States Mail.

Date: 3-29-17 Signed: Mara Ballard

From: Alex MacClenahan
To: Desa Ballard
Subject: Bretzinger 2016-CP-40-3728
Date: Monday, October 24, 2016 9:42:29 AM

EXHIBIT A

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT B

From: Desa Ballard
To: Alex MacClenahan
Cc: Mara T. Ballard, CFE, CMA (mara@desaballard.com); Elizabeth "Beth" Cogan (beth@desaballard.com)
Bcc: Neal Truslow; pete@nosajeterlaw.com
Subject: RE: Bretzinger 2016-CP-40-3728
Date: Monday, October 24, 2016 10:51:00 AM
Attachments: 2016.6.16 (filed) Summons and Complaint.pdf
2016.09.12 Order for Service by Publication.pdf
2016.10.14 Filed Affidavit of Publication.pdf

Alex:

Thanks for contacting me. Attached are the pleadings filed to date. This is a fee collection. Your clients did not want to pay the fees after my client settled their case. Peter is holding the money, and he has filed an answer just saying "yeah, I have the money, tell me what to do with it." The clients have already received their money.

Look forward to hearing from you.

db

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Monday, October 24, 2016 10:02 AM
To: Desa Ballard <Desab@desaballard.com>
Subject: Re: Bretzinger 2016-CP-40-3728

Thanks

> On Oct 24, 2016, at 10:01 AM, Desa Ballard <Desab@desaballard.com> wrote:

>

> Sure. I am traveling at the moment. Will be at your desk in a few hours.

>

>

>

>

> Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

>

>

> ----- Original message -----

> **From:** Alex MacClenahan <alex@macclenahanlaw.com>

> **Date:** 10/24/16 9:42 AM (GMT-05:00)

> **To:** Desa Ballard <Desab@desaballard.com>

> **Subject:** Bretzinger 2016-CP-40-3728

>

> Desa,

>

> I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

>

> Please let me know if you have any questions.

>

> Thanks

>

> Alex MacClenahan

>

>

>

>

>

>

> Alex MacClenahan

> The MacClenahan Law Firm, LLC

> 223 W. Stone Avenue

> Greenville, SC 29609

> Phone: 864-382-3340

> Fax: 864-751-2963

> alex@macclenahanlaw.com

>

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>

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Alex MacClenahan

The MacClenahan Law Firm, LLC

223 W. Stone Avenue

Greenville, SC 29609

Phone: 864-382-3340

Fax: 864-751-2963

alex@macclenahanlaw.com

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Copy

EXHIBIT C

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)
)
Neal Truslow)
)
Plaintiff)
vs.)
Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)
)
Defendants)
)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03728

**DEFAULT JUDGMENT
AGAINST DEFENDANTS BRETZINGER
AND HOLSINGER**

FILED
2016 NOV 29 AM 11:47
JEANETTE W. MCBRIDE
C.C.P. & C.S.

Plaintiff moves for entry of a default judgment against defendants Stephen Bretzinger and Lindsey Holsinger. It appears that the defendants Bretzinger and Holsinger were served with the summons and complaint in this matter via publication in the Sun Sentinel on September 22, 2016,, September 29, 2016 and lastly on October 06, 2016 (see Affidavit of Publication filed by the Clerk of Court in this matter on October 14, 2016). No responsive pleadings were filed and an Affidavit of Default was submitted with a Motion for Default Judgment and a proposed Order of Judgment on November 8, 2016.

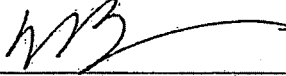
Therefore, IT IS ORDERED that judgment shall be entered in favor of the plaintiff against the defendants Stephen Bretzinger and Lindsey Holsinger in the amount of Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55).

It is further ORDERED that defendant Rikard & Protopapas LLC are authorized to release the sum Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55) to Plaintiff or his designee. This judgment shall bear interest at the legal rate.

[signature next page]

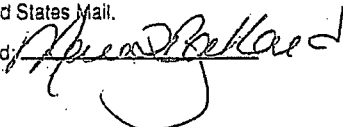
IT IS SO ORDERED.

November 18, 2016



Honorable DeAndrea G. Benjamin
Chief Administrative Judge

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Proposed Order for Settlement on all
counsel of record and *Pro Se* parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

Date: 11/14/16 Signed: 

EXHIBIT

From: Alex MacClenahan [<mailto:alex@macclenahanlaw.com>]
Sent: Thursday, January 5, 2017 12:06 PM
To: Desa Ballard <Desab@desaballard.com>
Cc: Harvey Watson <Harvey@desaballard.com>; Peter Protopapas <pdp@rplegalgroup.com>
Subject: Re: Truslow v. Bretzinger, et al. 2016-CP-40-3728

Counsel,

I just spoke with Judge Manning's clerk and he informed me that Judge Manning prefers that Judge Benjamin hear these motions. They asked me to notify all counsel so I am letting you know that this afternoon's hearing has been postponed and will be rescheduled in front of judge Benjamin at a later date.

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) is privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

On Jan 4, 2017, at 3:41 PM, Desa Ballard <Desab@desaballard.com> wrote:

I will be there for a 2 pm hearing in another matter, so I'll be there anyway. See you tomorrow.

db

-----Original Message-----

From: Manning, L. Casey Law Clerk (John Waites) [<mailto:CManningLC@sccourts.org>]
Sent: Wednesday, January 4, 2017 3:31 PM
To: Alex MacClenahan <alex@macclenahanlaw.com>; Manning, L. Casey <CManningJ@sccourts.org>
Cc: Desa Ballard <Desab@desaballard.com>; Harvey Watson <Harvey@desaballard.com>; Peter Protopapas <pdp@rplegalgroup.com>
Subject: RE: Truslow v. Bretzinger, et al. 2016-CP-40-3728

Unfortunately Judge Manning is out of the office today. He will be able to respond to this request tomorrow morning.

Christian Waites
Law Clerk to the Honorable L. Casey Manning Fifth Judicial Circuit Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201
Office: (803) 576-1774
Fax: (803) 576-1744

-----Original Message-----

From: Alex MacClenahan [<mailto:alex@macclenahanlaw.com>]
Sent: Wednesday, January 4, 2017 12:52 PM
To: Manning, L. Casey <CManningJ@sccourts.org>; Manning, L. Casey Law Clerk (John Waites) <CManningLC@sccourts.org>
Cc: Desa Ballard <desab@desaballard.com>; harvey@desaballard.com; Peter Protopapas <pdp@rplegalgroup.com>
Subject: Truslow v. Bretzinger, et al. 2016-CP-40-3728

Dear Judge Manning,

I represent Defendants Bretzinger and Holsinger in the above referenced matter. Desa Ballard and Harvey Watson represent the Plaintiff Neal Truslow and Peter Protopapas represents Defendant Rikard & Protopapas, LLC.

Two motions are set for hearing in front of you tomorrow at 3:30pm - Plaintiff's Motion for Publication and my clients' Motion to Set Aside Entry of Default. A default judgment signed by Judge Benjamin was filed on November 29, 2016 while the Motion to Set Aside Entry of Default was pending. I then filed a Motion to Set Aside Default Judgment. Though the Motion to Set Aside Default Judgment is not set for hearing tomorrow, Plaintiff's counsel has consented to having it heard at that time given that its resolution could impact the decision on the other pending motions.

After speaking with counsel for all parties, it was brought up that you might have concerns about ruling on the Motion to Set Aside Default Judgment since you did not sign the order. Counsel for all parties wanted to make you aware of this issue and inquire if you were willing to hear this motion or preferred that it be set for hearing in front of Judge Benjamin since she signed the order at issue.

I have copied all counsel of record so that they are aware of this communication. Please let us know at your earliest convenience if would like us to proceed with the hearing tomorrow or prefer that we reschedule it in front of Judge Benjamin.

Thank you in advance for your consideration. Please do not hesitate to contact me if you have

any questions or concerns about this matter.

Sincerely,

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow	)	Case No.: 2016-CP-40-3728
	)	
Plaintiff	)	PLAINTIFF'S REQUEST FOR
	)	PRODUCTION
vs.	)	
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	
	)	

Reserving all rights under the default judgment which has already been entered in this action, the Plaintiff herein submits the following requests for production to the Defendants Stephen Bretzinger and Lindsey Holsinger. Plaintiff incorporates the provisions of Rule 34, SCRPC, and the definitions and instructions contained therein. In addition, Plaintiff submits the following:

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply:

1. "You", "your", or "Defendant" or "these defendants" shall mean one or both Stephen Bretzinger and/or Lindsey Holsinger, as well as all persons acting or purporting to act on behalf of either of them, including lawyers, whether employed directly or indirectly, as an independent contractor, volunteer. For any purpose relevant to these Interrogatories it shall also include attorneys, accountants, agents, or family members including but not limited to Peter Protopapas.
2. "Person" shall include any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.
3. "Document" or "documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, electronic data, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, electronic or computer data bases or printouts, sketches, package

inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control; or subject to the control of the defendants or their attorneys whether such document is stored in word processing files, calendaring program data, e-mails, hard drives, mobile electronic devices including mobile telephones, computer discs, portable drives, hard drives in copier machines, hard drives in fax machines and other computer logs or images of items that might constitute "documents" within the definition set forth herein. This includes materials of any kind stored on portable electronic devices that are not presently in the possession of these defendants.

5. "Computer" shall include, but is not limited to, microcomputers (also known as personal computers or desktops), laptop computers, portable computers, personal digital assistants, Smart phones, tablets, minicomputers and mainframe computers.

6. "Electronic data" means all information stored in a digital format. Electronic data includes, but is not limited to, electronic mail messages and attachments, contacts, journal entries, calendar entries, word processing documents, spreadsheets, databases including all records and fields and structural information, charts, graphs, and any and all miscellaneous files responsive to the following requests. The responding party is expected to search for any and all information stored on hard disks, floppy disks, CDs, DVDs, USB devices, Personal Digital Assistants and Smart Phones (such as iPhones, Androids, Microsoft Surface, IPADs, Palm Pilots, Blackberrys and Treos), tablets, and in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with the information described above.

7. "Evidentiary Image" means a true bit-stream copy of the data requested. "Deleted File" means any electronic data file that has been erased or deleted from the electronic media on which it resided.

8. "Prior litigation" means a matter entitled Stephen Bretzinger and Lindsey Holsinger v. Crestwood Homes, LLC et al. Case No. 0:13-cv-01771-JMC that was pending and later resolved in the United States District Court for the District of South Carolina and the distribution of settlement proceeds from that action.

INSTRUCTIONS

A. All paper copies, documents and electronic data related to prior litigation of a matter entitled Stephen Bretzinger and Lindsey Holsinger v. Crestwood Homes, LLC et al. Case No. 0:13-cv-01771-JMC and any settlement proceeds received from that litigation, including any correspondence through the present date must be preserved. Please insure that all current back-up tapes, disks or drives are not rewritten and no mobile phones used by you are

discarded or altered. Stop any rotation, alteration and/or destruction of electronic media that may result in the alteration or loss of any electronic data relating to the issues in this lawsuit. Do not alter and/or erase active, deleted files or file fragments on any electronic media that may have any relation to this matter. Do not conduct any maintenance such as defragging, reformatting or upgrading any hard drives that may contain data relevant to this litigation. Do not dispose of any electronic media storage devices replaced due to failure and/or upgrade that may contain electronic data having any relation to this matter.

- B. If all of the information furnished in response to all or any part of a Request to Produce is not within your personal custody or control, or within the custody or control of your present attorneys, identify each person or entity who is known to or believed to have custody or control of any information or document requested as well any person or entity to whom any part of the information has previously been furnished or provided.
- C. If objections are entered to all or any part of a request to produce, state the specific grounds for the objection. Answer the request to produce to the extent to which there is no objection.
- D. If a privilege is asserted concerning all or any part of the information requested by a request to produce, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.
- E. Electronically-stored information should be produced on digital media in PDF format or a format that is reasonably usable.
- F. If electronically-stored information cannot be produced in PDF format or a format that is reasonably usable, produce the electronically-stored on digital media along with data with a limited use copy of the necessary software to enable Petitioner to view it.
- G. The following requests to produce shall be deemed to continue from the time of service until the time of final conclusion of the case so that information sought which comes your attention or knowledge or the attention or knowledge of your representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.
- H. Regardless of the noun, pronoun or other designation, if any, used in an request to produce to describe the person or entity to whom it is directed or about whom it is concerned, answers to each of the requests to produce shall include all responsive information known or available about such person or entity.

Request No. 1: Any and all of your bank statements, deposit slips, electronic copies of checks or other instruments reflecting receipt by you of any settlement proceeds from the prior litigation including but not limited to any funds paid to or received by Rikard and Protopapas,, LLC in the amount of \$100,000.00 from Builders Insurance Group on behalf of insured Scenic

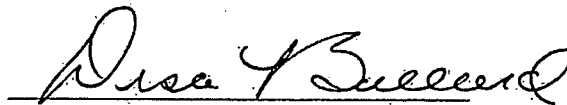
Homes, in check number 0001166045. A copy of this check is attached hereto and incorporated herein as Exhibit A to these Request to Produce.

Request No. 2: Any and all of your bank statements, deposit slips, checks, electronic copies, debit card entries, credit card receipts or statements or other documents or instruments reflecting the disbursement by you or on your behalf of any of the funds referred to in Request No. 1.

Request No. 3: Any and all correspondence exchanged by and between you and/or the plaintiff and/or any officer or agent of Rikard and Protopapas LLC related to this matter or the prior litigation, reserving of course any documents which are privileged but as to those produce a privilege log.

Request No. 4: Any and all copies of the complaint in this action received by you from any source including any envelope in which the copy was received or email to which the complaint was attached.

Plaintiff reserves the right to submit additional request production of documents or interrogatories after receipt of complete responses to these requests to produce. This reservation of rights does not limit the discovery which may be undertaken by the Plaintiff in this action.



Desa Ballard

Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

ATTORNEYS FOR PLAINTIFF

January 5, 2017

I, Beth Cogan, an employee of the Ballard & Watson Attorneys at Law, certify that I have this date served a copy of Plaintiff's Request for Production on all counsel of record and *Pro Se* parties by depositing a copy properly addressed, with sufficient First Class postage affixed, to each, in the United States Mail.

Date: 1/6/17 Signed: Beth Cogan



**Builders
Insurance
Group**

BUILDERS INSURANCE
(A MUTUAL CAPTIVE CO.) - Claims Adjuster
P.O. Box 723099
Atlanta, GA 31139-0999

Date: 05/20/2015 NO. 0001166045

POLICY NUMBER	CLAIM NUMBER	DATE OF LOSS	CLAIMANT	AMOUNT
GLP 0000571 04	000000077899	08/04/2008	Stephen Bretzinger and Lindsey Holsinger	***\$100,000.00**

PAY TO: Rikard and Protopapas LLC AND Stephen Bretzinger and Lindsey Holsinger

PAY: One Hundred Thousand and 00/100 Dollars*****

Mail To: Builders - 34 Sub Trust
Rikard and Protopapas LLC
1329 Blanding Street
Columbia SC 29201

[Signature]

⑈0001166045⑈ ⑆061100740⑆ 8800608302⑈

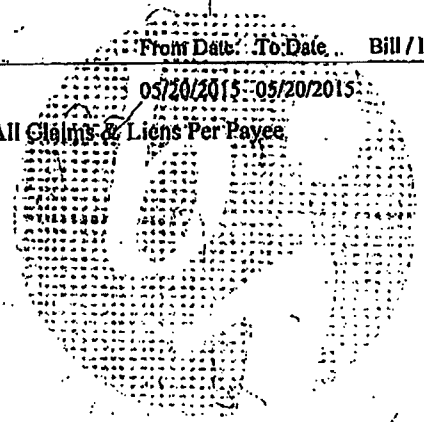
Please Cash or Deposit the above check as soon as possible and retain this portion for your records

PAID BY
BUILDERS INSURANCE
P. O. Box 723099
Atlanta, GA 31139

POLICY NUMBER	LOSS DATE	INSURED
GLP 0000571 04	08/04/2008	SCENIC HOMES INC

CLAIM NUMBER	CHECK NUMBER	CHECK DATE	ADJUSTER
000000077899	0001166045	05/20/2015	Mark Jones

Description	From Date	To Date	Bill / Invoice Number	Patient Account #	Invoice Amt	Amount
First and Final	05/20/2015	05/20/2015			\$0.00	\$100,000.00
Per Release of All Claims & Liens Per Payee						



Builders Insurance Group

By endorsement of this check, the payee, under penalty of fine and/or imprisonment, certifies entitlement to this payment for benefits or services, circumstances affecting such entitlement have not changed, and no false statements or representations have been made in support of the claim for payment. False representations could result in civil and criminal penalties.

Exhibit A to Request to Produce January 5, 2017

EXHIBIT

to lead to the discovery of admissible evidence. Subject to, and without waiving the forgoing objections, Defendants respond as follows:

Defendants admit receiving \$64,534.12 from the settlement proceeds. The balance is being held in trust at the law firm of Rikard and Protopapas. Enclosed and served contemporaneously herewith is a copy of the check in the amount of \$64,534.12 made payable to Stephen Bretzinger and Lindsay Holsinger.

3. Any and all correspondence exchanged by and between you and/or the plaintiff and/or any officer or agent of Rikard and Protopapas LLC related to this matter or the prior litigation, reserving of course any documents which are privileged but as to those produce a privilege log.

RESPONSE: Defendants object to this request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to, and without waiving the forgoing objections, Defendants respond as follows:

Enclosed and served contemporaneously herewith is

- (1) a copy of the check in the amount of \$64,534.12 made payable to Stephen Bretzinger and Lindsay Holsinger.
- (2) Distribution Authorization signed by Defendants
- (3) Authorization to Execute signed by the Defendants

Counsel is still reviewing e-mail correspondence between Defendants and Rickard and Protopapas, LLC to determine which, if any, of the communications are privileged. Defendants will supplement this response upon completion of the review.

4. Any and all copies of the complaint in this action received by you from any source including any envelope in which the copy was received or email to which the complaint was attached.

RESPONSE: Defendants object to this request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to, and without waiving the forgoing objections, Defendants respond as follows:

Defendants, via counsel, received a copy of the complaint on October 24, 2016.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and
LINDSEY HOLSINGER'S 2nd
SUPPLEMENTAL RESPONSES
to PLAINTIFF'S REQUEST
TO PRODUCE**

Pursuant to Rule 34 of the SCRPC, Defendants Stephen Bretzinger and Lindsey Holsinger supplement their responses to Plaintiff's Request to Produce as follows:

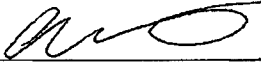
4 Any and all copies of the complaint in this action received by you from any source including any envelope in which the copy was received or email to which the complaint was attached.

RESPONSE: Defendants object to this request to the extent it seeks information protected by the attorney-client privilege and/or work product doctrine. Subject to, and without waiving the forgoing objections, Defendants respond as follows:

Defendants, via counsel, received a copy of the complaint on October 24, 2016. Defendants did not receive any other non-protected/non-privileged documents that are responsive to this request.

This the 20th day of March, 2017.

THE MACCLENAHAN LAW FIRM, LLC


Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on March 20, 2017 he served a copy of the forgoing **Defendant Stephen Bretzinger and Lindsey Holsinger's 2nd Supplemental Responses to Plaintiff's Requests to Produce** via United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

Motion to Alter or Amend Order Denying Set Aside Entry of Default, with Exhibits,
filed on October 2, 2017

STATE OF SOUTH CAROLINA)

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Neal Truslow,

Case No.: 2016-CP-40-03728

Plaintiff,

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO ALTER/AMEND ORDER
DENYING SET ASIDE OF
ENTRY OF DEFAULT**

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Default Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

met 10/2/17

Signature of Attorney for ☒ Plaintiff/ X Defendant

SECTION III: Motion Fee

X PAID - AMOUNT: \$25.00

☐ EXEMPT:

- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCR)
- ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions
- ☐ Other:

JUDGE'S SECTION

☒ Motion Fee to be paid upon filing of the attached order

☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

 MOTION FEE COLLECTED:

AMOUNT DUE:

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow,	)	Case No.: 2016-CP-40-03728
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS STEPHEN
	)	BRETZINGER and LINDSEY
Stephen Bretzinger, Lindsey Holsinger,	)	HOLSINGER'S MOTION TO
and Rikard & Protopapas, LLC.	)	ALTER OR AMEND ORDER
	)	DENYING MOTION TO SET
	)	ASIDE ENTRY OF DEFAULT
Defendants.	)	

Pursuant to Rule 59 and 60(b), Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to alter or amend its Order denying their Motion to Set Aside Entry of Default. In support of their motion, Defendants show the Court as follows:

1. Plaintiff attempted to serve Defendants via publication. The time to respond to the Summons and Complaint expired on November 7, 2016.
2. Defendants' counsel mistakenly calendared the due date on November 17, 2016.
3. On November 14, 2016, Defendants' counsel received a copy of the Affidavit of Default and a Motion for Default Judgment. That following day, Defendants' counsel e-mailed Defendants' Answer and asked Plaintiff's counsel to consent to set aside the entry of default. Plaintiff's counsel refused.
4. On November 16, 2016, Defendants served their Motion to Set Aside Entry of Default. True and accurate copies of the Answer and Motion to Set Aside Entry of Default are attached hereto as **Exhibit A** and **Exhibit B**, respectively, and incorporated

2017 OCT -28 AM 10:57
 JENNIFER A. MCGRIDG
 C.P. 655
 RICHLAND COUNTY
 FILED

herein by reference. The Clerk filed the Answer and Motion to Set Aside Entry of Default on November 18, 2016.

5. On November 18, 2016, the Court signed a Default Judgment against Defendants, without addressing Defendants' pending Motion to Set Aside Entry of Default.

6. The Default Judgment was not filed until November 29, 2016 and Defendants did not learn of the Default Judgment until December 5, 2016.

7. Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016.

8. On July 11, 2017, this Court heard oral arguments on Defendants' Motion to Set Aside Entry of Default and Motion to Set Aside Default Judgment.

9. On September 21, 2017, this Court entered an Order denying Defendants' Motion to Set Aside Default Judgment. A true and accurate copy of the Order is attached hereto as **Exhibit C** and incorporated herein by reference.

10. The Order did not make any ruling as to Defendants' Motion to Set Aside Entry of Default.

11. A default judgment should not have been entered against Defendants because, at the time the Default Judgment was entered, Defendants Motion to Set Aside Entry of Default was pending and Defendants had filed an Answer.

12. It is undisputed that the Court was unaware of Defendants' Motion to Set Aside Entry of Default at the time it signed the Order granting Default Judgment.

13. It is further undisputed that Defendants' were unaware that a default judgment was signed on the same day that they filed a Motion to Set Aside Entry of Default and an Answer.

14. This Court's Order found that "Plaintiff's allege Defendants were represented by an attorney when the dispute arose, refused to negotiate with Plaintiff, acknowledged they were aware of Plaintiff's charging lien, and evaded service."

15. Defendants had the right to have their pending Motion to Set Aside Entry of Default heard before the Court entered default judgment.

16. Moreover, Defendants, having appeared in the action, were entitled to notice and a hearing before the default judgment was entered.

17. The grounds for setting aside Entry of Default are less stringent than those for Default Judgment.

18. Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

19. In considering whether good cause exists, the Court should consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct.App.1989)).

20. As to factor (1): Defendants served their Answer within 10 days of the time to respond. Further, Defendants served and filed their Motion to Set Aside Entry of

Default within twenty-four hours of being told that Plaintiff would not consent to set aside the entry of default and within 15 days of the time to file a responsive pleading.

21. As to factor (2): Defendants presented evidence of meritorious defenses.
22. Specifically, Defendants alleged, among other things:
 - a. That they did not enter into a Contract with Plaintiff (Answer ¶ 1- 9)
 - b. They never agreed to or entered into a Settlement Agreement (Answer ¶31)
 - c. To the extent a Court determined that Plaintiff was entitled to damages, Defendants were entitled to an offset (Answer ¶ 19)
 - d. Defendants denied that they entered into the Settlement Agreement from which Plaintiff seeks to recover his fees (Answer ¶ 31).
 - e. Defendants denied that Plaintiff was assigned the entirety of the fees he is seeking to recover (Answer ¶ 40).
23. Plaintiff also submitted to the Court the following:
 - a. A Fee Agreement attached as Exhibit A to his Complaint that, on its face, does not name Plaintiff as a party to the agreement
 - b. The Fee Agreement also does not establish that Plaintiff was assigned the fees as alleged by Plaintiff in Paragraph 20 of his Complaint.
 - c. The order and opinion from the Federal Court citing the affidavits of both Defendants in which defendants denied that they consented to the settlement. The Court determined that Plaintiff acted as Defendants' agent in the federal action and therefore were bound by his agreement to settle. Importantly, the Court did not determine that Defendants' authorized Plaintiff to settle the case on their behalf. A copy of the Order and Affidavits are attached hereto as **Exhibit D** and **Exhibit E** and incorporated herein by reference.
24. As to factor (3): Plaintiff has shown no prejudice he suffered by having an entry of default set aside.
 - a. Plaintiff filed their Complaint on June 16, 2016, and accomplished service on November 7, 2016.

- b. Defendants served their Answer on November 16, 2016 (nine days from the deadline for the responsive pleading) and it was filed on November 18, 2016 (eleven days from the deadline for the responsive pleading).
- c. The monies that Plaintiff seeks to recover are being held in trust by Defendant Rikard and Protopapas, LLC and therefore Plaintiff faces no issue with collecting damages should he prevail.
- d. Plaintiff also engaged in discovery beyond issues surrounding the default; so he has been able to proceed with this case and will not face delay should default be set aside. A true and accurate copy of Plaintiff's discovery requests are attached hereto as **Exhibit F** and incorporated herein by reference.

25. Plaintiff has shown no prejudice suffered by this nine-day delay in responding to the Complaint.

26. The Court may also examine Rule 60(b) factors of, among others, mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, and whether the judgment is void. *Id.* at 608

27. These factors are relevant to a Rule 55(c) analysis to the extent that proof of any one of these factors is sufficient to show good cause but none are required to show good cause. *Id.* (emphasis added).

28. Defendants served their Answer within nine days of the time to respond. Further, Defendants served and filed their Motion to Set Aside Entry of Default within twenty-four hours being told that Plaintiff would not consent to set aside the entry of default and within 15 days of the time to file a responsive pleading.

29. Moreover, there is a statutory defect in the Order of Publication.

30. Plaintiff filed a Motion for Service by Publication pursuant to S.C. Code Section 15-9-710 *et seq.* S.C. Code Section 15-9-740 provides, in pertinent part, as follows:

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. **The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office direct to the person to be served at his place of residence**, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. (emphasis added).

31. In order to avoid resolving litigation by default, South Carolina courts require strict compliance with publication statutes. *Caldwell v. Wiquist*, 402 S. C. 565, 575, 741 S.E.2d 583 (S.C. App. 2013).

32. The Order for Publication fails to direct that Plaintiff mail a copy of the Summons to Defendants' last known address. Moreover, there is nothing in the record to indicate that such a directive was made or that Plaintiff mailed a copy to Defendants' last known address. A true and accurate copy of the Order for Publication is attached hereto as **Exhibit G** and incorporated herein by reference.

33. Since the attempted service by publication failed to strictly comply with the statutory requirements that a copy of the Summons be mailed to Defendants' last known address, the service was invalid.¹

34. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer, in oral arguments, in pleadings and in documents submitted by the parties to this Court.

¹ Though it has no precedential value, an unpublished opinion from the South Carolina Court of Appeals held that failure to comply with the mailing requirement constitutes improper service, regardless of whether the Defendant had actual notice of the proceedings. *Trico Engineering Consultants v. Kozlowski*, Opinion No. 2010-UP-511.

35. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. Moreover, at the time of filing less than less than 15 days had passed since the alleged service of the Complaint.

36. Before reaching the merits of Defendants' Motion to Set Aside Default Judgment, the Court should have considered Defendants' Motion to Set Aside Entry of Default. If Defendants set forth good cause, then the Entry of Default should be set aside. If the Entry of Default is set aside, no default judgment could be entered against Defendants.

For the reasons set forth herein, Defendants request that the Court alter or amend its Order and authorize the clerk to set aside the entry of default.

This the 2nd day of October, 2017.

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

2017 OCT -2 AM 11:57
JEANNETTE M. MORRIS
C.C.P. & G.S.
RICHLAND COUNTY
FILED

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on October 2, 2017 he served a copy of the forgoing **Motion to Alter or Amend Order Denying Motion to Set Aside Entry of Default** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**ANSWER OF DEFENDANTS
STEPHEN BRETZINGER and
LINDSEY HOLSINGER
[Jury Trial Demanded]**

2016 NOV 18 AM 10:23
FILED
RICHLAND COUNTY

Defendants Stephen Bretzinger and Lindsey Holsinger (hereinafter collectively referred to as "Defendants") answer Plaintiff's Complaint as follows:

FIRST DEFENSE

[Motion to Dismiss – Rule 12(b)(6)]

1. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.
2. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants move to dismiss the Complaint on the grounds that Plaintiff failed to state facts sufficient to constitute a cause of action.
3. Plaintiff alleges that Defendants associated him in a federal action pursuant to a written Fee Agreement attached as **Exhibit A** to Plaintiff's Complaint.
4. Plaintiff was not associated in the Fee Agreement.
5. Pursuant to Paragraph 4 of the Fee Agreement, the law firm of Truslow and Truslow, P.A. was associated to assist with all litigation.
6. On the face of Plaintiff's own pleadings, he is not a party to any contract with Defendants and, therefore, failed to state a claim for breach of contract.

7. Defendants request that the Court dismiss Plaintiff's complaint pursuant to Rule 12(b)(6).

SECOND DEFENSE
[Alternatively – Judgment on the Pleadings]

8. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

9. Alternatively, if the Court denies Defendants Rule 12(b)(6) Motion to Dismiss, Defendants move the Court for a judgment on the pleadings on the grounds that Plaintiff's own pleadings show that Plaintiff never entered into a contract with Defendants.

THIRD DEFENSE
[Unclean Hands]

10. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

11. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOURTH DEFENSE
[Misrepresentation]

12. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

13. Defendants plead fraud and misrepresentation as a defense to the Complaint.

FIFTH DEFENSE
[Failure to Mitigate]

14. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

15. Plaintiff failed to mitigate his damages, if any.

SIXTH DEFENSE
[Estoppel]

16. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

17. Defendants plead the doctrine of estoppel.

SEVENTH DEFENSE
[Offset]

18. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

19. To the extent Plaintiff is owed any damages, which is denied, Defendants are entitled to an offset in an amount equal to the damages caused by Truslow & Truslow, P.A.'s failure to comply with the terms of the Fee Agreement.

EIGHTH DEFENSE
[Answer]

20. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

21. Defendants admit the allegations of Paragraph 1 upon information and belief.

22. Defendants admit the allegations of Paragraphs 2 and 3.

23. Defendants admit the allegations of Paragraph 4 upon information and belief.

First Cause of Action
[Breach of Contract]

24. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

25. Defendants admit the allegations of Paragraph 5.

26. Defendants admit they entered into a written fee agreement with Nosal & Jeter, LLP. Defendants are not lawyers and therefore lack sufficient knowledge as to whether the fee agreement is compliant with state law and/or consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar, and, therefore, Defendants deny those allegations. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 6.

27. Defendants admit that the fee agreement associated the law firm of Truslow and Truslow, P.A. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 7.

28. Defendants admit that a lawsuit was filed in federal court. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 8.

29. Defendants admit that the Federal Action alleged numerous causes of action against multiple defendants. Defendant admits the allegations of Paragraph 9 to the extent they comply with the express terms of the Complaint in the Federal Action. To the extent the allegations of Paragraph 9 differ from the express terms of the Complaint filed in the Federal Action, those allegations are denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 9.

30. Defendants admit that a motion for summary judgment was filed by defendants in the Federal Action and that motion was denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 10.

31. Defendants deny that they agreed to or entered into a settlement agreement in the Federal Action. Defendants admit that Truslow and Truslow, P.A entered into a settlement agreement for \$100,000.00 without consulting with Defendants and without their consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 11.

32. Defendants admit that they refused to consent to the settlement agreement that Truslow and Truslow, P.A negotiated without their knowledge or consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 12.

33. Defendants admit that Truslow and Truslow, P.A ceased representing them and that they retained the law firm of Rikard and Protopapas, LLC to take over their representation in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 13.

34. Defendants admit that they were notified of Truslow and Truslow, P.A's charging lien for costs and fees. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 14.

35. Defendants admit that the Federal Court granted a motion to compel settlement in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 15.

36. Defendants admit the allegations of Paragraph 16 upon information and belief.

37. Defendants deny the allegations of Paragraph 17.

38. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 18, and, therefore, denies those allegations.

39. Defendants admit, upon information and belief, that Rikard & Protopapas, LLC is holding the disputed funds in trust pending the outcome of this litigation. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 19.

40. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 20, and, therefore, denies those allegations.

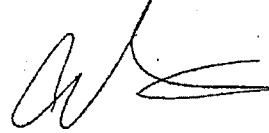
41. Defendants deny the allegations of Paragraphs 21, 22, 23, and 24.

PRAYER FOR RELIEF

WHEREFORE, Defendants Stephen Bretzinger and Lindsey Holsinger request the following relief:

1. That the Court dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) or alternatively pursuant to Rule 12(c).
2. That Plaintiff have an recover nothing from Defendants Stephen Bretzinger and Lindsey Holsinger;
3. A **trial by jury**; and
4. All other relief that the Court deems just and proper under the circumstance.

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

2016 NOV 18 AM 10:23
RICHLAND COUNTY
FILED
CLERK OF COURT

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing Answer via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

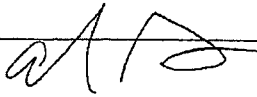
Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE ENTRY
OF DEFAULT**

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Entry of Default Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☒ NO	
SECTION II: Motion Type X Written motion attached ☒ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

2016 NOV 18 PM 12:03
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

 Signature of Attorney for ☐ Plaintiff/ X Defendant 11/16/16	
SECTION III: Motion Fee	
X PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE ENTRY
OF DEFAULT**

2016 NOV 18 PM 12:03
FILED
RICHLAND COUNTY
JEANETTE W. McBRIDE
CLERK

Pursuant to Rule 55(c), and for good cause shown, Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to set aside entry of default. In support of their motion, Defendants show the Court as follows:

1. Plaintiff's Complaint seeks recovery of money damages for an alleged breach of contract by Defendants.
2. On October 24, 2016, counsel for Defendants contacted Plaintiff's counsel via e-mail notifying her of his representation and requesting a copy of all pleadings. A true and accurate copy of the e-mail is attached hereto as **Exhibit A**.
3. Plaintiff's counsel responded that same day and provided a copy of the pleadings and an order for service via publication. A true and accurate copy of the e-mail is attached hereto as **Exhibit B**.
4. As such, Plaintiff's counsel had actual knowledge that Defendants had retained counsel in this matter.
5. On November 14, 2016, Plaintiff's counsel emailed Defendants' counsel a copy of Plaintiff's Affidavit of Default, Motion for Default Judgment and proposed

Order for Default Judgment. A true and accurate copy of that e-mail is attached hereto as **Exhibit C**.

6. On November 15, 2016 Defendants' counsel emailed Plaintiff's counsel a copy Defendants' Answer and requested that Plaintiff consent to set aside the entry of default. A true and accurate copy of that e-mail is attached hereto as **Exhibit D**.

7. Plaintiff's counsel responded via e-mail that Plaintiff would not consent to set aside the default because "your clients have been impossible to deal with" and that Plaintiff "assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you)." A true and accurate copy of that e-mail is attached hereto as **Exhibit E**.

8. Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

9. In considering whether good cause exists, the Court should consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct.App.1989).

10. At all times, Defendants have endeavored to act promptly and swiftly to defend their rights in this case. Defendants' counsel notified Plaintiff of his representation and that he was reviewing the pleadings. Plaintiff knew of this

representation because his counsel responded to the initial notice of representation and sent him a copy of the Affidavit of Default and Motion for Default Judgment.

11. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer filed contemporaneously with this motion.

12. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. Moreover, less than 45 days has passed since the alleged service of the Complaint. Common practice in Richland County is for a responding party to receive a 30-day extension to respond to a Complaint, so Defendants' Answer is being filed well within the typical 60-day period to respond.

13. Moreover, Rule 55(b)(4) provides, in pertinent part, that:

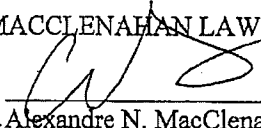
"[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication." (emphasis added)

14. Upon information and belief, no such examination occurred at or before the time of making the application for judgment, as such Plaintiff cannot proceed with default.

For the reasons set forth herein, Defendants request that the Court set aside entry of default and allow this case to proceed on its merits.

This the 16th day of November, 2016

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT A

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 9:41 AM
To: desab@desaballard.com



Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT B

From: Desa Ballard Desab@desaballard.com
Subject: RE: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 10:52 AM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Mara Ballard mara@desaballard.com, Beth Cogan Beth@desaballard.com

Alex:

Thanks for contacting me. Attached are the pleadings filed to date. This is a fee collection. Your clients did not want to pay the fees after my client settled their case. Peter is holding the money, and he has filed an answer just saying "yeah, I have the money, tell me what to do with it." The clients have already received their money.

Look forward to hearing from you.

db

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Monday, October 24, 2016 10:02 AM
To: Desa Ballard <Desab@desaballard.com>
Subject: Re: Bretzinger 2016-CP-40-3728

Thanks

On Oct 24, 2016, at 10:01 AM, Desa Ballard <Desab@desaballard.com> wrote:

Sure. I am traveling at the moment. Will be at your desk in a few hours.

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: Alex MacClenahan <alex@macclenahanlaw.com>
Date: 10/24/16 9:42 AM (GMT-05:00)
To: Desa Ballard <Desab@desaballard.com>
Subject: Bretzinger 2016-CP-40-3728

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-282-3340

Fax: 864-751-2963
alex@macclenahanlaw.com

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Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.



2016.6.16 (filed)
Summ...int.pdf



2016.09.12
Order f...ion.pdf

Order # - JAR2016

SUN-SENTINEL
Published Daily
Fort Lauderdale, Broward County, Florida
Boca Raton, Palm Beach County, Florida
Miami, Miami-Dade County, Florida

STATE OF FLORIDA

COUNTY OF BROWARD/PALM BEACH/MIAMI-DADE

Before the undersigned authority personally appeared
MARK KLEIN, who on oath says that he or she is a duly authorized representative of the **SUN-SENTINEL**, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice in:

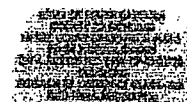
The matter of 17170-Never at Administration

Belmont & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171

Was published in said newspaper in the issues of: Sep 22, 2016; Sep 29, 2016; Oct 6th, 2016

4471901

Affiant further says that the said **SUN-SENTINEL** is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida; and that the said newspaper is:

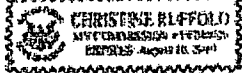


heretofore been continuously published in said BROWARD/PALM BEACH/DADA County, Florida, each day and has been entered as second class matter in the post office in BROWARD County, Florida, for a period of one year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised, any person, firm or corporation, any discount, rebate, commission or reward, for the purpose of securing this advertisement for publication in the said newspaper.

Mark K. King
Signature of Affiant

Sworn to and subscribed before me this: October 10, 2016.

Christine Ruffolo
Signature of Notary Public



Name of Notary, Typed, Printed, or Stamped
Personally Known (X) or Produced Identification ()

I, *Moya Ballard*, an employee of the Ballard & Vinton
Attorney at Law certify that I have this day signed a copy
of *Affiant's Affidavit*
corrected of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each of the United States Mail.

Date: *10-12-16* *Moya Ballard*

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Ninety-fifth Page
Ninety-sixth Page
Ninety-seventh Page
Ninety-eighth Page
Ninety-ninth Page
One Hundred Page

EXHIBIT C

From: Mara Ballard mara@desaballard.com
Subject: Truslow, Neal (Bretzinger);
Date: November 14, 2016 at 3:45 PM
To: pdp@rplegalgroup.com, alex@maccienahanlaw.com
Cc: Desa Ballard Desab@desaballard.com, Harvey Watson Harvey@desaballard.com



Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing.
The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com



2016.11.14 Filed
Affidav...ent.pdf

EXHIBIT D

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Re: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 11:22 AM
To: Desa Ballard desab@desaballard.com
Cc: Peter Protopapas pdp@rlegalgroup.com



Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex



Bretzinger -
Answer.pdf

On Nov 14, 2016, at 3:45 PM, Mara Ballard <maraballard@desaballard.com> wrote:

Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com
<image003.jpg>

<2016.11.14 Filed Affidavit of Default and Motion for Judgment.pdf>

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT E

From: Desa Ballard Desab@desaballard.com
Subject: RE: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 12:06 PM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Peter Protopapas pdp@rplegalgroup.com, Beth Cogan Beth@desaballard.com



No I can't consent to setting aside the default. Nothing personal I assure you, I'm sure you understand, but your clients have been impossible to deal with. They ducked service by several methods and we had to resort to service by publication. They didn't answer in time. I assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you).

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Tuesday, November 15, 2016 11:23 AM
To: Desa Ballard <Desab@desaballard.com>
Cc: Peter Protopapas <pdp@rplegalgroup.com>
Subject: Re: Truslow, Neal (Bretzinger);

Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:04
JEANNETTE W. MCBRIDE
C.C.P. & C.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing **Motion to Set Aside Entry of Default** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 16th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT C

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016-CP-40-03728

Neal Truslow

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ 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 _____
- ☐ 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:

ORDER INFORMATION

Defendants' Motion to Set Aside Default Judgment is denied.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge

Judge Code 2118

Date

9/21/2017

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of Sept, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2016-CP-40-03728

ORDER

RICHLAND COUNTY
FILED
2017 SEP 21 PM 4:10
JEANIE C. HARRIS

This matter came before the Court on a Motion to Set Aside Default Judgment and Entry of Default by Defendants Stephen Bretzinger and Lindsey Holsinger ("Defendants") against Plaintiff Neal Truslow ("Plaintiff"). A hearing on the motion was conducted on July 11, 2017. Present at the hearing were Desa Ballard, Esquire, attorney for Plaintiff, and Alexandre MacClenahan, Esquire, attorney for Defendants.

BACKGROUND

This case arises from a breach of contract claim for defects in a home from Crestwood Homes, LLC, purchased in 2008. Plaintiff filed this action following Defendants' refusal to pay Plaintiff attorney's fees and costs advanced by Plaintiff while representing Defendants in prior litigation in federal court. Plaintiff filed the Summons and Complaint on June 16, 2016. Defendants Stephen Bretzinger and Lindsey Holsinger filed an answer on November 18, 2016. Plaintiff filed a Motion for Default Judgment on November 14, 2016. Defendants filed a Motion to Set Aside Entry of Default on November 18, 2016. On the same day, an Order for Default Judgment was signed and subsequently filed on November 29, 2016. Thereafter, Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016.

DISCUSSION

At the motion hearing Defendants argued that on October 24, 2016, Defendants' counsel notified Plaintiff's counsel of his recent representation in the case and requested a copy of the pleadings filed to date. Later that same day, a copy of the Summons and Complaint, Order for Service by Publication, and a filed copy of the Affidavit for Service by Publication were provided

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to Defendants' counsel. On November 14, 2016, a copy of Plaintiff's Affidavit of Default, Motion for Default, and Proposed Order for Default Judgment were sent by email to Defendants' counsel. He responded on November 15, 2016, stating an answer was being prepared and requested Plaintiff to set aside the default. Plaintiff's counsel declined to do so.

Service by Publication was authorized by Order dated September 12, 2016 after the Sheriff's Department attempted service upon Defendants on eight occasions and noted activity that suggested Defendants were avoiding service of process. Service was also attempted by United Parcel Service on four occasions. Defendants were served by publication in the Sun Sentinel newspaper in the area of Defendants' residence in Florida once a week for three consecutive weeks completed on October 6, 2016. Upon receipt of the documents from Plaintiff's counsel on October 24, 2016, Defendants did not request an extension of time to file an Answer and did not communicate with Plaintiff's counsel.

Defendants contend the Default Judgment should not have been entered and should be set aside because Defendants' Answer was pending and Plaintiff sent the Motion for Default Judgment to circuit court without an examination under oath, which is required under Rule 55(b)(4), SCRCP. Further, Defendants contend they acted swiftly and promptly to defend their rights in the case by notifying Plaintiff of their representation in the case. Upon learning of the entry of default, Defendants' counsel made a formal appearance and promptly filed an Answer and Motion to Set Aside Entry of Default.

Defendants rely on Rule 55(b)(4), SCRCP, as a basis to set aside the default judgment. It states:

In actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined on oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.

However, Rule 55(b)(4) does not apply in this case. An examination under oath was not necessary because the Complaint alleges the money owed to Plaintiff has not been paid and is being held in

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trust by Defendant Rikard & Protopapas, a law firm. An attachment to levy on property of Defendants was not necessary because the money was being held in the law firm trust account. Plaintiff alleges Defendants were represented by an attorney when the dispute arose, refused to negotiate with Plaintiff, acknowledged they were aware of Plaintiff's charging lien, and evaded service. Sufficient evidence existed at the time the default judgment was entered to demonstrate that Plaintiff complied with the requirements for the issuance of the judgment and that Defendants' due process rights were protected.

Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009). Once a default judgment has been entered, a party seeking to be relieved from the judgment must do so under Rule 60(b), SCRPC. *Id.* at 608, 681 S.E.2d at 888. Defendants argue the default judgment should be set aside under Rule 60(b)(1) which requires a showing of mistake, inadvertence, excusable neglect, or surprise. Rule 60(b)(1), SCRPC. The party seeking to set aside the judgment has the burden of presenting evidence proving the facts essential to entitle him to relief. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct. App. 2008). The decision whether to set aside a default judgment lies solely within the sound discretion of the trial court. *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 490, 713 S.E.2d 335, 337 (Ct. App. 2011).

Regarding the timing for relief, Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016, after an Order for Default Judgement was signed and subsequently filed on November 29, 2016. Defendants filed an Answer five weeks after service by publication was completed and three weeks after proof of service on October 6, 2016 had been provided by Plaintiff. The filing of the motion was certainly prompt. However, Defendants' failed to establish a basis to set aside the default under Rule 60(b)(1). Even when Plaintiff provided the documents evidencing the filing of the action and service, no efforts were made by Defendants to answer within the remaining time allotted or to request additional time to respond to the Complaint. Defendants make no argument to show mistake, inadvertence, excusable neglect, or surprise.

Courts have held that in order to obtain relief from a default judgment under Rule 60(b)(1), not only must the movant make a proper showing he is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense. *McClurg*

v. Deaton, 380 S.C. 563, 574, 671 S.E.2d 87, 93 (Ct. App. 2008). A meritorious defense need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence. *Id.* at 575, 671 S.E.2d at 94. Defendants' Answer alleges defenses of unclean hands, misrepresentation, fraud, failure to mitigate damages, and estoppel without any factual basis. Defendants do not provide any explanation as to how these defenses are meritorious.

Defendants argue there is no prejudice to Plaintiff if the default judgment in this case is determined on the merits. However, Defendants have been holding \$35,132.55 allegedly owed to Plaintiff in trust since June 5, 2015. Defendants have not provided a satisfactory explanation for the default and have not presented any evidence proving the facts essential to entitle them to relief. Accordingly, Defendants are not entitled to relief on any of the grounds specified under Rule 60(b)(1), SCRCP.

ORDER

IT IS HEREBY ORDERED, Defendants Stephen Bretzinger and Lindsey Holsinger Motion to Set Aside is Default Judgment is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

September 21, 2017
Columbia, South Carolina

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EXHIBIT D

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsey Holsinger,	)	Civil Action No. 0:13-cv-02771-JMC
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Crestwood Homes, LLC d/b/a Scenic	)	<u>ORDER AND OPINION</u>
Homes, Paul Meng, James Ray, Reggie	)	
Lee McGaugh, Susan Meng, Mary Beth	)	
McGaugh, and Susan Ray,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Stephen Bretzinger and Lindsey Holsinger (collectively "Plaintiffs") filed this action seeking damages from Defendants Crestwood Homes, LLC d/b/a Scenic Homes, Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray (collectively "Defendants") resulting from their construction and sale to Plaintiffs of an allegedly defective house located at 2055 Covered Bridge Court, York County, South Carolina (the "Property"). (ECF No. 1.) Plaintiffs assert claims under state law against Defendants for breach of contract to construct an improvement to real property, breach of fiduciary duties, breach of the implied covenant of good faith and fair dealing, fraud, breach of contract accompanied by a fraudulent act, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -560 (1985 & Supp. 2011), fraudulent conveyance, unjust enrichment, civil conspiracy, breach of warranty, negligent construction, negligence per se, gross negligence, rescission, to void a contract for unconscionability, aiding and abetting wrongdoing, to pierce the corporate veil, and to collect on a judgment. (*Id.* at 7-22.)

This matter is before the court pursuant to Defendants' Motion to Enforce Settlement Agreement. (ECF No. 55.) Plaintiffs oppose the pending Motion to Enforce Settlement. (ECF

No. 62.) For the reasons set forth below, the court **GRANTS** Defendants' Motion to Enforce Settlement.

I. RELEVANT BACKGROUND TO PENDING MOTION

The following relevant facts taken from the complaint are assumed to be true only for the purposes of the pending motion. Crestwood Homes, LLC ("Crestwood") is an "association of persons" that includes "Individual Defendants" Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray. (ECF No. 1 at 6 ¶ 44.) This action arises from a course of events that allegedly resulted in Plaintiffs entering into a residential contract with Crestwood on or about June 28, 2008 to purchase the Property. (*Id.* at 3 ¶ 24.) After closing on and receiving title to the Property, Plaintiffs became aware of specified defects in the Property. (*Id.* at 4 ¶¶ 27-28.) Plaintiffs allege that after they provided notice of the defects in the Property to Crestwood, it failed to remedy said defects in the Property thereby resulting in the Property sustaining significant additional damage. (*Id.* at 4 ¶ 29, 5 ¶¶ 31-32.)

On July 29, 2010, Plaintiffs filed a lawsuit against Crestwood in the York County (South Carolina) Court of Common Pleas. (ECF No. 1-2.) Crestwood did not answer or otherwise respond to the lawsuit. After entering default against Crestwood on or about January 18, 2011, the state court entered judgment for Plaintiffs on July 8, 2011 in the amount of \$876,000.00 against Crestwood. (ECF No. 1-4.)

Thereafter, on October 10, 2013, Plaintiffs filed a Complaint in this court alleging the aforementioned causes of action against Defendants. (ECF No. 1.) On November 5, 2013, Crestwood answered the Complaint generally denying its allegations. (ECF No. 9.) On November 18, 2013, Individual Defendants filed Motions to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2). (ECF No. 16.) On September 5, 2014, the court denied

without prejudice Individual Defendants' Motions to Dismiss with leave to re-file after a period of limited jurisdictional discovery. (ECF No. 44.)

On September 26, 2014, the parties allegedly reached an agreement for the complete and final resolution and settlement of this case (the "Settlement Agreement"). (See ECF No. 55-1 at 5 ("They [Plaintiffs] accept and will settle for \$100,000.00" in exchange for a global release).) The Settlement Agreement and essential terms of the same were memorialized using the following language in an e-mail sent by Plaintiffs' counsel of record, Neal Truslow ("Truslow"), to Defendants' counsel on September 29, 2014:

To confirm the status of where we are:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(Id. at 2.) On or about October 7, 2014, Defendants' counsel prepared more formal settlement and release documents and provided the same to Plaintiffs' counsel. (ECF No. 55-2 at 3.) On October 29, 2014, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs "desire[d] to nullify the settlement" and dismiss the case without prejudice. (ECF No. 55-3 at 2.)

On November 5, 2014, Defendants filed the instant Motion to Enforce Settlement. (ECF No. 55.) Plaintiffs filed their Response in Opposition to Defendants' Motion to Enforce Settlement on November 24, 2014. (ECF No. 62.) On December 9, 2014, the court heard argument from the parties on the pending Motion to Enforce Settlement. (ECF No. 71.)

II. LEGAL STANDARD AND ANALYSIS

A. Standard for Enforcing Settlement

“Settlement agreements are matters of contract law, and contract law principles apply.” Patel v. Barot, 15 F. Supp. 3d 648, 653 (E.D. Va. 2014). “Because exercise of the authority to enforce settlement agreements depends on the parties’ agreement to a complete settlement, the court cannot enforce a settlement until it concludes that a complete agreement has been reached and determines the terms and conditions of that agreement.” Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002) (citing Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Therefore, “to exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions.” Id. at 540–41 (citing Moore v. Beaufort Cnty., 936 F.2d 159, 162 (4th Cir. 1991); Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Accordingly, “if an agreement for complete settlement of the underlying litigation, or part of it, has been reached and its terms and conditions can be determined, the court may enforce the agreement summarily as long as the excuse for nonperformance of the agreement is ‘comparatively insubstantial.’” Id. at 540 (quoting Millner v. Norfolk & W. Ry. Co., 643 F.2d 1005, 1009 (4th Cir. 1981)). However, “[i]f there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreement’s terms, the district court may not enforce a settlement agreement summarily,” and it must instead conduct a hearing in order to resolve that dispute and make factual findings. Id. at 541 (citations omitted).

B. The Parties’ Arguments

I. Defendants

Defendants move the court to enforce an alleged settlement with Plaintiffs containing the

following terms and conditions:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(ECF No. 55-1 at 2.) In support of their Motion to Enforce Settlement, Defendants argue that Plaintiffs' counsel "irrefutably confirmed the clear and ambiguous terms of the [S]ettlement [A]greement," and the acts of an attorney are binding on the client. (ECF No. 55 at 1, 3 (citing Sadighi v. Daghighfekr, 66 F. Supp. 2d 752, 761 (D.S.C. 1999) (citation omitted)).) Defendants further argue that "[t]he writings between counsel of record in this case unequivocally demonstrate that: (1) the parties reached a complete agreement; and (2) the writings set forth the essential terms and conditions of the Settlement Agreement." (ECF No. 55 at 3.) As a result, "Plaintiffs are bound by the actions of their attorneys" and the "Settlement Agreement is binding and enforceable upon the Plaintiffs." (Id. at 3–4.) Based on the foregoing, Defendants request that the court enforce the Settlement Agreement and dismiss this action. (Id. at 4.)

2. *Plaintiffs*

Plaintiffs oppose the Motion to Enforce Settlement asserting that it should be denied because the emails attached to Defendants' motion only "demonstrate that there was no commitment [to a settlement] and that critical terms were to be negotiated prior to any commitment." (ECF No. 62 at 1.) Plaintiffs next assert that their counsel "did not have authority to bind either of the Plaintiffs to a settlement agreement" or "forfeit an outstanding State Court judgment against the Defendants." (Id. at 7.) Finally, Plaintiffs assert that Defendants' evidence

does not support a finding that Plaintiffs displayed the intent “to be bound to any purported settlement.” (*Id.* at 8.) As a result, Plaintiffs beseech the court to deny Defendants’ Motion to Enforce Settlement. (*Id.*)

C. The Court’s Review

Upon consideration of the parties’ arguments, the court finds that the terms of the parties’ alleged settlement are clearly set forth in the parties’ exhibits¹ and, therefore, the court should enforce the settlement unless it determines that the parties failed to reach a complete agreement. As to this issue, Plaintiffs argue that their counsel did not have either actual authority or apparent authority to settle the matter. (ECF No. 62 at 7.) As support for their argument, Plaintiffs submitted affidavits, which specifically stated that their attorneys were not authorized to settle the case (ECF Nos. 62-4 & 62-5), and cited to Rule 43(k), SCRCP, which rule provides that “[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.”

In assessing the merits of Plaintiffs’ argument, the court observes that an attorney’s “authority to negotiate” on behalf of his client “is far different from the authority to agree to a specific settlement.” Auvil v. Grafton Homes, Inc., 92 F.3d 226, 231 (4th Cir. 1996). “It is generally accepted that when a client retains an attorney to represent him in litigation, absent an express agreement to the contrary, the attorney has implied authority to conduct the litigation and to negotiate its resolution.” *Id.* at 229–230. Moreover, under South Carolina law, absent fraud or mistake, counsel of record has the authority to settle litigation on behalf of their client.

¹ Defendants will pay \$100,000.00 to Plaintiffs in exchange for a full release of all claims. (ECF No. 55-1 at 2.)

Arnold v. Yarborough, 316 S.E.2d 416, 417 (S.C. Ct. App. 1984) (“Acts of an attorney are directly attributable to and binding upon the client.”) (Citation omitted); see also Poore v. Poore, 89 S.E. 569, 571 (S.C. 1916) (“It will never do, in the absence of fraud, to allow the undoubted attorneys of record for a party to a suit to enter into a solemn agreement to settle and adjust the issues and subject-matter of a suit and then later, if it is done, because for any reason the party is dissatisfied, to allow him to repudiate this agreement and employ different counsel to upset and set aside what his first counsel has done.”).

Upon review, the court finds that Truslow, Plaintiffs’ attorney of record, bound Plaintiffs when he stated his acknowledgement to the agreed upon terms of the settlement.² (See ECF No. 55-1 at 2 (“To confirm the status of where we are: Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case I’ll be sure to consent [to a stipulation of dismissal] once we’ve got funds and you’ve got a signed release.”).) Under South Carolina law, Truslow’s actions bind Plaintiffs since there has not been a showing of fraud. Arnold, 316 S.E. 2d at 417 (“Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud.”) (Citation omitted). In this regard, neither Plaintiffs’ affidavits nor Rule 43(k), SCRCP, require the court to find otherwise. See, e.g., Surety Ins. Co. of Cal. v. Williams, 729 F.2d 581, 583 (8th Cir. 1984) (“We think that in meeting that burden the Williamses may not rely on their conclusory affidavit,

² There were communications relevant to the settlement made by an attorney, Peter Nosal, who was not counsel of record for Plaintiffs in this matter. (See, e.g., ECF No. 55-1 at 4 (“I understand your concerns. I have explained to them that the settlement will be contingent of a full release of any and all claims against all defendants. Pete.”) & 5 (“They accept and will settle for \$100,000.00. They have some concerns about the language in the release, but I am confident we can work that out. Pete.”).) The court does not rely on Nosal’s communications to establish Plaintiffs’ agreement to settle the matter. See, e.g., Androlonis v. United States, No. 79-CV-847, 1995 WL 46331, at 2 (N.D.N.Y. Jan. 25, 1995) (“First, the court holds that no binding settlement agreement existed. Attorney Buskus was not the attorney of record in the district court, and counsel for the United States should have realized that agreement of the counsel of record was required before a settlement became binding.”).

but must establish through competent evidence that their attorney lacked actual, implied, or apparent authority to stipulate to an entry of judgment.”); Nationwide Mut. Ins. Co. v. Ruff, C/A No. 0:11-1011-CMC, 2011 WL 2491345, at *3 (D.S.C. June 22, 2011) (“[T]he South Carolina Rules of Civil Procedure govern actions brought in South Carolina courts, not federal courts, ...”); United States v. Hemmons, 774 F. Supp. 346, 350 (E.D. Pa. 1991) (“State rules of civil procedure do not apply in a federal court.”) (citing, e.g., U.S. Const. art. IV). Accordingly, the court concludes that the parties did reach a complete agreement to settle this matter, and the terms of that agreement are clearly discernible from the record.

III. CONCLUSION

For the reasons set forth above, the court hereby **GRANTS** Defendants’ Motion to Enforce Settlement Agreement. (ECF No. 55.) The court further **ORDERS** the parties to fulfill their obligations under the Settlement Agreement within 30 days of the date of entry of this Order. This action is hereby **DISMISSED**.

IT IS SO ORDERED.



United States District Judge

May 7, 2015
Columbia, South Carolina

EXHIBIT E

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsay
Holsinger,

CASE NO: 0:13-CV-2771-JMC

Plaintiffs,

vs.

**AFFIDAVIT OF
LINDSAY BRETZINGER**

Crestwood Homes, LLC d/b/a Scenic
Homes, Paul Meng, James Ray,
Reggie Lee McGaugh, Susan Meng,
Mary Beth McGaugh, and Susan Ray,

Defendants.

PERSONALLY APPEARED BEFORE ME, LINDSAY HOLSINGER, who after
being duly sworn, deposes and states:

1. I am over the age of eighteen and legally qualified to testify under oath.
2. My testimony contained herein is made upon personal knowledge except
as to those things that are testified as to upon information and belief. As to those things
testified to upon information and belief, I reasonably believe them to be true.
3. I have reviewed the allegations of the Complaint filed herewith and believe
the allegations to be true and correct to the best of my knowledge.
4. I have reviewed the factual allegations of the Defendants' motion to
enforce settlement.
5. I have not agreed to settle the case in this matter nor have I authorized
anyone else to settle the case on my behalf.

EXHIBIT 5 page 1

6. It is my understanding my husband received an email on or about September 26, 2014 requesting permission to settle the case for the sum of one hundred thousand dollars (\$100,000.00).

7. It was my understanding that any settlement in this case would involve further negotiation of the particular and specific terms related to the settlement.

8. When I learned of this offer, I did not understand and I was not informed such a settlement would require me to give up all of my claims against all of the defendants named in this action.

9. When I learned of this offer, I did not understand and was not informed such a settlement would require me to give up the existing State court judgment against Crestwood Homes, LLC D/B/A Scenic Homes.

10. I have always taken the position that I would not voluntarily sign away my State court judgment against Crestwood Homes, LLC D/B/A/ Scenic Homes.

11. I specifically instructed counsel I would not settle the case under such a condition. By way of illustration, Defendants previously approached me and my husband about settling the case and we rejected those overtures as well.

12. Mistery Truslow and Nosal were not authorized to settle this case without my express permission.

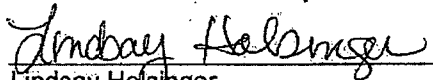
13. I have not given anyone my permission to settle this case. I have not authorized anyone to communicate my willingness to completely dismiss all of these claims and the outstanding judgment.

14. When I became aware of the expectation that I would be required to surrender and abandon all of my claims against these Defendants, including the

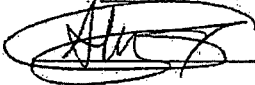
outstanding judgment, I immediately reiterated my longstanding rejection of such a resolution.

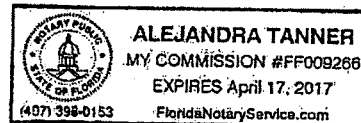
15. I have never agreed, either orally or in writing, to give up all of my claims against the Defendants.

FURTHER, AFFIANT SAYETH NOT.


Lindsay Holsinger

SWORN AND SUBSCRIBED BEFORE ME
THIS 24 DAY OF NOVEMBER 2014.





NOTARY PUBLIC FOR Broward County, FL

MY COMMISSION EXPIRES: 17 April 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsay
Holsinger,

Plaintiffs,

vs.

Crestwood Homes, LLC d/b/a Scenic
Homes, Paul Meng, James Ray,
Reggie Lee McGaugh, Susan Meng,
Mary Beth McGaugh, and Susan Ray,

Defendants.

CASE NO: 0:13-CV-2771-JMC

**AFFIDAVIT OF
STEPHEN BRETZINGER**

PERSONALLY APPEARED BEFORE ME, STEPHEN BRETZINGER, who after
being duly sworn, deposes and states:

1. I am over the age of eighteen and legally qualified to testify under oath.
2. My testimony contained herein is made upon personal knowledge except
as to those things that are testified as to upon information and belief. As to those things
testified to upon information and belief, I reasonably believe them to be true.
3. I have reviewed the allegations of the Complaint filed herewith and believe
the allegations to be true and correct to the best of my knowledge.
4. I have reviewed the factual allegations of the Defendants' motion to
enforce settlement.
5. I have not agreed to settle the case in this matter.
6. On September 26, 2014 I received an email requesting my permission to
settle the case for the sum of one hundred thousand dollars (\$100,000.00).

EXHIBIT 4 page 1

7. It was my understanding any such settlement would involve further negotiation of the particular and specific terms related to any settlement.

8. I did not understand that such a settlement would require me to give up all of my claims against all of the defendants named in this action.

9. I did not understand that such a settlement would require me to give up the existing State court judgment against Crestwood Homes, LLC D/B/A Scenic Homes.

10. I was not, and am not, willing to give up my claims and causes of action against these defendants, including the outstanding judgment against the Crestwood defendant.

11. Dismissal of the outstanding judgment and all of the claims was a material and significant term to me.

12. I specifically instructed counsel that any such settlement would only be pursuant to my terms and conditions.

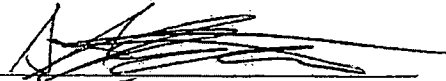
13. Mr. Truslow and Mr. Nosal were not authorized to settle this case. Nor were they authorized to communicate my willingness to completely dismiss all of these claims and the outstanding judgment.

14. I have not given anyone my permission to settle this case. I have not authorized anyone to communicate my willingness to completely dismiss all of these claims and the outstanding judgment.

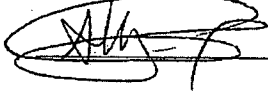
15. When I became aware of the expectation that I would give up all of my claims against these Defendants, I immediately reiterated my rejection of such a resolution.

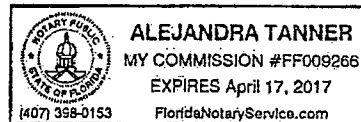
16. I have never agreed either orally or in writing to give up all of my claims against the Defendants as set forth within the proposed settlement agreement provided for my review.

FURTHER, AFFIANT SAYETH NOT.


Stephen Bretzinger

SWORN AND SUBSCRIBED BEFORE ME
THIS 24 DAY OF NOVEMBER 2014.





NOTARY PUBLIC FOR Broward County, FL

MY COMMISSION EXPIRES: 17 April 2017

EXHIBIT F

REQUEST TO ADMIT

Reserving all rights to enforce the default judgment already entered in this matter, and solely for purposes of the issues currently pending before the Court in motions filed on behalf of defendants Bretinger and Holsinger (hereafter “these defendants”), Plaintiff serves the following Requests to Admit upon defendants Bretzinger and Holsinger, and require that answers be timely served upon the undersigned in accordance with Rule 36, SCRCp, or suffer the consequences of failing to answer as set forth in the rule. You are cautioned to be aware of the restrictions placed upon your failure to answer or avoid admitting the following, as set forth in Rule 36.

1. The attached email dated August 22, 2016 accurately represents instructions given by these defendants, or either of them, to Peter Protopapas sometime prior to August 22, 2016.
2. These defendants were aware no later than August 22, 2016 that this lawsuit had been filed and service upon them was being attempted.

3. These defendants have avoided service in this matter.
4. These defendants were aware that service by publication had been authorized by this Court prior to October 8, 2016.
5. These defendants had actual notice of this litigation no later than October 8, 2016.
6. These defendants had received a copy of the complaint in this matter no later than November 1, 2016.
7. These defendants intend to delay these proceedings.
8. These defendants lack a defense to this action.
9. These defendants have received all settlement funds recovered by Plaintiff on their behalf.
10. These defendants are attempting to avoid paying an attorney fee for work that performed for them in connection with the collection of a judgment.

Desa Ballard

Desa Ballard
Ballard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

January 5, 2017

ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow	)	Case No.: 2016-CP-40-3728
	)	
Plaintiff	)	PLAINTIFF'S REQUEST FOR
	)	PRODUCTION
vs.	)	
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	
	)	

Reserving all rights under the default judgment which has already been entered in this action, the Plaintiff herein submits the following requests for production to the Defendants Stephen Bretzinger and Lindsey Holsinger. Plaintiff incorporates the provisions of Rule 34, SCRCF, and the definitions and instructions contained therein. In addition, Plaintiff submits the following:

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "Defendant" or "these defendants" shall mean one or both Stephen Bretzinger and/or Lindsey Holsinger, as well as all persons acting or purporting to act on behalf of either of them, including lawyers, whether employed directly or indirectly, as an independent contractor, volunteer. For any purpose relevant to these Interrogatories it shall also include attorneys, accountants, agents, or family members including but not limited to Peter Protopapas.
2. "Person" shall include any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.
3. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, electronic data, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, electronic or computer data bases or printouts, sketches, package

inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control, or subject to the control of the defendants or their attorneys whether such document is stored in word processing files, calendaring program data, e-mails, hard drives, mobile electronic devices including mobile telephones, computer discs, portable drives, hard drives in copier machines, hard drives in fax machines and other computer logs or images of items that might constitute "documents" within the definition set forth herein. This includes materials of any kind stored on portable electronic devices that are not presently in the possession of these defendants.

5. "Computer" shall include, but is not limited to, microcomputers (also known as personal computers or desktops), laptop computers, portable computers, personal digital assistants, Smart phones, tablets, minicomputers and mainframe computers.

6. "Electronic data" means all information stored in a digital format. Electronic data includes, but is not limited to, electronic mail messages and attachments, contacts, journal entries, calendar entries, word processing documents, spreadsheets, databases including all records and fields and structural information, charts, graphs, and any and all miscellaneous files responsive to the following requests. The responding party is expected to search for any and all information stored on hard disks, floppy disks, CDs, DVDs, USB devices, Personal Digital Assistants and Smart Phones (such as iPhones, Androids, Microsoft Surface, iPads, Palm Pilots, Blackberrys and Treos), tablets, and in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with the information described above.

7. "Evidentiary Image" means a true bit-stream copy of the data requested. "Deleted File" means any electronic data file that has been erased or deleted from the electronic media on which it resided.

8. "Prior litigation" means a matter entitled Stephen Bretzinger and Lindsey Holsinger v. Crestwood Homes, LLC et al. Case No. 0:13-cv-01771-JMC that was pending and later resolved in the United States District Court for the District of South Carolina and the distribution of settlement proceeds from that action.

INSTRUCTIONS

A. All paper copies, documents and electronic data related to prior litigation of a matter entitled Stephen Bretzinger and Lindsey Holsinger v. Crestwood Homes, LLC et al. Case No. 0:13-cv-01771-JMC and any settlement proceeds received from that litigation, including any correspondence through the present date must be preserved. Please insure that all current back-up tapes, disks or drives are not rewritten and no mobile phones used by you are

discarded or altered. Stop any rotation, alteration and/or destruction of electronic media that may result in the alteration or loss of any electronic data relating to the issues in this lawsuit. Do not alter and/or erase active, deleted files or file fragments on any electronic media that may have any relation to this matter. Do not conduct any maintenance such as defragging, reformatting or upgrading any hard drives that may contain data relevant to this litigation. Do not dispose of any electronic media storage devices replaced due to failure and/or upgrade that may contain electronic data having any relation to this matter.

- B. If all of the information furnished in response to all or any part of a Request to Produce is not within your personal custody or control, or within the custody or control of your present attorneys, identify each person or entity who is known to or believed to have custody or control of any information or document requested as well any person or entity to whom any part of the information has previously been furnished or provided.
- C. If objections are entered to all or any part of a request to produce, state the specific grounds for the objection. Answer the request to produce to the extent to which there is no objection.
- D. If a privilege is asserted concerning all or any part of the information requested by a request to produce, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.
- E. Electronically-stored information should be produced on digital media in PDF format or a format that is reasonably usable.
- F. If electronically-stored information cannot be produced in PDF format or a format that is reasonably usable, produce the electronically-stored on digital media along with data with a limited use copy of the necessary software to enable Petitioner to view it.
- G. The following requests to produce shall be deemed to continue from the time of service until the time of final conclusion of the case so that information sought which comes your attention or knowledge or the attention or knowledge of your representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.
- H. Regardless of the noun, pronoun or other designation, if any, used in an request to produce to describe the person or entity to whom it is directed or about whom it is concerned, answers to each of the requests to produce shall include all responsive information known or available about such person or entity.

Request No. 1: Any and all of your bank statements, deposit slips, electronic copies of checks or other instruments reflecting receipt by you of any settlement proceeds from the prior litigation including but not limited to any funds paid to or received by Rikard and Protopapas,, LLC in the amount of \$100,000.00 from Builders Insurance Group on behalf of insured Scenic

Homes, in check number 0001166045. A copy of this check is attached hereto and incorporated herein as Exhibit A to these Request to Produce.

Request No. 2: Any and all of your bank statements, deposit slips, checks, electronic copies, debit card entries, credit card receipts or statements or other documents or instruments reflecting the disbursement by you or on your behalf of any of the funds referred to in Request No. 1.

Request No. 3: Any and all correspondence exchanged by and between you and/or the plaintiff and/or any officer or agent of Rikard and Protopapas LLC related to this matter or the prior litigation, reserving of course any documents which are privileged but as to those produce a privilege log.

Request No. 4: Any and all copies of the complaint in this action received by you from any source including any envelope in which the copy was received or email to which the complaint was attached.

Plaintiff reserves the right to submit additional request production of documents or interrogatories after receipt of complete responses to these requests to produce. This reservation of rights does not limit the discovery which may be undertaken by the Plaintiff in this action.

Desa Ballard

Desa Ballard

Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

ATTORNEYS FOR PLAINTIFF

January 5, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-3728

Neal Truslow)

Plaintiff,)

vs.)

Stephen Bretzinger,)

Lindsey Holsinger, and)

Rikard & Protopapas, LLC)

Defendants)

**PLAINTIFF'S FIRST
INTERROGATORIES TO DEFENDANTS
STEPHEN BRETZINGER AND LINDSEY
HOLSINGER**

The Plaintiff, by and through the undersigned attorneys, hereby require the Defendant, Stephen Bretzinger and Lindsey Holsinger to answer under oath the Interrogatories hereinafter set forth within thirty (30) days after the serving hereof in accordance with Rule 33 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "plaintiff(s)" shall mean defendant(s) or either of them, or any pertinent predecessors, successor, or subsidiary thereof, their employees, agents, servants, officers, directors, or representatives, as well as all persons acting or purporting to act on their behalf for any purpose relevant to these Interrogatories.

2. "Person" shall mean any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.

3. "Identify" or "identity", when used in reference to a natural person, shall require you to state (a) his full name, (b) his present or last known address, and (c) his present or last known employer and job title. When used in reference to a corporation or business entity, "identify" or "identity" shall require you to state (a) the full name of the corporation or business entity, (b) the present or last known address, and (c) the principal place of business and state of incorporation. When used in reference to a document, "identify" or "identity" shall require you to state (a) the date of such document, (b) the type of document, (c) the present location of such document or copies of such document, and (d) a brief summary of the contents of such document.

4. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, computer data bases or printouts, sketches, package inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control, or subject to the control of the defendants or their attorneys.

INSTRUCTIONS

1. If all of the information furnished in response to all or any part of an Interrogatory is not within the personal knowledge of the defendants or her attorneys, identify each person to whom all or any part of the information furnished is a matter of personal knowledge or each person who communicated to the defendants or her attorneys all or any part of the information furnished.

2. If the answer to all or any part of an Interrogatory is not presently known or available, include a statement to that effect.

3. If you do not have all or any part of the information requested in an Interrogatory and are unable to obtain it within the time permitted by the South Carolina Rules of Procedure, state the information to the best of your knowledge upon information and belief and identify the source of that information.

4. If objections are entered to all or any part of an Interrogatory, state the specific grounds for the objection and answer such Interrogatory to the extent to which there is no objection.

5. If a privilege is asserted concerning all or any part of the information requested by an Interrogatory, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.

6. For purposes of the interrogatories set forth herein, any attorney-client or work product privilege by and between the defendants and the plaintiff is expressly waived.

7. The following Interrogatories shall be deemed to continue from the time of service until the time of trial of the case so that information sought which comes to the knowledge of said party, his/her representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.

INTERROGATORIES

INTERROGATORY NO. 1: Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2: Set forth a list of photographs, plate, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

INTERROGATORY NO. 3: List the names and addresses of any witnesses you plan to use to support your claim that you have a meritorious defense to this action.

INTERROGATORY NO. 4: For each person known to the parties or counsel to be a witness concerning the service of the summons and complaint, the entry of default, or the existence of a meritorious defense, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 5: Identify all email addresses used by each of the defendants, both personally and for business use, that you have used at any time since January 1, 2016. As to each:

(a) List all email software and versions presently and previously used by you and the dates of use from January 1, 2016 to the present.

(b) Identify all users you know of who have generated email related to the subject matter of this litigation.

(c) Identify by sender and recipient any and all email messages you know of, including the creation date, the recipient, and the sender, relating to, referencing or relevant to

the service of the pleadings in this case and/or a meritorious defense you intend to assert, and provide the substantive content of each. In lieu of providing the substantive content, you may provide a screen shot or copy of each email responsive to this request.

INTERROGATORY NO. 6: Identify each cell phone or portable electronic device used by either of the defendants at any time during since January 1, 2016, and as to each:

- (a) Identify the phone number(s) for that device.
- (b) Identify the carrier for each telephone and the account number(s) for all accounts which provide service for that device.
- (c) If you have changed electronic devices at any time since January 1, 2016, identify the location of the prior electronic device used by you.
- (d) Identify all persons or entities with whom you have exchanged or received text messages from at any time since January 1, 2016 relating to, referencing or relevant to the service of the pleadings in this case and/or a meritorious defense you intend to assert.
- (e) Identify by date and party(s) the sender and/or recipient, date of the text message and content of each text message that is responsive to this request. In lieu of providing the substantive content, you may provide a screen shot or copy of each email responsive to this request.



Desa Ballard
Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
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desab@desaballard.com
harvey@desaballard.com

COUNSEL FOR PLAINTIFF

February 3, 2017

I, Beth Cogan, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Plaintiff First Interrogatories on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.
Date: 2/3/17 Signed: Beth K Cogan

Page 4 of 4

EXHIBIT G

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.:2016-CP-40-03728

Neal Truslow

Plaintiff,

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant.

ORDER
FOR SERVICE
BY PUBLICATION
JANETTE W. MCBRIDE
CLERK OF COURT
2016 SEP 12 PM 1:12
RICHLAND COUNTY
FILED

This matter comes before me upon the Motion of the attorney for Plaintiff, Harvey M. Watson III, for an Order for Service by Publication pursuant to S.C. Code § 15-9-710.

It appears that there is just cause for granting this Motion, therefore,

IT IS HEREBY ORDERED that service upon the Defendants Stephen Bretzinger and Lindsey Holsinger be made by publication in the SunSentinel newspaper located in Palm Beach County, FL, once a week for three weeks.

IT IS SO ORDERED.

Jeanette W. McBride
Jeanette W. McBride
Clerk of Court

Dated: 9/12/16
Richland County, South Carolina

Motion to Alter or Amend Order Denying Set Aside Default Judgment,
with Exhibits, filed on October 2, 2017

STATE OF SOUTH CAROLINA

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Neal Truslow,

Case No.: 2016-CP-40-03728

Plaintiff,

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO ALTER/AMEND ORDER
DENYING SET ASIDE
DEFAULT JUDGMENT**

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

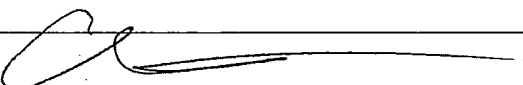
Defendants.

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Default Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

metts / 10/21/17

2017 OCT -2 AM 9:57
JEANETTE W. MCBRIDE
C.C.P. & G.S.

RICHLAND COUNTY
FILED

 Signature of Attorney for ☐ Plaintiff/ ☒ Defendant	
SECTION III: Motion Fee	
X PAID – AMOUNT: \$25.00 ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Convection Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow,	)	Case No.: 2016-CP-40-03728
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANTS STEPHEN
	)	BRETZINGER and LINDSEY
Stephen Bretzinger, Lindsey Holsinger,	)	HOLSINGER'S MOTION TO
and Rikard & Protopapas, LLC.	)	ALTER OR AMEND ORDER
	)	DENYING MOTION TO SET
Defendants.	)	ASIDE DEFAULT JUDGMENT

2017 OCT -2 AM 9:59
 RICHLAND COUNTY
 FILED

Pursuant to Rule 60(b) and Rule 59, Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to alter or amend its Order denying their Motion to Set Aside Default Judgment. In support of their motion, Defendants show the Court as follows:

1. Plaintiff attempted to serve Defendants via publication. The time to respond to the Summons and Complaint expired on November 7, 2016.
2. Defendants' counsel mistakenly calendared the due date on November 17, 2016.
3. On November 14, 2016, Defendants' counsel received a copy of the Affidavit of Default and a Motion for Default Judgment. That following day, Defendants' counsel e-mailed Defendants' Answer and asked Plaintiff's counsel to consent to set aside the entry of default. Plaintiff's counsel refused.
4. On November 16, 2016, Defendants served their Motion to Set Aside Entry of Default. True and accurate copies of the Answer and Motion to Set Aside Entry of Default are attached hereto as **Exhibit A** and **Exhibit B**, respectively, and incorporated

herein by reference. The Clerk filed the Answer and Motion to Set Aside Entry of Default on November 18, 2016.

5. On November 18, 2016, the Court signed a Default Judgment against Defendants, without addressing Defendants' pending Motion to Set Aside Entry of Default.

6. The Default Judgment was not filed until November 29, 2016 and Defendants did not learn of the Default Judgment until December 5, 2016.

7. Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016. A true and accurate copy of the Motion to Set Aside Default Judgment is attached hereto as **Exhibit C** and incorporated herein by reference.

8. On July 11, 2017, this Court heard oral arguments on Defendants' Motion to Set Aside Entry of Default and Motion to Set Aside Default Judgment.

9. On September 21, 2017, this Court entered an Order denying Defendants' Motion to Set Aside Default Judgment. A true and accurate copy of the Order is attached hereto as **Exhibit D** and incorporated herein by reference.

10. A default judgment should not have been entered against Defendants because, at the time the Default Judgment was entered, Defendants Motion to Set Aside Entry of Default was pending and Defendants had filed an Answer.

11. It is undisputed that the Court was unaware of Defendants' Motion to Set Aside Entry of Default at the time it signed the Order granting Default Judgment.

12. It is further undisputed that Defendants' were unaware that a default judgment was signed on the same day that they filed a Motion to Set Aside Entry of Default and an Answer.

13. Defendants had the right to have their pending Motion to Set Aside Entry of Default heard before the Court entered default judgment.

14. This Court's Order found that "Plaintiff's allege Defendants were represented by an attorney when the dispute arose, refused to negotiate with Plaintiff, acknowledged they were aware of Plaintiff's charging lien, and evaded service."

15. If Defendants' were represented by an attorney when the dispute arose, as the Court found, then Rule 55(b)(2) required that Plaintiff serve Defendants with written notice of the motion for default judgment at least three days prior to a hearing.

16. Moreover, Defendants, having appeared in the action on November 16, 2016, were entitled to notice and a hearing before the default judgment was entered.

17. Defendants received no notice of a hearing and no hearing was held; yet a default judgment was entered against Defendants.

18. Given that the default judgment was entered after Plaintiff knew Defendants' were represented by counsel, and Defendants' counsel appeared and filed an Answer and Motion to Set Aside Entry of Default; the default judgment should be set aside.

19. A default judgment may be set aside if the moving party can show, in pertinent part, mistake, inadvertence, surprise, excusable neglect, or that the judgment is void. S.C.R.C.P. Rule 60(b)(1) and 60(b)(4).

20. Defendants showed mistake, inadvertence, surprise or excusable neglect when they presented evidence that the delay in filing an answer was a result of their attorney mistakenly calendaring the due date for November 17, 2016 instead of November 7, 2016.

21. While the general rule is that the mistake of an attorney will be imputed to the client, this is not a hard and fast rule. *Tobias v. Rice*, 379 S.C. 357, 665 S.E.2d 216, 220 (S.C. App. 2008), *reversed on other grounds*, 386 S.C. 105, 688 S.E.2d 552 (2010). The rule should “should be applied rationally, with a fair recognition that justice to the litigants is always the polestar.” *Brown v. Vutler*, 341 S.C. 259, 554 S.E.2d 431 (S.C.App. 2001).

22. It is undisputed that Plaintiff’s counsel knew that Defendants’ retained counsel on October 24, 2016, prior to the date a responsive pleading was due. If it were not for a calendaring mistake, the Answer would have been timely filed. Instead, the Answer was served nine days late and filed 11 days late (the discrepancy a result solely of the time to mail the Answer to the Clerk of Court).

23. In determining whether to grant a motion to set aside default judgment pursuant to Rule 60(b)(1), the Court should consider the following factors: “(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *McClurg v. Denton*, 671 S.E.2d 89, 93, 380 S.C. 563, 574 (S.C. App. 2009).

24. As to factor (1): Defendants served their Answer within 10 days of the time to respond. Further, Defendants served and filed their Motion to Set Aside Entry of Default within twenty-four hours of being told that Plaintiff would not consent to set aside the entry of default and within 15 days of the time to file a responsive pleading. The Motion to Set Aside Default Judgment was filed within 23 days from the date the Defendants learned of the default judgment. Rule 60(b) allows for a motion to be made “within a reasonable time, and for reasons (1), (2), and (3) not more than one year after

the judgment, order, or proceeding was entered or taken.” S.C.R.C.P. Rule 60(b). The motion was filed well within the one-year time limit set forth in Rule 60(b).

25. As to factor (2), the existence of a meritorious defense, our courts have held “[t]o establish a meritorious defense, a party is not required to show an absolute defense.” *Microtronics, Inc. v. South Carolina Dep’t. of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223 (S.C. App. 2001). Indeed, a meritorious defense is not required to be perfect nor is it required that it prevail at trial; rather it must simply be one that is worthy of a hearing. *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (S.C. 1989).

26. Defendants presented evidence of meritorious defenses. Specifically, Defendants alleged, among other things:

- a. That they did not enter into a Contract with Plaintiff (Answer ¶ 1- 9)
- b. They never agreed to or entered into a Settlement Agreement (Answer ¶31)
- c. To the extent a Court determined that Plaintiff was entitled to damages, Defendants were entitled to an offset (Answer ¶ 19)
- d. Defendants denied that they entered into the Settlement Agreement from which Plaintiff seeks to recover his fees (Answer ¶ 31).
- e. Defendants denied that Plaintiff was assigned the entirety of the fees he is seeking to recover (Answer ¶ 40).

27. Plaintiff also submitted evidence to the Court that goes to Defendants’ meritorious defenses; including the following:

- a. A Fee Agreement attached as Exhibit A to his Complaint that, on its face does not name Plaintiff as a party to the agreement
- b. The Fee Agreement also does not establish that Plaintiff was assigned the fees as alleged by Plaintiff in Paragraph 20 of his Complaint.
- c. The order and opinion from the Federal Court citing the affidavits of both Defendants in which defendants denied that they consented to

the settlement. The Court determined that Plaintiff acted as Defendants' agent in the federal action and therefore were bound by his agreement to settle. Importantly, the Court did not determine that Defendants' authorized Plaintiff to settle the case on their behalf. A copy of the affidavits are attached hereto as **Exhibit E** and **Exhibit F** and incorporated herein by reference.

28. As to factor (3): Plaintiff has shown no prejudice he suffered by having an entry of default set aside.

- a. Plaintiff filed their Complaint on June 16, 2016, and accomplished service on November 7, 2016.
- b. Defendants served their Answer on November 16, 2016 (nine days from the deadline for the responsive pleading) and it was filed on November 18, 2016 (eleven days from the deadline for the responsive pleading).
- c. The monies that Plaintiff seeks to recover are being held in trust by Defendant Rikard and Protopapas, LLC and therefore Plaintiff faces no issue with collecting damages should he prevail.
- d. Plaintiff also engaged in discovery beyond issues surrounding the default; so he has been able to proceed with this case and will not face delay should default be set aside. A true and accurate copy of Plaintiff's discovery requests are attached hereto as **Exhibit G** and incorporated herein by reference.

29. Plaintiff has shown no prejudice suffered by this nine-day delay in responding to the Complaint.

30. Defendants have shown mistake, inadvertence, surprise, or excusable neglect. Defendants also filed a timely motion for relief; established the existence of meritorious defenses; and showed that Plaintiff will suffer no prejudice if relief is granted. Therefore, the Default Judgment should have been set aside.

31. Pursuant to Rule 60(b)(4), the judgment should also be set aside because the judgment is void. S.C.R.C.P Rule 60(b)(4).

32. There is a statutory defect in the Order of Publication rendering the judgment void because Plaintiff failed to properly serve Defendants by publication.

33. Plaintiff filed a Motion for Service by Publication pursuant to S.C. Code Section 15-9-710 *et seq.* S.C. Code Section 15-9-740 provides, in pertinent part, as follows:

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. **The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office direct to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him.** (emphasis added).

34. In order to avoid resolving litigation by default, South Carolina courts require strict compliance with publication statutes. *Caldwell v. Wiquist*, 402 S. C. 565, 575, 741 S.E.2d 583 (S.C. App. 2013).

35. The Order for Publication fails to direct that Plaintiff mail a copy of the Summons to Defendants' last known address. Moreover, there is nothing in the record to indicate that such a directive was made or that Plaintiff mailed a copy to Defendants' last known address. A true and accurate copy of the Order for Publication is attached hereto as **Exhibit H** and incorporated herein by reference.

36. Since the attempted service by publication failed to strictly comply with the statutory requirements that copy of the Summons be mailed to Defendants' last known address, the service was invalid and the Court has no personal jurisdiction over

Defendants. *BB&T v. Taylor*, 369 S.C. 548, 554-55, 633 S.E.2d 501, 504-505 (S.C. 2006).¹ The Default Judgment is, therefore, void and should have been set aside.

37. Defendants are also entitled to relief from the default judgment because Plaintiff failed to comply with Rule 55(b)(4). Rule 55(b)(4) provides, in pertinent part, that:

“[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent **at or before the time of making the application for judgment** shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.” (emphasis added)

38. The Court’s Order states that Rule 55(b)(4) does not apply in this case because the funds are being held in trust by Defendant Rikard & Protopapas so no attachment to levy on property was necessary. Rule 55(b)(4) does not contain such an exception.

39. Rather, Rule 55(b)(4) requires that Plaintiff be examined under oath about any payments made by Defendants and produce an affidavit that an attachment has been issued on Defendants’ property. It does not provide an exception to this requirement if funds are being held in a trust account.

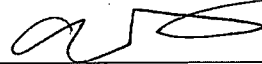
¹ Though it has no precedential value, an unpublished opinion from the South Carolina Court of Appeals held that failure to comply with the mailing requirement constitutes improper service, regardless of whether the Defendant had actual notice of the proceedings. *Trico Engineering Consultants v. Kozlowski*, Opinion No. 2010-UP-511.

40. As such, Plaintiff must comply with Rule 55(b)(4) before obtaining a default judgment. It is undisputed that no such examination occurred at or before the time of making the application for judgment, as such Plaintiff's default judgment is void and should have been set aside.

For the reasons set forth herein, Defendants request that the Court set aside the default judgment and allow this case to proceed on its merits.

This the 2nd day of October, 2017

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

2017 OCT -2 AM 9:55
FILED
RICHLAND COUNTY
CLERK OF COURT
C.C.P. & C.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on October 2, 2017 he served a copy of the forgoing **Motion to Alter or Amend Order Denying Set Aside of Default Judgment** via United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

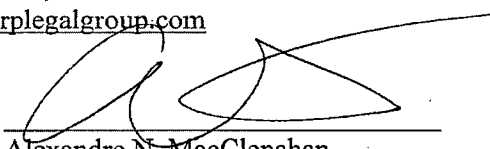

Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT A

STATE OF SOUTH CAROLINA)

FIFTH JUDICIAL CIRCUIT

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Neal Truslow,)

Case No.: 2016-CP-40-03728

Plaintiff,)

vs.)

ANSWER OF DEFENDANTS

STEPHEN BRETZINGER and

LINDSEY HOLSINGER

[Jury Trial Demanded]

Stephen Bretzinger, Lindsey Holsinger,)
and Rikard & Protopapas, LLC.)

Defendants.)

Defendants Stephen Bretzinger and Lindsey Holsinger (hereinafter collectively referred to as "Defendants") answer Plaintiff's Complaint as follows:

FIRST DEFENSE

[Motion to Dismiss – Rule 12(b)(6)]

1. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.
2. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants move to dismiss the Complaint on the grounds that Plaintiff failed to state facts sufficient to constitute a cause of action.
3. Plaintiff alleges that Defendants associated him in a federal action pursuant to a written Fee Agreement attached as **Exhibit A** to Plaintiff's Complaint.
4. Plaintiff was not associated in the Fee Agreement.
5. Pursuant to Paragraph 4 of the Fee Agreement, the law firm of Truslow and Truslow, P.A. was associated to assist with all litigation.
6. On the face of Plaintiff's own pleadings, he is not a party to any contract with Defendants and, therefore, failed to state a claim for breach of contract.

7. Defendants request that the Court dismiss Plaintiff's complaint pursuant to Rule 12(b)(6).

SECOND DEFENSE
[Alternatively – Judgment on the Pleadings]

8. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

9. Alternatively, if the Court denies Defendants Rule 12(b)(6) Motion to Dismiss, Defendants move the Court for a judgment on the pleadings on the grounds that Plaintiff's own pleadings show that Plaintiff never entered into a contract with Defendants.

THIRD DEFENSE
[Unclean Hands]

10. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

11. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOURTH DEFENSE
[Misrepresentation]

12. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

13. Defendants plead fraud and misrepresentation as a defense to the Complaint.

FIFTH DEFENSE
[Failure to Mitigate]

14. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

15. Plaintiff failed to mitigate his damages, if any.

SIXTH DEFENSE
[Estoppel]

16. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

17. Defendants plead the doctrine of estoppel.

SEVENTH DEFENSE
[Offset]

18. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

19. To the extent Plaintiff is owed any damages, which is denied, Defendants are entitled to an offset in an amount equal to the damages caused by Truslow & Truslow, P.A.'s failure to comply with the terms of the Fee Agreement.

EIGHTH DEFENSE
[Answer]

20. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

21. Defendants admit the allegations of Paragraph 1 upon information and belief.

22. Defendants admit the allegations of Paragraphs 2 and 3.

23. Defendants admit the allegations of Paragraph 4 upon information and belief.

First Cause of Action
[Breach of Contract]

24. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

25. Defendants admit the allegations of Paragraph 5.

26. Defendants admit they entered into a written fee agreement with Nosal & Jeter, LLP. Defendants are not lawyers and therefore lack sufficient knowledge as to whether the fee agreement is compliant with state law and/or consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar, and, therefore, Defendants deny those allegations. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 6.

27. Defendants admit that the fee agreement associated the law firm of Truslow and Truslow, P.A. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 7.

28. Defendants admit that a lawsuit was filed in federal court. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 8.

29. Defendants admit that the Federal Action alleged numerous causes of action against multiple defendants. Defendant admits the allegations of Paragraph 9 to the extent they comply with the express terms of the Complaint in the Federal Action. To the extent the allegations of Paragraph 9 differ from the express terms of the Complaint filed in the Federal Action, those allegations are denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 9.

30. Defendants admit that a motion for summary judgment was filed by defendants in the Federal Action and that motion was denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 10.

31. Defendants deny that they agreed to or entered into a settlement agreement in the Federal Action. Defendants admit that Truslow and Truslow, P.A entered into a settlement agreement for \$100,000.00 without consulting with Defendants and without their consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 11.

32. Defendants admit that they refused to consent to the settlement agreement that Truslow and Truslow, P.A negotiated without their knowledge or consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 12.

33. Defendants admit that Truslow and Truslow, P.A ceased representing them and that they retained the law firm of Rikard and Protopapas, LLC to take over their representation in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 13.

34. Defendants admit that they were notified of Truslow and Truslow, P.A's charging lien for costs and fees. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 14.

35. Defendants admit that the Federal Court granted a motion to compel settlement in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 15.

36. Defendants admit the allegations of Paragraph 16 upon information and belief.

37. Defendants deny the allegations of Paragraph 17.

38. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 18, and, therefore, denies those allegations.

39. Defendants admit, upon information and belief, that Rikard & Protopapas, LLC is holding the disputed funds in trust pending the outcome of this litigation. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 19.

40. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 20, and, therefore, denies those allegations.

41. Defendants deny the allegations of Paragraphs 21, 22, 23, and 24.

PRAYER FOR RELIEF

WHEREFORE, Defendants Stephen Bretzinger and Lindsey Holsinger request the following relief:

1. That the Court dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) or alternatively pursuant to Rule 12(c).
2. That Plaintiff have an recover nothing from Defendants Stephen Bretzinger and Lindsey Holsinger;
3. A **trial by jury**; and
4. All other relief that the Court deems just and proper under the circumstance.

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Neal Truslow,)

Plaintiff,)

vs.)

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.)

Defendants.)

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

2016 NOV 18 AM 10:23

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing **Answer** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**ANSWER OF DEFENDANTS
STEPHEN BRETZINGER and
LINDSEY HOLSINGER
[Jury Trial Demanded]**

2016 NOV 18 AM 10:23
RICHLAND COUNTY
FILED

Defendants Stephen Bretzinger and Lindsey Holsinger (hereinafter collectively referred to as "Defendants") answer Plaintiff's Complaint as follows:

FIRST DEFENSE

[Motion to Dismiss – Rule 12(b)(6)]

1. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.
2. Pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, Defendants move to dismiss the Complaint on the grounds that Plaintiff failed to state facts sufficient to constitute a cause of action.
3. Plaintiff alleges that Defendants associated him in a federal action pursuant to a written Fee Agreement attached as Exhibit A to Plaintiff's Complaint.
4. Plaintiff was not associated in the Fee Agreement.
5. Pursuant to Paragraph 4 of the Fee Agreement, the law firm of Truslow and Truslow, P.A. was associated to assist with all litigation.
6. On the face of Plaintiff's own pleadings, he is not a party to any contract with Defendants and, therefore, failed to state a claim for breach of contract.

7. Defendants request that the Court dismiss Plaintiff's complaint pursuant to Rule 12(b)(6).

SECOND DEFENSE
[Alternatively – Judgment on the Pleadings]

8. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

9. Alternatively, if the Court denies Defendants Rule 12(b)(6) Motion to Dismiss, Defendants move the Court for a judgment on the pleadings on the grounds that Plaintiff's own pleadings show that Plaintiff never entered into a contract with Defendants.

THIRD DEFENSE
[Unclean Hands]

10. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

11. Plaintiff's claims are barred in whole or in part by the doctrine of unclean hands.

FOURTH DEFENSE
[Misrepresentation]

12. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

13. Defendants plead fraud and misrepresentation as a defense to the Complaint.

FIFTH DEFENSE
[Failure to Mitigate]

14. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

15. Plaintiff failed to mitigate his damages, if any.

SIXTH DEFENSE
[Estoppel]

16. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

17. Defendants plead the doctrine of estoppel.

SEVENTH DEFENSE
[Offset]

18. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

19. To the extent Plaintiff is owed any damages, which is denied, Defendants are entitled to an offset in an amount equal to the damages caused by Truslow & Truslow, P.A.'s failure to comply with the terms of the Fee Agreement.

EIGHTH DEFENSE
[Answer]

20. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

21. Defendants admit the allegations of Paragraph 1 upon information and belief.

22. Defendants admit the allegations of Paragraphs 2 and 3.

23. Defendants admit the allegations of Paragraph 4 upon information and belief.

First Cause of Action
[Breach of Contract]

24. Defendants re-allege and incorporate the preceding paragraphs as if fully set forth herein.

25. Defendants admit the allegations of Paragraph 5.

26. Defendants admit they entered into a written fee agreement with Nosal & Jeter, LLP. Defendants are not lawyers and therefore lack sufficient knowledge as to whether the fee agreement is compliant with state law and/or consistent with all professional obligations applicable to Plaintiff by virtue of his membership in the South Carolina Bar, and, therefore, Defendants deny those allegations. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 6.

27. Defendants admit that the fee agreement associated the law firm of Truslow and Truslow, P.A. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 7.

28. Defendants admit that a lawsuit was filed in federal court. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 8.

29. Defendants admit that the Federal Action alleged numerous causes of action against multiple defendants. Defendant admits the allegations of Paragraph 9 to the extent they comply with the express terms of the Complaint in the Federal Action. To the extent the allegations of Paragraph 9 differ from the express terms of the Complaint filed in the Federal Action, those allegations are denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 9.

30. Defendants admit that a motion for summary judgment was filed by defendants in the Federal Action and that motion was denied. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 10.

31. Defendants deny that they agreed to or entered into a settlement agreement in the Federal Action. Defendants admit that Truslow and Truslow, P.A entered into a settlement agreement for \$100,000.00 without consulting with Defendants and without their consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 11.

32. Defendants admit that they refused to consent to the settlement agreement that Truslow and Truslow, P.A negotiated without their knowledge or consent. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 12.

33. Defendants admit that Truslow and Truslow, P.A ceased representing them and that they retained the law firm of Rikard and Protopapas, LLC to take over their representation in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 13.

34. Defendants admit that they were notified of Truslow and Truslow, P.A's charging lien for costs and fees. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 14.

35. Defendants admit that the Federal Court granted a motion to compel settlement in the Federal Action. Unless expressly admitted here, Defendants deny the remaining allegations of Paragraph 15.

36. Defendants admit the allegations of Paragraph 16 upon information and belief.

37. Defendants deny the allegations of Paragraph 17.

38. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 18, and, therefore, denies those allegations.

39. Defendants admit, upon information and belief, that Rikard & Protopapas, LLC is holding the disputed funds in trust pending the outcome of this litigation. Unless expressly admitted herein, Defendants deny the remaining allegations of Paragraph 19.

40. Defendants lack sufficient knowledge to form a belief as to the truth or falsity of the allegations set forth in Paragraph 20, and, therefore, denies those allegations.

41. Defendants deny the allegations of Paragraphs 21, 22, 23, and 24.

PRAYER FOR RELIEF

WHEREFORE, Defendants Stephen Bretzinger and Lindsey Holsinger request the following relief:

1. That the Court dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6) or alternatively pursuant to Rule 12(c).
2. That Plaintiff have an recover nothing from Defendants Stephen Bretzinger and Lindsey Holsinger;
3. A **trial by jury**; and
4. All other relief that the Court deems just and proper under the circumstance.

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

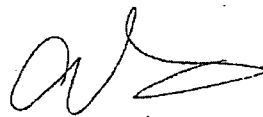
2016 NOV 18 AM 10:23
RICHLAND COUNTY
FILED
CLERK OF COURT

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing Answer via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 15th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT C

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

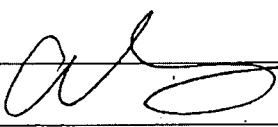
Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE
DEFAULT JUDGMENT**

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Default Judgment Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

RICHLAND COUNTY
FILED

2016 DEC 28 PM 3:12
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

 Signature of Attorney for ☐ Plaintiff/ ☒ Defendant	
SECTION III: Motion Fee	
X PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: <u>Matt</u> ☐ MOTION FEE COLLECTED: _____ ☐ AMOUNT DUE: _____ Date Filed: <u>12/28/16</u>	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE
DEFAULT JUDGMENT**

2016 DEC 28 PM 3:13
FILED
RICHLAND COUNTY
JENNIFER H. MCBRIDE
CLERK

Pursuant to Rules 55(c) and 60(b), Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to set aside default judgment. In support of their motion, Defendants show the Court as follows:

1. Plaintiff's Complaint seeks recovery of money damages for an alleged breach of contract by Defendants.

2. As set forth in more detail in Defendants' Motion to Set Aside Entry of Default, counsel for Defendants contacted Plaintiff's counsel on October 24, 2016 via e-mail notifying her of his representation and requesting a copy of all pleadings. Plaintiff's counsel responded that same day and provided a copy of the pleadings and an order for service via publication.

3. On November 14, 2016, Plaintiff's counsel emailed Defendants' counsel a copy of Plaintiff's Affidavit of Default, Motion for Default Judgment and proposed Order for Default Judgment. The following day Defendants' counsel emailed Plaintiff's counsel a copy Defendants' Answer and requested that Plaintiff consent to set aside the

entry of default. Plaintiff's counsel responded via e-mail that Plaintiff would not consent to set aside the default.

4. On November 16, 2016, Defendants served Plaintiff with their Motion to Set Aside Entry of Default and the clerk filed the Motion on November 18, 2016. A true and accurate copy of the filed Motion to Set Aside Entry of Default is attached hereto as **Exhibit A**.

5. On December 5, 2016 counsel for Defendants learned that the Court entered a default judgment against Defendants. The Order is signed November 18, 2016 but was not filed by the clerk until November 29, 2016. A true and accurate copy of the Order is attached hereto as **Exhibit B**.

6. Given that the default judgment was entered after Defendants' counsel had appeared and filed an Answer and Motion to Set Aside Entry of Default, the default judgment should be set aside for mistake, inadvertence, surprise, or excusable neglect.

7. At all times, Defendants have endeavored to act promptly and swiftly to defend their rights in this case. Defendants' counsel notified Plaintiff of his representation and that he was reviewing the pleadings. Upon learning of the entry of default, Defendants' counsel made a formal appearance and promptly filed an Answer and Motion to Set aside Entry of Default.

8. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer filed contemporaneously with this motion.

9. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. At the time the judgment was entered, Defendants' had served and filed an Answer and Motion to Set Aside Entry of Default. Justice would require that

the pending Motion to Set Aside Entry of Default be heard prior to entering the default judgment.

10. Moreover, Rule 55(b)(4) provides, in pertinent part, that:

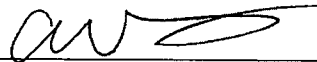
“[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.” (emphasis added)

11. Upon information and belief, no such examination occurred at or before the time of making the application for judgment, as such Plaintiff cannot proceed with default.

For the reasons set forth herein, Defendants request that the Court set aside the default judgment and allow this case to proceed on its merits.

This the 22nd day of December, 2016

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan
SC Bar # 72507
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX 864-331-3058
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Neal Truslow,)

Plaintiff,)

vs.)

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.)

Defendants.)

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

2016 DEC 28 PM 3:13
FILED
RICHLAND COUNTY
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on December 22, 2016 he served a copy of the forgoing **Motion to Set Aside Default Judgment** via United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 22nd day of December, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@maccclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

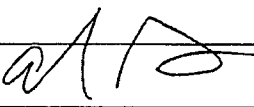
Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE ENTRY
OF DEFAULT**

Plaintiff's Attorney: Desa Ballard Ballard & Watson Post Office Box 6338 West Columbia, South Carolina 29171 803-796-9299/FAX: 803-796-1066 desab@desaballard.com	Attorney for Defendants Bretzinger and Holsinger: Alex MacClenahan The MacClenahan Law Firm, LLC 223 W. Stone Avenue Greenville SC 29606 864-382-3340/Fax: 864-751-2963 alex@macclenahanlaw.com
Attorney for Defendant Rikard & Protopapas, LLC Peter Protopapas Rikard & Protopapas, LLC 1329 Blanding Street Columbia, South Carolina 29201 pdp@rplegalgroup.com	
X MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) PROPOSED ORDER/CONSENT ORDER (complete sections II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Set Aside Entry of Default Estimated Time Needed: 15 minutes Court Reporter Needed: X YES/ ☐ NO	
SECTION II: Motion Type X Written motion attached ☐ Form Motion -- I hereby move for relief or action by the court as set forth in the attached order.	

2016 NOV 18 PM 12:03
JEANNETTE W. HOBBS
C.C.P. & G.S.

RICHLAND COUNTY
FILED

 Signature of Attorney for ☐ Plaintiff/ X Defendant 11/16/16	
SECTION III: Motion Fee	
X PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Convection Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCp) ☐ Proposed order submitted at request of the court or reduced to writing from motion made in open court per judge's instructions ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other: _____	_____ JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

**DEFENDANTS STEPHEN
BRETZINGER and LINDSEY
HOLSINGER'S MOTION
TO SET ASIDE ENTRY
OF DEFAULT**

2016 NOV 18 PM 12:03
JENNIFER W. McBRIDE
CLERK
RICHLAND COUNTY
FILED

Pursuant to Rule 55(c), and for good cause shown, Defendants Stephen Bretzinger and Lindsey Holsinger move this Court to set aside entry of default. In support of their motion, Defendants show the Court as follows:

1. Plaintiff's Complaint seeks recovery of money damages for an alleged breach of contract by Defendants.
2. On October 24, 2016, counsel for Defendants contacted Plaintiff's counsel via e-mail notifying her of his representation and requesting a copy of all pleadings. A true and accurate copy of the e-mail is attached hereto as **Exhibit A**.
3. Plaintiff's counsel responded that same day and provided a copy of the pleadings and an order for service via publication. A true and accurate copy of the e-mail is attached hereto as **Exhibit B**.
4. As such, Plaintiff's counsel had actual knowledge that Defendants had retained counsel in this matter.
5. On November 14, 2016, Plaintiff's counsel emailed Defendants' counsel a copy of Plaintiff's Affidavit of Default, Motion for Default Judgment and proposed

Order for Default Judgment. A true and accurate copy of that e-mail is attached hereto as **Exhibit C**.

6. On November 15, 2016 Defendants' counsel emailed Plaintiff's counsel a copy Defendants' Answer and requested that Plaintiff consent to set aside the entry of default. A true and accurate copy of that e-mail is attached hereto as **Exhibit D**.

7. Plaintiff's counsel responded via e-mail that Plaintiff would not consent to set aside the default because "your clients have been impossible to deal with" and that Plaintiff "assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you)." A true and accurate copy of that e-mail is attached hereto as **Exhibit E**.

8. Under Rule 55(c), the entry of default may be set aside for "good cause shown," which is a less stringent standard than the excusable neglect standard of Rule 60(b). *Sundown Operating Co. v. Intedge Indus. Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

9. In considering whether good cause exists, the Court should consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct.App.1989).

10. At all times, Defendants have endeavored to act promptly and swiftly to defend their rights in this case. Defendants' counsel notified Plaintiff of his representation and that he was reviewing the pleadings. Plaintiff knew of this

representation because his counsel responded to the initial notice of representation and sent him a copy of the Affidavit of Default and Motion for Default Judgment.

11. Defendants have one or more meritorious defenses to Plaintiff's Complaint as set forth in the Answer filed contemporaneously with this motion.

12. Plaintiff cannot demonstrate any prejudice he will suffer if this case is determined on its merits. Moreover, less than less than 45 days has passed since the alleged service of the Complaint. Common practice in Richland County is for a responding party to receive a 30-day extension to respond to a Complaint, so Defendants' Answer is being filed well within the typical 60-day period to respond.

13. Moreover, Rule 55(b)(4) provides, in pertinent part, that:

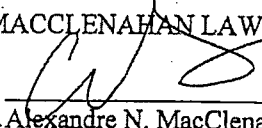
"[i]n actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined under oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication." (emphasis added)

14. Upon information and belief, no such examination occurred at or before the time of making the application for judgment, as such Plaintiff cannot proceed with default.

For the reasons set forth herein, Defendants request that the Court set aside entry of default and allow this case to proceed on its merits.

This the 16th day of November, 2016

THE MACCLENAHAN LAW FIRM, LLC



Alexandre N. MacClenahan

SC Bar # 72507

223 W. Stone Avenue

Greenville, SC 29609

864-382-3340/FAX 864-331-3058

alex@macclenahanlaw.com

Attorney for Defendants

Stephen Bretzinger and

Lindsey Holsinger

EXHIBIT A

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 9:41 AM
To: desab@desaballard.com

MA

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT B

From: Desa Ballard Desab@desaballard.com
Subject: RE: Bretzinger 2016-CP-40-3728
Date: October 24, 2016 at 10:52 AM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Mara Ballard mara@desaballard.com, Beth Cogan Beth@desaballard.com

Alex:

Thanks for contacting me. Attached are the pleadings filed to date. This is a fee collection. Your clients did not want to pay the fees after my client settled their case. Peter is holding the money, and he has filed an answer just saying "yeah, I have the money, tell me what to do with it." The clients have already received their money.

Look forward to hearing from you.

db

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Monday, October 24, 2016 10:02 AM
To: Desa Ballard <Desab@desaballard.com>
Subject: Re: Bretzinger 2016-CP-40-3728

Thanks

On Oct 24, 2016, at 10:01 AM, Desa Ballard <Desab@desaballard.com> wrote:

Sure. I am traveling at the moment. Will be at your desk in a few hours.

Sent via the Samsung Galaxy Note5, an AT&T 4G LTE smartphone

----- Original message -----

From: Alex MacClenahan <alex@macclenahanlaw.com>
Date: 10/24/16 9:42 AM (GMT-05:00)
To: Desa Ballard <Desab@desaballard.com>
Subject: Bretzinger 2016-CP-40-3728

Desa,

I have been retained by Stephen and Lindsay Bretzinger. I am trying to get up to speed on what is going on with this case. I understand that you are in the process of obtaining service via publication. Is this correct? Also, can you provide me with a pdf copy of the pleadings you have filed?

Please let me know if you have any questions.

Thanks

Alex MacClenahan

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340

Fax: 864-751-2963
alex@macclenahanlaw.com

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Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

This message (including attachments) may be privileged and confidential. If you are not the intended recipient, please delete it without further distribution and reply to the sender that you have received the message in error.

Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.



2016.6.16 (filed)
Summ...int.pdf



2016.09.12
Order f...ion.pdf

Order # : 4482956

SUN-SENTINEL
Published Daily
Fort Lauderdale, Broward County, Florida
Boca Raton, Palm Beach County, Florida
Miami, Miami-Dade County, Florida

STATE OF FLORIDA

COUNTY OF: BROWARD/PALM BEACH/MIAMI-DADE

Before the undersigned authority personally appeared
MARK KUZNETZ, who on oath says that he or she is a duly authorized representative of the **SUN-SENTINEL**, a DAILY newspaper published in BROWARD/PALM BEACH/MIAMI-DADE County, Florida; that the attached copy of advertisement, being a Legal Notice is:

The author of 11710-Notice of Administration

Dallard & Warren, Attorneys at Law
Post Office Box 6338
West Columbia, SC 29171

Was published in said newspaper in the issues of: Sep 22, 2016; Sep 29, 2016; Oct 06, 2016

4471901

Affiant further says that the said **SUN-SENTINEL** is a newspaper published in said BROWARD/PALM BEACH/MIAMI-DADE County, Florida; and the attached copy of advertisement is:

STATE OF SOUTH CAROLINA
COUNTY OF BROWARD
IN THE COURT OF COMMON PLEAS
JAMES E. HARRIS, JR.
CIVIL ACTION NO. 2016-000000-000000
JAMES E. HARRIS, JR.
DEARLY OF COMMON PLEAS - NO
ANY OTHER PROCEEDINGS

EXHIBIT C

From: Mara Ballard mara@desaballard.com
Subject: Truslow, Neal (Bretzinger);
Date: November 14, 2016 at 3:45 PM
To: pdp@rlegalgroup.com, alex@macclenahanlaw.com
Cc: Desa Ballard Desab@desaballard.com, Harvey Watson Harvey@desaballard.com

MB

Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfiled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com



2016.11.14 Filed
Affidav...ent.pdf

EXHIBIT D

From: Alex MacClenahan alex@macclenahanlaw.com
Subject: Re: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 11:22 AM
To: Desa Ballard desab@desaballard.com
Cc: Peter Protopapas pdp@rplegalgroup.com

MA

Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex



Bretzinger -
Answer.pdf

On Nov 14, 2016, at 3:45 PM, Mara Ballard <marab@desaballard.com> wrote:

Gentlemen,

Please see the attached documents which were taken to the Clerk of Court today for filing. The unfilled versions were placed in the mail to you for service earlier today.

If you have any questions, please let us know.

With Kindest Regards,

Mara T. Ballard, CFE, CMA
Forensic Accountant
Ballard & Watson Attorneys at Law
226 State Street (29169)
Post Office Box 6338
West Columbia, South Carolina 29171
803.796.9299
803.796.1066 Facsimile
www.desaballard.com
<image003.jpg>

<2016.11.14 Filed Affidavit of Default and Motion for Judgment.pdf>

Alex MacClenahan
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
Phone: 864-382-3340
Fax: 864-751-2963
alex@macclenahanlaw.com

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Circular 230 Disclosure: To ensure compliance with Treasury Department regulations, we inform you that any U.S. tax advice contained in this communication (including any attachments) was not intended or written to be used, and cannot be used, for the purpose of avoiding U.S. tax-related penalties or promoting, marketing, or recommending to another party any tax-related matters addressed herein.

EXHIBIT E

From: **Desa Ballard** Desab@desaballard.com
Subject: RE: Truslow, Neal (Bretzinger);
Date: November 15, 2016 at 12:06 PM
To: Alex MacClenahan alex@macclenahanlaw.com
Cc: Peter Protopapas pdp@rplegalgroup.com, Beth Cogan Beth@desaballard.com

DB

No I can't consent to setting aside the default. Nothing personal I assure you, I'm sure you understand, but your clients have been impossible to deal with. They ducked service by several methods and we had to resort to service by publication. They didn't answer in time. I assumed you had not taken the case once you saw your clients were trying to get out of paying their lawyers (assumed you would not want the same to happen to you).

-----Original Message-----

From: Alex MacClenahan [mailto:alex@macclenahanlaw.com]
Sent: Tuesday, November 15, 2016 11:23 AM
To: Desa Ballard <Desab@desaballard.com>
Cc: Peter Protopapas <pdp@rplegalgroup.com>
Subject: Re: Truslow, Neal (Bretzinger);

Desa,

I was in the process of drafting the Answer in this matter when I received your a. The answer is being sent to the Court for filing and I have provided a copy to via PDG. Will you agree to set aside the default or do I need to file a motion.

Thanks

Alex

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

FIFTH JUDICIAL CIRCUIT

IN THE COURT OF COMMON PLEAS

Case No.: 2016-CP-40-03728

Certificate of Service

RICHLAND COUNTY
FILED
2016 NOV 18 PM 12:04
JEANNETTE W. MCBRIDE
C.O.P. & G.S.

The undersigned attorney for Defendants Stephen Bretzinger and Lindsey Holsinger hereby certifies that on November 15, 2016 he served a copy of the forgoing **Motion to Set Aside Entry of Default** via e-mail and United States Mail, sufficient postage prepaid, addressed to all counsel of record as follows:

Desa Ballard
Ballard & Watson
Post Office Box 6338
West Columbia, South Carolina 29171
desab@desaballard.com

Peter Protopapas
Rikard & Protopapas, LLC
1329 Blanding Street
Columbia, South Carolina 29201
pdp@rplegalgroup.com

This the 16th day of November, 2016.



Alexandre N. MacClenahan
SC Bar 72507
The MacClenahan Law Firm, LLC
223 W. Stone Avenue
Greenville, SC 29609
864-382-3340/FAX: 864-751-2963
alex@macclenahanlaw.com
Attorney for Defendants
Stephen Bretzinger and
Lindsey Holsinger

EXHIBIT B

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003728

Neal Truslow

Stephen Bretzinger

PLAINTIFF(S)

Lindsey Holsinger

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Dismissal);
☐ Rule 43(k), SCRCP (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ 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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge _____

Judge Code _____

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the 29 day of Nov, 20 16 and a copy mailed first class or placed in the appropriate attorney's box on this 29 November 2016 to attorneys of record or to parties (when appearing pro se) as follows:

Harvey M. Watson III

Peter Demos Protopapas

Alexandre Nicolas MacClenahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court Janette W. McBride

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)
Neal Truslow)
Plaintiff)
vs.)
Stephen Bretzinger,)
Lindsey Holsinger, and)
Rikard & Protopapas, LLC)
Defendants)

FIFTH JUDICIAL CIRCUIT
IN THE COURT OF COMMON PLEAS

Case No. 2016-CP-40-03728

**DEFAULT JUDGMENT
AGAINST DEFENDANTS BRETZINGER
AND HOLSINGER**

FILED
2016 NOV 29 AM 11:44
JEANETTE M. MCBRIDE
C.C.P. & G.S.

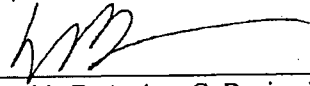
Plaintiff moves for entry of a default judgment against defendants Stephen Bretzinger and Lindsey Holsinger. It appears that the defendants Bretzinger and Holsinger were served with the summons and complaint in this matter via publication in the Sun Sentinel on September 22, 2016., September 29, 2016 and lastly on October 06, 2016 (see Affidavit of Publication filed by the Clerk of Court in this matter on October 14, 2016). No responsive pleadings were filed and an Affidavit of Default was submitted with a Motion for Default Judgment and a proposed Order of Judgment on November 8, 2016.

Therefore, IT IS ORDERED that judgment shall be entered in favor of the plaintiff against the defendants Stephen Bretzinger and Lindsey Holsinger in the amount of Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55).

It is further ORDERED that defendant Rikard & Protopapas LLC are authorized to release the sum Thirty Five Thousand One Hundred Thirty Two and 55/100 dollars (\$35,132.55) to Plaintiff or his designee. This judgment shall bear interest at the legal rate.

[signature next page]

IT IS SO ORDERED.



Honorable DeAndrea G. Benjamin
Chief Administrative Judge

November 19, 2016

I, Mara Ballard, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Proposed Order for Judgment on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.

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Date: 11.14.16 Signed: Mara Ballard

EXHIBIT D

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016-CP-40-03728

Neal Truslow

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for: ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

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.
- ☐ 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 _____
- ☐ 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:

ORDER INFORMATION

Defendants' Motion to Set Aside Default Judgment is denied.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE PUBLIC 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
		\$
		\$
		\$

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.

Circuit Court Judge

Alfred Lee

Judge Code 2118

Date

9/24/2017

For Clerk of Court Office Use Only

This judgment was entered on the 21 day of Sept, 2017 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Jeanette W. McBride

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

v.

Stephen Bretzinger, Lindsey Holsinger,
and Rikard & Protopapas, LLC.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

Docket No. 2016-CP-40-03728

ORDER

RICHLAND COUNTY
FILED
2017 SEP 21 PM 4:10
JEANETTE
CLERK

This matter came before the Court on a Motion to Set Aside Default Judgment and Entry of Default by Defendants Stephen Bretzinger and Lindsey Holsinger ("Defendants") against Plaintiff Neal Truslow ("Plaintiff"). A hearing on the motion was conducted on July 11, 2017. Present at the hearing were Desa Ballard, Esquire, attorney for Plaintiff, and Alexandre MacClenahan, Esquire, attorney for Defendants.

BACKGROUND

This case arises from a breach of contract claim for defects in a home from Crestwood Homes, LLC, purchased in 2008. Plaintiff filed this action following Defendants' refusal to pay Plaintiff attorney's fees and costs advanced by Plaintiff while representing Defendants in prior litigation in federal court. Plaintiff filed the Summons and Complaint on June 16, 2016. Defendants Stephen Bretzinger and Lindsey Holsinger filed an answer on November 18, 2016. Plaintiff filed a Motion for Default Judgment on November 14, 2016. Defendants filed a Motion to Set Aside Entry of Default on November 18, 2016. On the same day, an Order for Default Judgment was signed and subsequently filed on November 29, 2016. Thereafter, Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016.

DISCUSSION

At the motion hearing Defendants argued that on October 24, 2016, Defendants' counsel notified Plaintiff's counsel of his recent representation in the case and requested a copy of the pleadings filed to date. Later that same day, a copy of the Summons and Complaint, Order for Service by Publication, and a filed copy of the Affidavit for Service by Publication were provided

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to Defendants' counsel. On November 14, 2016, a copy of Plaintiff's Affidavit of Default, Motion for Default, and Proposed Order for Default Judgment were sent by email to Defendants' counsel. He responded on November 15, 2016, stating an answer was being prepared and requested Plaintiff to set aside the default. Plaintiff's counsel declined to do so.

Service by Publication was authorized by Order dated September 12, 2016 after the Sheriff's Department attempted service upon Defendants on eight occasions and noted activity that suggested Defendants were avoiding service of process. Service was also attempted by United Parcel Service on four occasions. Defendants were served by publication in the Sun Sentinel newspaper in the area of Defendants' residence in Florida once a week for three consecutive weeks completed on October 6, 2016. Upon receipt of the documents from Plaintiff's counsel on October 24, 2016, Defendants did not request an extension of time to file an Answer and did not communicate with Plaintiff's counsel.

Defendants contend the Default Judgment should not have been entered and should be set aside because Defendants' Answer was pending and Plaintiff sent the Motion for Default Judgment to circuit court without an examination under oath, which is required under Rule 55(b)(4), SCRCP. Further, Defendants contend they acted swiftly and promptly to defend their rights in the case by notifying Plaintiff of their representation in the case. Upon learning of the entry of default, Defendants' counsel made a formal appearance and promptly filed an Answer and Motion to Set Aside Entry of Default.

Defendants rely on Rule 55(b)(4), SCRCP, as a basis to set aside the default judgment. It states:

In actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined on oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication.

However, Rule 55(b)(4) does not apply in this case. An examination under oath was not necessary because the Complaint alleges the money owed to Plaintiff has not been paid and is being held in

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trust by Defendant Rikard & Protopapas, a law firm. An attachment to levy on property of Defendants was not necessary because the money was being held in the law firm trust account. Plaintiff alleges Defendants were represented by an attorney when the dispute arose, refused to negotiate with Plaintiff, acknowledged they were aware of Plaintiff's charging lien, and evaded service. Sufficient evidence existed at the time the default judgment was entered to demonstrate that Plaintiff complied with the requirements for the issuance of the judgment and that Defendants' due process rights were protected.

Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009). Once a default judgment has been entered, a party seeking to be relieved from the judgment must do so under Rule 60(b), SCRPC. *Id.* at 608, 681 S.E.2d at 888. Defendants argue the default judgment should be set aside under Rule 60(b)(1) which requires a showing of mistake, inadvertence, excusable neglect, or surprise. Rule 60(b)(1), SCRPC. The party seeking to set aside the judgment has the burden of presenting evidence proving the facts essential to entitle him to relief. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 94 (Ct. App. 2008). The decision whether to set aside a default judgment lies solely within the sound discretion of the trial court. *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 490, 713 S.E.2d 335, 337 (Ct. App. 2011).

Regarding the timing for relief, Defendants filed a Motion to Set Aside Default Judgment on December 28, 2016, after an Order for Default Judgement was signed and subsequently filed on November 29, 2016. Defendants filed an Answer five weeks after service by publication was completed and three weeks after proof of service on October 6, 2016 had been provided by Plaintiff. The filing of the motion was certainly prompt. However, Defendants' failed to establish a basis to set aside the default under Rule 60(b)(1). Even when Plaintiff provided the documents evidencing the filing of the action and service, no efforts were made by Defendants to answer within the remaining time allotted or to request additional time to respond to the Complaint. Defendants make no argument to show mistake, inadvertence, excusable neglect, or surprise.

Courts have held that in order to obtain relief from a default judgment under Rule 60(b)(1), not only must the movant make a proper showing he is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense. *McClurg*

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v. *Deaton*, 380 S.C. 563, 574, 671 S.E.2d 87, 93 (Ct. App. 2008). A meritorious defense need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence. *Id.* at 575, 671 S.E.2d at 94. Defendants' Answer alleges defenses of unclean hands, misrepresentation, fraud, failure to mitigate damages, and estoppel without any factual basis. Defendants do not provide any explanation as to how these defenses are meritorious.

Defendants argue there is no prejudice to Plaintiff if the default judgment in this case is determined on the merits. However, Defendants have been holding \$35,132.55 allegedly owed to Plaintiff in trust since June 5, 2015. Defendants have not provided a satisfactory explanation for the default and have not presented any evidence proving the facts essential to entitle them to relief. Accordingly, Defendants are not entitled to relief on any of the grounds specified under Rule 60(b)(1), SCRC.P.

ORDER

IT IS HEREBY ORDERED, Defendants Stephen Bretzinger and Lindsey Holsinger Motion to Set Aside is Default Judgment is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

September 21, 2017
Columbia, South Carolina

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EXHIBIT E

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsey Holsinger,	)	Civil Action No. 0:13-cv-02771-JMC
	)	
Plaintiffs,	)	
	)	
v.	)	
	)	
Crestwood Homes, LLC d/b/a Scenic	)	<u>ORDER AND OPINION</u>
Homes, Paul Meng, James Ray, Reggie	)	
Lee McGaugh, Susan Meng, Mary Beth	)	
McGaugh, and Susan Ray,	)	
	)	
Defendants.	)	
	)	

Plaintiffs Stephen Bretzinger and Lindsey Holsinger (collectively “Plaintiffs”) filed this action seeking damages from Defendants Crestwood Homes, LLC d/b/a Scenic Homes, Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray (collectively “Defendants”) resulting from their construction and sale to Plaintiffs of an allegedly defective house located at 2055 Covered Bridge Court, York County, South Carolina (the “Property”). (ECF No. 1.) Plaintiffs assert claims under state law against Defendants for breach of contract to construct an improvement to real property, breach of fiduciary duties, breach of the implied covenant of good faith and fair dealing, fraud, breach of contract accompanied by a fraudulent act, negligent misrepresentation, violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10 to -560 (1985 & Supp. 2011), fraudulent conveyance, unjust enrichment, civil conspiracy, breach of warranty, negligent construction, negligence per se, gross negligence, rescission, to void a contract for unconscionability, aiding and abetting wrongdoing, to pierce the corporate veil, and to collect on a judgment. (*Id.* at 7–22.)

This matter is before the court pursuant to Defendants’ Motion to Enforce Settlement Agreement. (ECF No. 55.) Plaintiffs oppose the pending Motion to Enforce Settlement. (ECF

No. 62.) For the reasons set forth below, the court **GRANTS** Defendants' Motion to Enforce Settlement.

I. RELEVANT BACKGROUND TO PENDING MOTION

The following relevant facts taken from the complaint are assumed to be true only for the purposes of the pending motion. Crestwood Homes, LLC ("Crestwood") is an "association of persons" that includes "Individual Defendants" Paul Meng, James Ray, Reggie Lee McGaugh, Susan Meng, Mary Beth McGaugh, and Susan Ray. (ECF No. 1 at 6 ¶ 44.) This action arises from a course of events that allegedly resulted in Plaintiffs entering into a residential contract with Crestwood on or about June 28, 2008 to purchase the Property. (*Id.* at 3 ¶ 24.) After closing on and receiving title to the Property, Plaintiffs became aware of specified defects in the Property. (*Id.* at 4 ¶¶ 27-28.) Plaintiffs allege that after they provided notice of the defects in the Property to Crestwood, it failed to remedy said defects in the Property thereby resulting in the Property sustaining significant additional damage. (*Id.* at 4 ¶ 29, 5 ¶¶ 31-32.)

On July 29, 2010, Plaintiffs filed a lawsuit against Crestwood in the York County (South Carolina) Court of Common Pleas. (ECF No. 1-2.) Crestwood did not answer or otherwise respond to the lawsuit. After entering default against Crestwood on or about January 18, 2011, the state court entered judgment for Plaintiffs on July 8, 2011 in the amount of \$876,000.00 against Crestwood. (ECF No. 1-4.)

Thereafter, on October 10, 2013, Plaintiffs filed a Complaint in this court alleging the aforementioned causes of action against Defendants. (ECF No. 1.) On November 5, 2013, Crestwood answered the Complaint generally denying its allegations. (ECF No. 9.) On November 18, 2013, Individual Defendants filed Motions to Dismiss the Complaint pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(2). (ECF No. 16.) On September 5, 2014, the court denied

without prejudice Individual Defendants' Motions to Dismiss with leave to re-file after a period of limited jurisdictional discovery. (ECF No. 44.)

On September 26, 2014, the parties allegedly reached an agreement for the complete and final resolution and settlement of this case (the "Settlement Agreement"). (See ECF No. 55-1 at 5 ("They [Plaintiffs] accept and will settle for \$100,000.00" in exchange for a global release).) The Settlement Agreement and essential terms of the same were memorialized using the following language in an e-mail sent by Plaintiffs' counsel of record, Neal Truslow ("Truslow"), to Defendants' counsel on September 29, 2014:

To confirm the status of where we are:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(Id. at 2.) On or about October 7, 2014, Defendants' counsel prepared more formal settlement and release documents and provided the same to Plaintiffs' counsel. (ECF No. 55-2 at 3.) On October 29, 2014, Plaintiffs' counsel informed Defendants' counsel that Plaintiffs "desire[d] to nullify the settlement" and dismiss the case without prejudice. (ECF No. 55-3 at 2.)

On November 5, 2014, Defendants filed the instant Motion to Enforce Settlement. (ECF No. 55.) Plaintiffs filed their Response in Opposition to Defendants' Motion to Enforce Settlement on November 24, 2014. (ECF No. 62.) On December 9, 2014, the court heard argument from the parties on the pending Motion to Enforce Settlement. (ECF No. 71.)

II. LEGAL STANDARD AND ANALYSIS

A. Standard for Enforcing Settlement

“Settlement agreements are matters of contract law, and contract law principles apply.” Patel v. Barot, 15 F. Supp. 3d 648, 653 (E.D. Va. 2014). “Because exercise of the authority to enforce settlement agreements depends on the parties’ agreement to a complete settlement, the court cannot enforce a settlement until it concludes that a complete agreement has been reached and determines the terms and conditions of that agreement.” Hensley v. Alcon Labs., Inc., 277 F.3d 535, 540 (4th Cir. 2002) (citing Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Therefore, “to exercise its inherent power to enforce a settlement agreement, a district court (1) must find that the parties reached a complete agreement and (2) must be able to determine its terms and conditions.” Id. at 540–41 (citing Moore v. Beaufort Cnty., 936 F.2d 159, 162 (4th Cir. 1991); Ozyagcilar v. Davis, 701 F.2d 306, 308 (4th Cir. 1983)). Accordingly, “if an agreement for complete settlement of the underlying litigation, or part of it, has been reached and its terms and conditions can be determined, the court may enforce the agreement summarily as long as the excuse for nonperformance of the agreement is ‘comparatively insubstantial.’” Id. at 540 (quoting Millner v. Norfolk & W. Ry. Co., 643 F.2d 1005, 1009 (4th Cir. 1981)). However, “[i]f there is a factual dispute over the existence of an agreement, over the authority of attorneys to enter into the agreement, or over the agreement’s terms, the district court may not enforce a settlement agreement summarily,” and it must instead conduct a hearing in order to resolve that dispute and make factual findings. Id. at 541 (citations omitted).

B. The Parties’ Arguments

1. *Defendants*

Defendants move the court to enforce an alleged settlement with Plaintiffs containing the

following terms and conditions:

Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case. Defendants are drafting a full, final and complete release from Plaintiffs that ends litigation upon payment. This settlement shall be a final settlement of all claims – past, present, or future – by Plaintiffs against any/all Defendants (or associated entities, heirs, assigns, etc.) in this action, and specifically includes the prior State court action and this Federal action. Essentially, anything to do with the house in York County will be covered by this action. To the extent Plaintiffs have enrolled this judgment in any jurisdiction, they will say that same is satisfied, dissolved or otherwise abandoned. This is standard language included in any release, to my understanding.

(ECF No. 55-1 at 2.) In support of their Motion to Enforce Settlement, Defendants argue that Plaintiffs' counsel "irrefutably confirmed the clear and ambiguous terms of the [S]ettlement [A]greement," and the acts of an attorney are binding on the client. (ECF No. 55 at 1, 3 (citing Sadighi v. Daghighfekr, 66 F. Supp. 2d 752, 761 (D.S.C. 1999) (citation omitted)).) Defendants further argue that "[t]he writings between counsel of record in this case unequivocally demonstrate that: (1) the parties reached a complete agreement; and (2) the writings set forth the essential terms and conditions of the Settlement Agreement." (ECF No. 55 at 3.) As a result, "Plaintiffs are bound by the actions of their attorneys" and the "Settlement Agreement is binding and enforceable upon the Plaintiffs." (Id. at 3–4.) Based on the foregoing, Defendants request that the court enforce the Settlement Agreement and dismiss this action. (Id. at 4.)

2. *Plaintiffs*

Plaintiffs oppose the Motion to Enforce Settlement asserting that it should be denied because the emails attached to Defendants' motion only "demonstrate that there was no commitment [to a settlement] and that critical terms were to be negotiated prior to any commitment." (ECF No. 62 at 1.) Plaintiffs next assert that their counsel "did not have authority to bind either of the Plaintiffs to a settlement agreement" or "forfeit an outstanding State Court judgment against the Defendants." (Id. at 7.) Finally, Plaintiffs assert that Defendants' evidence

does not support a finding that Plaintiffs displayed the intent “to be bound to any purported settlement.” (*Id.* at 8.) As a result, Plaintiffs beseech the court to deny Defendants’ Motion to Enforce Settlement. (*Id.*)

C. The Court’s Review

Upon consideration of the parties’ arguments, the court finds that the terms of the parties’ alleged settlement are clearly set forth in the parties’ exhibits¹ and, therefore, the court should enforce the settlement unless it determines that the parties failed to reach a complete agreement. As to this issue, Plaintiffs argue that their counsel did not have either actual authority or apparent authority to settle the matter. (ECF No. 62 at 7.) As support for their argument, Plaintiffs submitted affidavits, which specifically stated that their attorneys were not authorized to settle the case (ECF Nos. 62-4 & 62-5), and cited to Rule 43(k), SCRCP, which rule provides that “[n]o agreement between counsel affecting the proceedings in an action shall be binding unless reduced to the form of a consent order or written stipulation signed by counsel and entered in the record, or unless made in open court and noted upon the record, or reduced to writing and signed by the parties and their counsel.”

In assessing the merits of Plaintiffs’ argument, the court observes that an attorney’s “authority to negotiate” on behalf of his client “is far different from the authority to agree to a specific settlement.” Auvil v. Grafton Homes, Inc., 92 F.3d 226, 231 (4th Cir. 1996). “It is generally accepted that when a client retains an attorney to represent him in litigation, absent an express agreement to the contrary, the attorney has implied authority to conduct the litigation and to negotiate its resolution.” *Id.* at 229–230. Moreover, under South Carolina law, absent fraud or mistake, counsel of record has the authority to settle litigation on behalf of their client.

¹ Defendants will pay \$100,000.00 to Plaintiffs in exchange for a full release of all claims. (ECF No. 55-1 at 2.)

Arnold v. Yarborough, 316 S.E.2d 416, 417 (S.C. Ct. App. 1984) (“Acts of an attorney are directly attributable to and binding upon the client.”) (Citation omitted); see also Poore v. Poore, 89 S.E. 569, 571 (S.C. 1916) (“It will never do, in the absence of fraud, to allow the undoubted attorneys of record for a party to a suit to enter into a solemn agreement to settle and adjust the issues and subject-matter of a suit and then later, if it is done, because for any reason the party is dissatisfied, to allow him to repudiate this agreement and employ different counsel to upset and set aside what his first counsel has done.”).

Upon review, the court finds that Truslow, Plaintiffs’ attorney of record, bound Plaintiffs when he stated his acknowledgement to the agreed upon terms of the settlement.² (See ECF No. 55-1 at 2 (“To confirm the status of where we are: Defendants have offered, and Plaintiffs have accepted, a \$100,000 (gross) global settlement to resolve this case . . . I’ll be sure to consent [to a stipulation of dismissal] once we’ve got funds and you’ve got a signed release.”).) Under South Carolina law, Truslow’s actions bind Plaintiffs since there has not been a showing of fraud. Arnold, 316 S.E. 2d at 417 (“Litigants must necessarily be held bound by the acts of their attorneys in the conduct of a cause in court, in the absence, of course, of fraud.”) (Citation omitted). In this regard, neither Plaintiffs’ affidavits nor Rule 43(k), SCRCP, require the court to find otherwise. See, e.g., Surety Ins. Co. of Cal. v. Williams, 729 F.2d 581, 583 (8th Cir. 1984) (“We think that in meeting that burden the Williamses may not rely on their conclusory affidavit,

² There were communications relevant to the settlement made by an attorney, Peter Nosal, who was not counsel of record for Plaintiffs in this matter. (See, e.g., ECF No. 55-1 at 4 (“I understand your concerns. I have explained to them that the settlement will be contingent of a full release of any and all claims against all defendants. Pete.”) & 5 (“They accept and will settle for \$100,000.00. They have some concerns about the language in the release, but I am confident we can work that out. Pete.”).) The court does not rely on Nosal’s communications to establish Plaintiffs’ agreement to settle the matter. See, e.g., Andrulonis v. United States, No. 79-CV-847, 1995 WL 46331, at 2 (N.D.N.Y. Jan. 25, 1995) (“First, the court holds that no binding settlement agreement existed. Attorney Buskus was not the attorney of record in the district court, and counsel for the United States should have realized that agreement of the counsel of record was required before a settlement became binding.”).

but must establish through competent evidence that their attorney lacked actual, implied, or apparent authority to stipulate to an entry of judgment.”); Nationwide Mut. Ins. Co. v. Ruff, C/A No. 0:11-1011-CMC, 2011 WL 2491345, at *3 (D.S.C. June 22, 2011) (“[T]he South Carolina Rules of Civil Procedure govern actions brought in South Carolina courts, not federal courts, ...”); United States v. Hemmons, 774 F. Supp. 346, 350 (E.D. Pa. 1991) (“State rules of civil procedure do not apply in a federal court.”) (citing, e.g., U.S. Const. art. IV). Accordingly, the court concludes that the parties did reach a complete agreement to settle this matter, and the terms of that agreement are clearly discernible from the record.

III. CONCLUSION

For the reasons set forth above, the court hereby **GRANTS** Defendants’ Motion to Enforce Settlement Agreement. (ECF No. 55.) The court further **ORDERS** the parties to fulfill their obligations under the Settlement Agreement within 30 days of the date of entry of this Order. This action is hereby **DISMISSED**.

IT IS SO ORDERED.



United States District Judge

May 7, 2015
Columbia, South Carolina

EXHIBIT F

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsay
Holsinger,

Plaintiffs,

vs.

Crestwood Homes, LLC d/b/a Scenic
Homes, Paul Meng, James Ray,
Reggie Lee McGaugh, Susan Meng,
Mary Beth McGaugh, and Susan Ray,

Defendants.

CASE NO: 0:13-CV-2771-JMC

**AFFIDAVIT OF
STEPHEN BRETZINGER**

PERSONALLY APPEARED BEFORE ME, STEPHEN BRETZINGER, who after
being duly sworn, deposes and states:

1. I am over the age of eighteen and legally qualified to testify under oath.
2. My testimony contained herein is made upon personal knowledge except
as to those things that are testified as to upon information and belief. As to those things
testified to upon information and belief, I reasonably believe them to be true.
3. I have reviewed the allegations of the Complaint filed herewith and believe
the allegations to be true and correct to the best of my knowledge.
4. I have reviewed the factual allegations of the Defendants' motion to
enforce settlement.
5. I have not agreed to settle the case in this matter.
6. On September 26, 2014 I received an email requesting my permission to
settle the case for the sum of one hundred thousand dollars (\$100,000.00).

EXHIBIT 4 page 1

7. It was my understanding any such settlement would involve further negotiation of the particular and specific terms related to any settlement.

8. I did not understand that such a settlement would require me to give up all of my claims against all of the defendants named in this action.

9. I did not understand that such a settlement would require me to give up the existing State court judgment against Crestwood Homes, LLC D/B/A Scenic Homes.

10. I was not, and am not, willing to give up my claims and causes of action against these defendants, including the outstanding judgment against the Crestwood defendant.

11. Dismissal of the outstanding judgment and all of the claims was a material and significant term to me.

12. I specifically instructed counsel that any such settlement would only be pursuant to my terms and conditions.

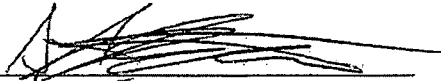
13. Mr. Truslow and Mr. Nosal were not authorized to settle this case. Nor were they authorized to communicate my willingness to completely dismiss all of these claims and the outstanding judgment.

14. I have not given anyone my permission to settle this case. I have not authorized anyone to communicate my willingness to completely dismiss all of these claims and the outstanding judgment.

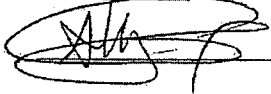
15. When I became aware of the expectation that I would give up all of my claims against these Defendants, I immediately reiterated my rejection of such a resolution.

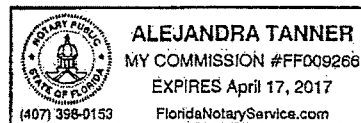
16. I have never agreed either orally or in writing to give up all of my claims against the Defendants as set forth within the proposed settlement agreement provided for my review.

FURTHER, AFFIANT SAYETH NOT.


Stephen Bretzinger

SWORN AND SUBSCRIBED BEFORE ME
THIS 24 DAY OF NOVEMBER 2014.





NOTARY PUBLIC FOR Broward County, FL

MY COMMISSION EXPIRES: 17 April 2017

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Stephen Bretzinger and Lindsay
Holsinger,

Plaintiffs,

vs.

Crestwood Homes, LLC d/b/a Scenic
Homes, Paul Meng, James Ray,
Reggie Lee McGaugh, Susan Meng,
Mary Beth McGaugh, and Susan Ray,

Defendants.

CASE NO: 0:13-CV-2771-JMC

**AFFIDAVIT OF
LINDSAY BRETZINGER**

PERSONALLY APPEARED BEFORE ME, LINDSAY HOLSINGER, who after
being duly sworn, deposes and states:

1. I am over the age of eighteen and legally qualified to testify under oath.
2. My testimony contained herein is made upon personal knowledge except
as to those things that are testified as to upon information and belief. As to those things
testified to upon information and belief, I reasonably believe them to be true.
3. I have reviewed the allegations of the Complaint filed herewith and believe
the allegations to be true and correct to the best of my knowledge.
4. I have reviewed the factual allegations of the Defendants' motion to
enforce settlement.
5. I have not agreed to settle the case in this matter nor have I authorized
anyone else to settle the case on my behalf.

EXHIBIT 5 page 1

6. It is my understanding my husband received an email on or about September 26, 2014 requesting permission to settle the case for the sum of one hundred thousand dollars (\$100,000.00).

7. It was my understanding that any settlement in this case would involve further negotiation of the particular and specific terms related to the settlement.

8. When I learned of this offer, I did not understand and I was not informed such a settlement would require me to give up all of my claims against all of the defendants named in this action.

9. When I learned of this offer, I did not understand and was not informed such a settlement would require me to give up the existing State court judgment against Crestwood Homes, LLC D/B/A Scenic Homes.

10. I have always taken the position that I would not voluntarily sign away my State court judgment against Crestwood Homes, LLC D/B/A/ Scenic Homes.

11. I specifically instructed counsel I would not settle the case under such a condition. By way of illustration, Defendants previously approached me and my husband about settling the case and we rejected those overtures as well.

12. Mistrs Truslow and Nosal were not authorized to settle this case without my express permission.

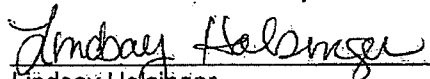
13. I have not given anyone my permission to settle this case. I have not authorized anyone to communicate my willingness to completely dismiss all of these claims and the outstanding judgment.

14. When I became aware of the expectation that I would be required to surrender and abandon all of my claims against these Defendants, including the

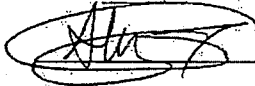
outstanding judgment, I immediately reiterated my longstanding rejection of such a resolution.

15. I have never agreed, either orally or in writing, to give up all of my claims against the Defendants.

FURTHER, AFFIANT SAYETH NOT.


Lindsay Holsinger

SWORN AND SUBSCRIBED BEFORE ME
THIS 24 DAY OF NOVEMBER 2014.



NOTARY PUBLIC FOR Boward County, FL

MY COMMISSION EXPIRES: 17 April 2017

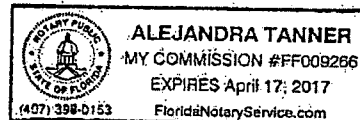


EXHIBIT G

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
	)	Case No. 2016-CP-40-03728
Neal Truslow	)	
	)	
	)	
Plaintiff	)	
vs.	)	REQUEST TO ADMIT
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	

To: Defendants Bretzinger and Holsinger:

Reserving all rights to enforce the default judgment already entered in this matter, and solely for purposes of the issues currently pending before the Court in motions filed on behalf of defendants Bretinger and Holtsinger (hereafter "these defendants"), Plaintiff serves the following Requests to Admit upon defendants Bretzinger and Holsinger, and require that answers be timely served upon the undersigned in accordance with Rule 36, SCRCP, or suffer the consequences of failing to answer as set forth in the rule. You are cautioned to be aware of the restrictions placed upon your failure to answer or avoid admitting the following, as set forth in Rule 36.

Admit or deny the following:

1. The attached email dated August 22, 2016 accurately represents instructions given by these defendants, or either of them, to Peter Protopapas sometime prior to August 22, 2016.
2. These defendants were aware no later than August 22, 2016 that this lawsuit had been filed and service upon them was being attempted.

3. These defendants have avoided service in this matter.
4. These defendants were aware that service by publication had been authorized by this Court prior to October 8, 2016.
5. These defendants had actual notice of this litigation no later than October 8, 2016.
6. These defendants had received a copy of the complaint in this matter no later than November 1, 2016.
7. These defendants intend to delay these proceedings.
8. These defendants lack a defense to this action.
9. These defendants have received all settlement funds recovered by Plaintiff on their behalf.
10. These defendants are attempting to avoid paying an attorney fee for work that performed for them in connection with the collection of a judgment.

Desa Ballard

Desa Ballard
Ballard & Watson, Attorneys at Law
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West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

January 5, 2017

ATTORNEY FOR PLAINTIFF

STATE OF SOUTH CAROLINA	)	FIFTH JUDICIAL CIRCUIT
	)	
COUNTY OF RICHLAND	)	IN THE COURT OF COMMON PLEAS
	)	
Neal Truslow	)	Case No.: 2016-CP-40-3728
	)	
Plaintiff	)	PLAINTIFF'S REQUEST FOR
	)	PRODUCTION
vs.	)	
	)	
Stephen Bretzinger,	)	
Lindsey Holsinger, and	)	
Rikard & Protopapas, LLC	)	
	)	
Defendants	)	
	)	

Reserving all rights under the default judgment which has already been entered in this action, the Plaintiff herein submits the following requests for production to the Defendants Stephen Bretzinger and Lindsey Holsinger. Plaintiff incorporates the provisions of Rule 34, SCRCF, and the definitions and instructions contained therein. In addition, Plaintiff submits the following:

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "Defendant" or "these defendants" shall mean one or both Stephen Bretzinger and/or Lindsey Holsinger, as well as all persons acting or purporting to act on behalf of either of them, including lawyers, whether employed directly or indirectly, as an independent contractor, volunteer. For any purpose relevant to these Interrogatories it shall also include attorneys, accountants, agents, or family members including but not limited to Peter Protopapas.
2. "Person" shall include any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.
3. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, electronic data, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, electronic or computer data bases or printouts, sketches, package

inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control, or subject to the control of the defendants or their attorneys whether such document is stored in word processing files, calendaring program data, e-mails, hard drives, mobile electronic devices including mobile telephones, computer discs, portable drives, hard drives in copier machines, hard drives in fax machines and other computer logs or images of items that might constitute "documents" within the definition set forth herein. This includes materials of any kind stored on portable electronic devices that are not presently in the possession of these defendants.

5. "Computer" shall include, but is not limited to, microcomputers (also known as personal computers or desktops), laptop computers, portable computers, personal digital assistants, Smart phones, tablets, minicomputers and mainframe computers.

6. "Electronic data" means all information stored in a digital format. Electronic data includes, but is not limited to, electronic mail messages and attachments, contacts, journal entries, calendar entries, word processing documents, spreadsheets, databases including all records and fields and structural information, charts, graphs, and any and all miscellaneous files responsive to the following requests. The responding party is expected to search for any and all information stored on hard disks, floppy disks, CDs, DVDs, USB devices, Personal Digital Assistants and Smart Phones (such as iPhones, Androids, Microsoft Surface, iPads, Palm Pilots, Blackberrys and Treos), tablets, and in any other vehicle for digital data storage and/or transmittal. The term electronic data also includes the file, folder tabs and/or containers and labels appended to, or associated with, any physical storage device associated with the information described above.

7. "Evidentiary Image" means a true bit-stream copy of the data requested. "Deleted File" means any electronic data file that has been erased or deleted from the electronic media on which it resided.

8. "Prior litigation" means a matter entitled Stephen Bretzinger and Lindsey Holsinger v. Crestwood Homes, LLC et al. Case No. 0:13-cv-01771-JMC that was pending and later resolved in the United States District Court for the District of South Carolina and the distribution of settlement proceeds from that action.

INSTRUCTIONS

A. All paper copies, documents and electronic data related to prior litigation of a matter entitled Stephen Bretzinger and Lindsey Holsinger v. Crestwood Homes, LLC et al. Case No. 0:13-cv-01771-JMC and any settlement proceeds received from that litigation, including any correspondence through the present date must be preserved. Please insure that all current back-up tapes, disks or drives are not rewritten and no mobile phones used by you are

discarded or altered. Stop any rotation, alteration and/or destruction of electronic media that may result in the alteration or loss of any electronic data relating to the issues in this lawsuit. Do not alter and/or erase active, deleted files or file fragments on any electronic media that may have any relation to this matter. Do not conduct any maintenance such as defragging, reformatting or upgrading any hard drives that may contain data relevant to this litigation. Do not dispose of any electronic media storage devices replaced due to failure and/or upgrade that may contain electronic data having any relation to this matter.

- B. If all of the information furnished in response to all or any part of a Request to Produce is not within your personal custody or control, or within the custody or control of your present attorneys, identify each person or entity who is known to or believed to have custody or control of any information or document requested as well any person or entity to whom any part of the information has previously been furnished or provided.
- C. If objections are entered to all or any part of a request to produce, state the specific grounds for the objection. Answer the request to produce to the extent to which there is no objection.
- D. If a privilege is asserted concerning all or any part of the information requested by a request to produce, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.
- E. Electronically-stored information should be produced on digital media in PDF format or a format that is reasonably usable.
- F. If electronically-stored information cannot be produced in PDF format or a format that is reasonably usable, produce the electronically-stored on digital media along with data with a limited use copy of the necessary software to enable Petitioner to view it.
- G. The following requests to produce shall be deemed to continue from the time of service until the time of final conclusion of the case so that information sought which comes your attention or knowledge or the attention or knowledge of your representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.
- H. Regardless of the noun, pronoun or other designation, if any, used in an request to produce to describe the person or entity to whom it is directed or about whom it is concerned, answers to each of the requests to produce shall include all responsive information known or available about such person or entity.

Request No. 1: Any and all of your bank statements, deposit slips, electronic copies of checks or other instruments reflecting receipt by you of any settlement proceeds from the prior litigation including but not limited to any funds paid to or received by Rikard and Protopapas,, LLC in the amount of \$100,000.00 from Builders Insurance Group on behalf of insured Scenic

Homes, in check number 0001166045. A copy of this check is attached hereto and incorporated herein as Exhibit A to these Request to Produce.

Request No. 2: Any and all of your bank statements, deposit slips, checks, electronic copies, debit card entries, credit card receipts or statements or other documents or instruments reflecting the disbursement by you or on your behalf of any of the funds referred to in Request No. 1.

Request No. 3: Any and all correspondence exchanged by and between you and/or the plaintiff and/or any officer or agent of Rikard and Protopapas LLC related to this matter or the prior litigation, reserving of course any documents which are privileged but as to those produce a privilege log.

Request No. 4: Any and all copies of the complaint in this action received by you from any source including any envelope in which the copy was received or email to which the complaint was attached.

Plaintiff reserves the right to submit additional request production of documents or interrogatories after receipt of complete responses to these requests to produce. This reservation of rights does not limit the discovery which may be undertaken by the Plaintiff in this action.

Desa Ballard

Desa Ballard

Ballard & Watson
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West Columbia, South Carolina 29171
Telephone 803.796.9299
Facsimile 803.796.1066
Email: desab@desaballard.com

ATTORNEYS FOR PLAINTIFF

January 5, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Neal Truslow)

Plaintiff,)

vs.)

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC)

Defendants)

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-40-3728

**PLAINTIFF'S FIRST
INTERROGATORIES TO DEFENDANTS
STEPHEN BRETZINGER AND LINDSEY
HOLSINGER**

The Plaintiff, by and through the undersigned attorneys, hereby require the Defendant, Stephen Bretzinger and Lindsey Holsinger to answer under oath the Interrogatories hereinafter set forth within thirty (30) days after the serving hereof in accordance with Rule 33 of the South Carolina Rules of Civil Procedure.

DEFINITIONS

As used herein, except when the context requires otherwise, the following definitions shall apply.

1. "You", "your", or "plaintiff(s)" shall mean defendant(s) or either of them, or any pertinent predecessors, successor, or subsidiary thereof, their employees, agents, servants, officers, directors, or representatives, as well as all persons acting or purporting to act on their behalf for any purpose relevant to these Interrogatories.

2. "Person" shall mean any individual, partnership, firm, association, corporation, or any other business, governmental, or legal entity.

3. "Identify" or "identity", when used in reference to a natural person, shall require you to state (a) his full name, (b) his present or last known address, and (c) his present or last known employer and job title. When used in reference to a corporation or business entity, "identify" or "identity" shall require you to state (a) the full name of the corporation or business entity, (b) the present or last known address, and (c) the principal place of business and state of incorporation. When used in reference to a document, "identify" or "identity" shall require you to state (a) the date of such document, (b) the type of document, (c) the present location of such document or copies of such document, and (d) a brief summary of the contents of such document.

4. "Document" or documents" shall mean all correspondence, records, reports, indices, summaries, compilations, extracts, memoranda, forms, graphs, technical data or charts, photographs, films, videotapes, sound recordings, invoices, specifications, laboratory reports, protocols, manuals, brochures, pamphlets, advertisements, promotional materials, instructions, literature, computer data bases or printouts, sketches, package inserts, labels, press releases, or any other graphic, visual, written, or recorded electronically or otherwise, of any kind whatsoever, within the knowledge, possession, custody, of any kind whatsoever, within the knowledge, possession, custody, control, or subject to the control of the defendants or their attorneys.

INSTRUCTIONS

1. If all of the information furnished in response to all or any part of an Interrogatory is not within the personal knowledge of the defendants or her attorneys, identify each person to whom all or any part of the information furnished is a matter of personal knowledge or each person who communicated to the defendants or her attorneys all or any part of the information furnished.
2. If the answer to all or any part of an Interrogatory is not presently known or available, include a statement to that effect.
3. If you do not have all or any part of the information requested in an Interrogatory and are unable to obtain it within the time permitted by the South Carolina Rules of Procedure, state the information to the best of your knowledge upon information and belief and identify the source of that information.
4. If objections are entered to all or any part of an Interrogatory, state the specific grounds for the objection and answer such Interrogatory to the extent to which there is no objection.
5. If a privilege is asserted concerning all or any part of the information requested by an Interrogatory, identify the information or document for which privilege is asserted and state the specific grounds for each such privilege asserted.
6. For purposes of the interrogatories set forth herein, any attorney-client or work product privilege by and between the defendants and the plaintiff is expressly waived.
7. The following Interrogatories shall be deemed to continue from the time of service until the time of trial of the case so that information sought which comes to the knowledge of said party, his/her representative, or attorney, after Answers to Interrogatories have been submitted, shall be transmitted to the undersigned.

INTERROGATORIES

INTERROGATORY NO. 1: Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

INTERROGATORY NO. 2: Set forth a list of photographs, plate, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

INTERROGATORY NO. 3: List the names and addresses of any witnesses you plan to use to support your claim that you have a meritorious defense to this action.

INTERROGATORY NO. 4: For each person known to the parties or counsel to be a witness concerning the service of the summons and complaint, the entry of default, or the existence of a meritorious defense, set forth a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

INTERROGATORY NO. 5: Identify all email addresses used by each of the defendants, both personally and for business use, that you have used at any time since January 1, 2016. As to each:

(a) List all email software and versions presently and previously used by you and the dates of use from January 1, 2016 to the present.

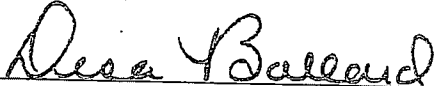
(b) Identify all users you know of who have generated email related to the subject matter of this litigation.

(c) Identify by sender and recipient any and all email messages you know of, including the creation date, the recipient, and the sender, relating to, referencing or relevant to

the service of the pleadings in this case and/or a meritorious defense you intend to assert, and provide the substantive content of each. In lieu of providing the substantive content, you may provide a screen shot or copy of each email responsive to this request.

INTERROGATORY NO. 6: Identify each cell phone or portable electronic device used by either of the defendants at any time during since January 1, 2016, and as to each:

- (a) Identify the phone number(s) for that device.
- (b) Identify the carrier for each telephone and the account number(s) for all accounts which provide service for that device.
- (c) If you have changed electronic devices at any time since January 1, 2016, identify the location of the prior electronic device used by you.
- (d) Identify all persons or entities with whom you have exchanged or received text messages from at any time since January 1, 2016 relating to, referencing or relevant to the service of the pleadings in this case and/or a meritorious defense you intend to assert.
- (e) Identify by date and party(s) the sender and/or recipient, date of the text message and content of each text message that is responsive to this request. In lieu of providing the substantive content, you may provide a screen shot or copy of each email responsive to this request.


Desa Ballard
Harvey M. Watson III

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desab@desaballard.com
harvey@desaballard.com

COUNSEL FOR PLAINTIFF

February 3, 2017

I, Beth Cogan, an employee of the Ballard & Watson
Attorneys at Law certify that I have this date served a copy
of Plaintiff First Interrogatories on all
counsel of record and Pro Se parties by depositing a copy
properly addressed, with sufficient First Class postage
affixed, to each, in the United States Mail.
Date: 2/3/17 Signed: Beth Cogan

Page 4 of 4

EXHIBIT H

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Neal Truslow

Plaintiff,

vs.

Stephen Bretzinger,
Lindsey Holsinger, and
Rikard & Protopapas, LLC

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-40-03728

ORDER
FOR SERVICE
BY PUBLICATION

2016 SEP 12 PM 1:12
JEANETTE W. MCBRIDE
CLERK OF COURT
RICHLAND COUNTY
FILED

This matter comes before me upon the Motion of the attorney for Plaintiff, Harvey M. Watson III, for an Order for Service by Publication pursuant to S.C. Code § 15-9-710.

It appears that there is just cause for granting this Motion, therefore,

IT IS HEREBY ORDERED that service upon the Defendants Stephen Bretzinger and Lindsey Holsinger be made by publication in the SunSentinel newspaper located in Palm Beach County, FL, once a week for three weeks.

IT IS SO ORDERED.

Jeanette W. McBride
Jeanette W. McBride
Clerk of Court

Dated: 9/12/16
Richland County, South Carolina

Transcript of July 11, 2017 hearing on Motion to Compel and Motion to Set Aside

State of South Carolina)
County of Richland)

In The Court of Common Pleas
Fifth Judicial Circuit
2016-CP-40-3728

Neal Truslow,

Plaintiff,

vs.

Stephen Bretzinger and
Lindsey Holsinger, et al.,

Defendants.

Transcript of Record

July 11, 2017
Columbia, South Carolina

B E F O R E:

The Honorable Alison Renee Lee, Judge

A P P E A R A N C E S:

Desa Ballard, Esquire
Attorney for the Plaintiff

Alexandre N. MacClenahan, Esquire
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I N D E X

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E X H I B I T S

<u>No.</u>	<u>Description</u>	<u>Ev.</u>

No exhibits introduced.

1 THE COURT: We are here on docket number
2 2016-CP-40-03728. It is Neal Truslow vs. Stephen
3 Bretzinger and Lindsey Holsinger, et al., with a couple of
4 others, I think. The plaintiff is represented by Desa
5 Ballard. The defense is represented by?

6 MR. MACCLENAHAN: Alex MacClenahan, Your Honor.

7 THE COURT: What was the last name again?

8 MR. MACCLENAHAN: MacClenahan.

9 THE COURT: MacClenahan. Okay. Thank you.

10 We are here on two motions. One is a motion to set
11 aside default, and the other is to compel answers to
12 discovery. Let's take up -- I guess the oldest one is the
13 motion to set aside the default judgment.

14 MR. MACCLENAHAN: Thank you, Your Honor. Alex
15 MacClenahan here. I represent both Stephen Bretzinger and
16 Lindsey Holsinger in this matter. They are husband and
17 wife; they just have different last names. The -- and
18 we're here on a motion to set aside default judgment and
19 entry of default in this matter.

20 I was retained by my clients back in October of last
21 year, 2016. On October 24th, I sent an email over to
22 plaintiff's counsel, Ms. Ballard, which that email is
23 attached as Exhibit A to the motion to set aside entry of
24 default, just notifying her of my representation and asking
25 her, you know, can you please give me a copy of the

1 pleadings, let me know service, et cetera. And she
2 responded promptly, I think the same day, and provided me
3 with a copy of the pleadings and the filings where my
4 clients were being -- in the process of being served by
5 publication.

6 On November 14th, I get an email from the plaintiff
7 providing me with a copy of an entry of default that had
8 been filed in the courthouse. I responded on November 15th
9 and said, look, I was in the process of filing my answer.
10 I had it calendared on a different day. Here's a copy of
11 the answer I'm filing. Will you consent to set aside
12 default judgment -- or, excuse me, set, set aside entry of
13 default? And she responded and said she refused to set
14 aside the entry of default, and again this correspondence
15 is attached as exhibits to, to my motion, Your Honor. The
16 Exhibit E is the final exhibit attached to that motion in
17 which the response was, in asking to set aside the entry of
18 default, was simply:

19 No, I can't consent to set aside the default.

20 It's nothing personal, I assure you. I'm sure
21 you understand that your clients have been
22 impossible to deal with. They ducked service by
23 several methods, and we had to resort to service
24 by publication. They didn't answer in time. I
25 assumed you had not taken the case once you saw

1 your clients were trying to get out of paying
2 their lawyers. I assumed you did not want ---

3 Excuse me.

4 --- assumed you would not want the same thing to
5 happen to you.

6 And that was her -- that was the reason I got for not
7 setting aside the entry of default. Essentially, they felt
8 my clients had been ducking service and had been a pain to
9 deal with on there.

10 So, I prepared a motion to set aside entry of default,
11 and that motion was served over November 16th, Your Honor,
12 the day following our email exchange and was filed by the
13 clerk of court on November 18th at 12:03 PM Your Honor. At
14 that point, I was simply waiting for the -- to be notified
15 that the motion was going to be set for hearing. And to my
16 surprise on -- what day was it? Excuse me.

17 MS. BALLARD: 11/29.

18 MR. MACCLENAHAN: Thank you, the -- but not on 11/29,
19 on December 5th of 2016 I was -- I received notification
20 that a default judgment had been entered. And when I
21 looked on the clerk's website and filings, I saw that the
22 default judgment was signed on November 18, 2016, which is
23 the same day my motion to set aside entry of default was
24 filed and was not filed, however, until November 29th of
25 2016, Your Honor.

1 So in that interim, what appears to have happened is
2 the plaintiff had submitted their default judgment motion
3 to the court for signature without a hearing because they
4 were taking the position that we had not made an appearance
5 in there and had not answered and, therefore, didn't need
6 to have a hearing on the liquidated damages clause. And
7 that judgment got signed the same day that my filing to set
8 aside the entry of default was, was filed by the clerk of
9 court.

10 So, it seems that these two ships kind of crossed in
11 the night and when the court had signed the default
12 judgment, was not yet aware that the entry of default had
13 been filed that same day. I'd also filed an answer with
14 that, Your Honor. It wasn't just a motion to set aside
15 entry of default, and the answer is on file and had also
16 been served to the plaintiff's counsel.

17 And, Your Honor, Mr. Protopapas is here as well. He
18 represents Rikard and Protopapas, who -- they're just
19 holding money that we're all arguing about on there. So,
20 he, he received a copy as well of all these pleadings when
21 I sent them out to them.

22 So, the -- again, they weren't satisfied. They
23 entered default. I have this default judgment in place,
24 and so I then filed a motion to set aside the default
25 judgment that we're here on today.

1 So, we have sort of two different things to go
2 through, Your Honor, being the standards to set aside
3 default judgment and the standards to set aside entry of
4 default in order to achieve the results that my clients are
5 asking the court for here. And as you well know, Your
6 Honor, to set aside a motion for entry of default -- I
7 mean, to set aside a entry of default, rather, is something
8 for good cause shown.

9 The -- and I think the -- there's no dispute that when
10 I received notice that entry of default was filed, the next
11 day I communicated with plaintiff's counsel asking them to
12 set it aside. I prepared an answer, and then I prepared a
13 motion to set aside entry of default, served that on all
14 the parties. I served it via email and through regular
15 mail, and then sent it to the court for filing the -- on
16 there. I didn't sit on my hands waiting for, you know,
17 some new event to happen or anything of that sort, Your
18 Honor.

19 At the time I filed my answer, the -- if we assume the
20 service of the date of publication -- the service by
21 publication, rather, if we assume it was valid on there,
22 and we're not arguing otherwise, that only fort-five days
23 had passed at the time I filed my answer from the response.
24 Typically -- and I'm not saying I would have received it
25 but, I mean, oftentimes you'll receive a thirty-day

1 extension, making it sixty days that -- before you would
2 even be having to file a responsive pleading, Your Honor,
3 but I filed it. It was past the thirty days, but I filed
4 it within forty-five days on there, filed it as soon as I
5 found out about it, filed the answer and then was waiting
6 for a hearing to be set. And unknown to me, you know, a
7 motion for default judgment had been supplied to the court
8 on, on this matter.

9 And again, you know, the plaintiffs, Your Honor, were
10 aware of my representation. The -- I had sent them notice
11 of representation and request of pleadings and the service
12 and the documents regarding the service of publication.
13 So, when they filed the motion for entry of default
14 judgment and their motion for default judgment, they were
15 aware that I had made an appearance. Well, not a formal
16 one with the court, at least. I'd appeared to them and
17 said I represent these folks. So, they had some knowledge
18 that a lawyer was involved.

19 And not that the -- again, Rule 55 certainly doesn't
20 require a follow-up email or phone call before you file an
21 entry of default if someone hasn't responded, but typical
22 custom is that you know a lawyer is involved before an
23 entry of default or, or default judgment is filed, you
24 would ask them about it. Are you still representing this
25 person because if you are, then I need to, I need to have

1 the answer, or just so you know, I'm filing this motion. I
2 got to serve you with it, right?

3 They, they didn't serve me with the motion. They just
4 served me with the order, and if they didn't think I was
5 going to be representing them, Your Honor, it begs the
6 question of why would I be served with a copy of the order
7 if they didn't believe or have knowledge that I was
8 representing these folks? But in any event, that's the,
9 the lead up to entry of default there.

10 So, for good cause simply, there's clearly good cause
11 to set aside the entry of default here. As soon as I found
12 out about the default, I acted promptly and quickly, Your
13 Honor. Filed an answer. Filed my motion. The -- again,
14 only forty-five days had passed at that point. So, it's
15 not as if we're talking months down the road and these
16 folks had been investing all their time and money preparing
17 for a judgment or anything like that, Your Honor. Again,
18 the plaintiffs were aware that I had shown up and made an
19 appearance to them, at least, of my representation. As far
20 as -- I'm sorry.

21 THE COURT: And you're saying, you're saying -- when
22 was the first time you notified counsel about your
23 representation?

24 MR. MACCLENAHAN: October 24th of 2016, Your Honor.

25 THE COURT: Yes, sir.

1 MR. MACCLENAHAN: And that's, and that's also the day
2 that they provided -- they responded that same day and
3 provided me with a copy of the pleadings and the, the
4 notice of service of publication order, service of
5 publication, et cetera.

6 So, I mean, they affirmatively responded to me with it
7 on there as well. It's not as if an email went unanswered
8 on there, Your Honor. So, the plaintiffs were aware that I
9 had at least shown up to some extent to represent these
10 folks in this matter. So as far as setting it aside, the
11 default judgment should have never been entered to begin
12 with because the entry of default, number one, had my
13 motion pending and the answer pending.

14 And again I simply think if you look at the dates on
15 it, they kind of crossed in the night. I've never had an
16 instance of a judge entering a default judgment without a
17 hearing when they're aware that an entry of default and an
18 answer have been filed to try to protect it. Before you
19 would enter a default judgment, there would have to be some
20 sort of decision on the merits on the motion to set aside
21 entry of default on there. I think simply all that
22 happened was they crossed in the night on it. And again,
23 after Judge -- was it Judge Currie who signed it?

24 MS. BALLARD: Benjamin.

25 MR. MACCLENAHAN: Benjamin, excuse me, Judge Benjamin

1 signed it, Your Honor, the -- it wasn't then filed until
2 November 29th. So, there was -- you know, you guys, all
3 the, all the judges here are inundated with orders and
4 stuff, and they sit on it. There's, there's time lag just
5 from when they get reviewed, signed, sent back to the
6 clerks for filing because the clerk's office has their
7 things, and that's what happened in this instance. But I
8 -- it was entered the same day that my entry of default
9 was, was filed, Your Honor, on it and two days before I had
10 served all the parties with a copy of the entry of default,
11 and my answer was filed at the same time as my entry of --
12 my motion to set aside entry of default, Your Honor. So,
13 it should never have gotten to the default judgment stage.

14 We have good cause to set aside the entry of default
15 that was pending. The fact that someone, a particular
16 defendant might have been difficult to serve does not
17 constitute good cause to, to not, not set aside an entry of
18 default, Your Honor. So, the -- I acted promptly on that,
19 but then they have the default judgment entered into and --
20 excuse me. Before I get to the default judgment, I also
21 want to show -- and Rule 55(b)(4), it covers judgments
22 after service by publication. And, and it's cited and the
23 language is quoted in my motion, but it says:

24 In actions for the recovery of money only.

25 Which is what this is. So, they're trying to collect

1 an attorney fee:

2 When the summons has been served by publication
3 and the defendant is a non-resident of the state

4 ---

5 Which my folks are.

6 --- no default judgment shall be rendered unless
7 the plaintiff or his agent at or before the time
8 of making the application for judgment shall have
9 been examined under oath respecting any payments
10 that have been made to the plaintiff or anything
11 for his use on account of the demand mentioned in
12 the complaint, and shall show affidavit and an
13 attachment has been in the action levied upon
14 property belonging to the defendant.

15 No examination under oath happened in this that I'm
16 aware of, Your Honor. The -- I believe Judge Benjamin
17 signed the default judgment in chambers without a hearing
18 on it. There wasn't a hearing where someone came in to --
19 and testified under oath in order to get the entry of
20 default or the default judgment. So, again procedurally a
21 skip was step -- was skipped, rather, that they would have
22 had to go through in order to obtain the entry of default
23 and default judgment on here because this only applies to
24 service by publication, but that's what this case is,
25 service by publication.

1 THE COURT: So, you're saying that even if there are
2 liquidated damages, if it's service by publication, there
3 still has to be someone who comes in and provides some
4 testimony or some evidence?

5 MR. MACCLENAHAN: That's, that's the way the rule
6 reads, Your Honor, and I, I've searched. I mean, I've
7 searched for case law on this rule because until I looked
8 at the rule in preparing, you know, for my motion, seeing
9 what defenses I had, I wasn't aware that that was in there,
10 to be frank with the court here. I found no cases that
11 addressed the issue of liquidated damages versus
12 unliquidated damages. But it just says:

13 In the actions for recovery of money only ---
14 Which is what this is.

15 --- and the service has been by publication, the
16 defendants and nonresident ---

17 All three of those things apply in this case, Your
18 Honor.

19 --- no default judgment shall be rendered unless
20 the plaintiff or his agent at the time of making
21 application of judgment shall be examined under
22 oath.

23 It doesn't say submit an affidavit either. It says
24 examined under oath, presumably by the court, I suppose,
25 when you're seeking a default judgment on there. It's not

1 entirely clear for that. But no such examination under
2 oath occurred to, to my knowledge, Your Honor, and I've
3 looked at the court file, et cetera, for it and I found no
4 evidence that it's in -- that it ever occurred.

5 So, then we get to the, to the -- then we get to the
6 default judgment and again, Your Honor, I, I know the court
7 is well aware of the standards to set aside a default
8 judgment. The -- and it's typically mistake, inadvertence,
9 or excusable neglect in this instance. And in this
10 instance, Your Honor, it's, it's some sort of mistake or
11 inadvertence that's happened here where I filed my motion
12 to set aside the entry of default.

13 In my motion, I brought up the issue Rule 55(b)(4). I
14 also said I had meritorious defenses, filed a
15 contemporaneous answer, set forth the timeline that we've
16 been going over how I responded, et cetera, to show that I
17 was acting promptly and quickly upon receiving notice of
18 this on there. And the motion for default judgment, I
19 think, was just sitting in Judge Benjamin's chambers when
20 my motion to set aside entry of default was filed.

21 I never received a copy of the motion to -- for
22 default judgment to be aware that it was pending. If I had
23 received a copy of the motion for set aside default, Judge,
24 of course I would have contacted Judge Benjamin as well to
25 let her know that, you know, we had filed an answer, we had

1 a motion to set aside entry of default, and ask for -- to
2 at least set a hearing for the default judgment and to hear
3 my motion to set aside entry of default before anything,
4 you know, was finalized and an order was entered.

5 So because of that mistake or inadvertence, so to
6 speak, that's really the only reason the default judgment
7 got -- was entered in this instance. The -- and it should
8 be set aside so that my clients can proceed on the case on,
9 on the merits here. They have -- the plaintiff here knew
10 of my representation, suffered no prejudice as a -- if this
11 is set aside, we'll just move forward with the case.

12 Your Honor, we've actually already done some discovery
13 in this matter while the default judgment was pending.
14 We've engaged in interrogatories, request to produce,
15 request to admit. They've responded to some of the
16 discovery. They have objected to some of it on the grounds
17 that they claim this default judgment was entered, so they
18 shouldn't have to respond to it, but they've respond to
19 others, including the request to admit they responded to,
20 Your Honor.

21 They've also served me with discovery to answer on
22 behalf of my client, and that's -- there's a motion to
23 compel pending here that they're looking for further
24 information beyond what was already provided to them.

25 And the discovery that was served by both parties

1 didn't just go to, you know, the issue of timing on when
2 the motions -- when the answer was due, when the motion was
3 filed, et cetera. They did address those issues, but they
4 also touched on other issues going towards the merits of
5 the case, asking for witness lists as well, asking for
6 document lists, bank statements, et cetera, some phone
7 conversations or text messages, emails, going into sort of
8 communications that covered not just what might be an issue
9 for the -- this hearing in particular, Your Honor, but
10 issues that go towards the merits of the case on there,
11 which again they've suffered no prejudice.

12 We've been able to go through written discovery on
13 this. I've provided them with some information; they've
14 provided me with some information on it. The -- on it.
15 The -- here's a volume they provided, and there's one
16 request to produce they still have an issue with which
17 we'll get in a moment. So, again there's no prejudice
18 that's been suffered on their end. We've been able to move
19 this case forward slowly, but it's been moved forward as
20 far as written discovery goes.

21 There's not -- if this judgment is set aside, Your
22 Honor, there's not a whole lot more written discovery to
23 take place. And then we, you know, we'll be ready to move
24 right in with doing depositions and, and mediation as
25 required and moving forward with this. The -- and I would

1 certainly agree to some sort accelerated scheduling order
2 to help accomplish that so this case isn't lingering on the
3 docket. And I think plaintiffs are also willing to do that
4 as, as we had discussed before our conference call with
5 Judge Benjamin a few weeks ago before this got set for
6 hearing, Your Honor.

7 So in any event, for those reasons, they haven't
8 suffered any prejudice. We have some meritorious defenses
9 that were raised. We've filed promptly and quickly on
10 here, the -- and at the end of the day they didn't
11 procedurally do the things they were supposed to do to get
12 a default judgment like do this examination under oath. We
13 should set aside this default judgment, set aside the entry
14 of default, let this proceed.

15 The -- I know they're going to say there's no
16 meritorious defenses because that's what -- they wouldn't
17 have filed the lawsuit if they thought there was a defense
18 to it, the -- there was a legitimate defense to it. That's
19 how the -- our whole system works on it. But there are
20 some defenses that are being raised. There is
21 disagreements about the attorney fee and what's owed on the
22 attorney fee and the work that was done. That gets into
23 the merits of the case and beyond the scope of setting
24 aside this default judgment.

25 We would just ask that these folks be allowed to

1 proceed with the case on its merits, that they not be
2 prejudiced irrevocably by having a default judgment
3 entered, and we'll, we'll all move forward with discovery
4 in the case and move in to depositions. There's not a lot
5 of depositions to take in this case and once that's done,
6 the case is ready for mediation and trial pretty soon. So,
7 we can have this wrapped up pretty soon after if this
8 default judgment and entry of default is set aside, Your
9 Honor.

10 THE COURT: Thank you.

11 MR. MACCLENAHAN: Thank you.

12 THE COURT: Ms. Ballard.

13 MS. BALLARD: Thank you, Your Honor. This case arises
14 out of Mr. Truslow's representation of Mr. MacClenahan's
15 client in a case in federal district court. It was a case
16 involving damages for some allegedly -- for construction on
17 a home in York County. While Mr. Truslow was representing
18 the defendants, they authorized a settlement of \$100,000.
19 They then rejected the settlement, and Mr. Truslow moved to
20 be relieved as counsel in federal court. He was relieved
21 as counsel, and Mr. Protopapas appeared as counsel for Mr.
22 MacClenahan's clients.

23 The defendants in the district court action filed a
24 motion to enforce the settlement and that motion was
25 granted. Mr. Protopapas, as counsel for Mr. MacClenahan's

1 clients or the defendants, received the \$100,000, disbursed
2 the net proceeds to his clients, who are the defendants in
3 this case, and his clients instructed him not to pay Mr.
4 Truslow. He acknowledged and they have acknowledged that
5 Mr. Truslow has a charging lien in the amount of 35,000
6 some-odd dollars. That money is being held in Mr.
7 Protopapas's trust account. So, after several months of
8 discussions between Mr. Truslow, Mr. Protopapas, and Mr.
9 Protopapas advising that his clients would not allow him to
10 release the fee to Mr. Truslow, we filed this lawsuit.

11 By that time, the defendants were living in --
12 somewhere in Florida. We retained the sheriff's department
13 in that county in Florida. I'm sorry I can't remember the
14 name of the county. The sheriff's office went to the home
15 eight times, and they returned an affidavit of nonservice
16 to us indicating that the defendants appeared to be
17 avoiding service. And the grounds for that were that there
18 was a package on the front steps addressed to defendant
19 Holsinger one day when they went for service, and the next
20 day when they went for service the package was gone,
21 leading to the conclusion that somebody picked it up. So,
22 after eight attempts to serve them at their residence, the
23 sheriff's department returned an affidavit of nonservice to
24 us.

25 We then entrusted it to the United Parcel Service.

1 Since the United Parcel Service box got picked up, we
2 thought maybe we could serve them by United Parcel Service.
3 UPS tried to serve them four times and returned an
4 affidavit of nonservice to us.

5 So, we applied to the court, Your Honor, for an order
6 to serve them by publication, and that order to serve them
7 by publication was issued on September 12, 2016. In
8 response to that, Your Honor, we published service by
9 publication in the newspaper as required by the order for
10 service by publication, and the service was completed on
11 October 6, 2016.

12 When Mr. MacClenahan contacted me by email on the 24th
13 of October, he said I've been hired by these parties. I
14 understand you're trying to serve them by publication.
15 Could you provide me with the pleadings, and I did. I
16 provided him with the complaint. I provided him with the
17 service, the order for service by publication, and I
18 provided him with the affidavit of service showing that
19 service had been accomplished on October 6, 2016.

20 Three weeks passed and five weeks after service had
21 been accomplished, and we had not heard anything. So, we
22 filed a motion for entry of default and a motion for entry
23 of default judgment. There was one filing. There are not
24 two filings, there's one, and I want to make sure it's
25 clear. We emailed that to Mr. MacClenahan the day we filed

1 it, which was November 14, 2016. That's when he
2 communicated me and asked if I would agree to set aside the
3 default. And I said based on the defendants' behavior, no,
4 I would not agree to set aside the default.

5 And it wasn't just their failure to be served twelve
6 times between the sheriff and UPS. It was also their
7 refusal to allow Mr. Protopapas to accept service in this
8 case and to disburse the fees to Mr. Truslow that he was
9 owed.

10 So, I acknowledge that Mr. MacClenahan said that he
11 was in the process of preparing an answer, but that answer
12 was late. That answer was five weeks late after service by
13 publication had been accomplished, and I sent him the
14 affidavit of service to show that service on his client was
15 complete on October 6th. So, he knew that. Presumably
16 they knew that.

17 His motion to set aside was filed. We did -- we sat
18 back and waited. We had filed our motion of default and
19 default judgment; we did not file anything else. We did
20 not surreptitiously go to Judge Benjamin's office and say
21 hey, Judge, they haven't answered. Here's a proposed
22 default judgment. We allowed what we filed on November
23 14th to work its way through the system. Judge Benjamin
24 did, in fact, sign the default judgment on November 18th
25 and filed it on November 29th, which is when we found out

1 about it by -- we were monitoring it online to see what had
2 happen been filed, and it got served by the clerk's office,
3 not by me. So, he got it the same time I got it.

4 Your Honor, in terms of a default judgment, there is
5 no good cause. They knew on October 24th that service had
6 been completed on October 6th because I sent it to them,
7 told them so. They knew, and I waited three weeks. My
8 email, when I responded to him on 10/24, I said here is all
9 the stuff to date. Please let me hear from you or I look
10 forward to hearing from you or something.

11 I got nothing. I didn't get a request for extension.
12 I didn't get an acknowledgment. I didn't get could I have
13 extra time to answer. I didn't get anything. So, my
14 conclusion, as I've indicated in my memorandum in
15 opposition to the motion to set aside default judgment, my
16 conclusion that -- was that once Mr. MacClenahan saw what
17 the nature of the dispute was, he had no longer agreed to
18 represent them. I really thought that since his clients
19 were trying to stiff a lawyer for a fee that he's earned,
20 that Mr. MacClenahan, by his silence, had stepped away from
21 the case. I had no reason to believe otherwise. However,
22 I went ahead and served him since he had not appeared in
23 the action but he had emailed me. So, I sent him a copy of
24 my motion for entry of default judgment. I did nothing
25 else until Judge Benjamin signed the affidavit -- or,

1 excuse me, the order for default judgment.

2 We do oppose setting aside the default judgment
3 because there is no good cause. There is not excusable
4 neglect. There's neglect obviously, but there's no
5 excusable neglect.

6 Mr. MacClenahan's position is it's customary in
7 Richland County for defendants to be given an additional
8 thirty days to answer. Well, it's probably customary when
9 defendants have not been ducking service for twelve times.
10 I certainly would have given them an extension of time had
11 they asked. In this case I might have given an extension
12 of time had they asked, but they never asked.

13 And as far as prejudice is concerned, Your Honor, Mr.
14 Protopapas has filed an answer in this proceeding, and he's
15 acknowledged that he did receive the money that -- from the
16 settlement in federal court. He received that money and
17 disbursed it to the defendants in June 2015. We filed this
18 lawsuit a year later, June 2016. So, here we are July
19 2017. The prejudice is my clients have not had their
20 money. My client has not had his money for two years while
21 the defendants have had their money ever since Mr.
22 Protopapas gave it to them in 2015.

23 So, their defenses in their proposed answer are kind
24 of just vague, generic, you know, unclean hands kind of
25 defenses. It doesn't set forth any facts as to what the

1 defenses really are except we know that they changed their
2 mind about the settlement because they knew that that's why
3 Mr. Truslow got out of the case.

4 In terms of 55(b)(4), Mr. MacClenahan's right. There
5 are no cases construing that actual language, and I looked
6 at the federal rules to see if there is a comparable
7 federal rule so that we could get some guidance from the
8 federal rule, and there is no comparable federal rule about
9 that either. So, looking at the substance of what is
10 required by paragraph D, everything that is required by
11 paragraph D is of record: the admission of the defendants
12 that they knew that they -- there was a charging lien
13 asserted by Mr. Truslow; the acknowledgment by the
14 defendants that they had received their money and Mr.
15 Truslow has not received his.

16 This is not a suit for recovery of money insomuch as
17 it's a suit requesting an order authorizing Mr. Protopapas
18 to release the money to Mr. Truslow which has already been
19 earned. So, I'm not asking for any money from the
20 defendants. I'm asking for an order authorizing and
21 directing Mr. Protopapas to release my client's earned fee
22 to him. Judge Benjamin has signed that order authorizing
23 him to do that.

24 Mr. MacClenahan filed a motion to set aside default
25 judgment. We were scheduled to be heard in February, Your

1 Honor, in front of Judge Manning. The day before the
2 hearing, Mr. MacClenahan asked Judge Manning for a
3 continuance, saying that the motion to set aside default
4 had to be heard by Judge Benjamin, and I opposed that. I
5 said the motion to set aside can be heard by anybody, but
6 Judge Manning punted and said okay. Fine. I'll give you a
7 continuance.

8 We had a status conference with Judge Benjamin, and
9 Judge Benjamin said I don't have to hear that, and that's
10 how Your Honor got it because it got rescheduled. But
11 that's four months ago that the motion to set aside default
12 would have been heard but for the conduct of the defendants
13 in attempting to delay.

14 So, here is what happened. After they, they obtained
15 the continuance from Judge Manning, I served request to
16 admit and interrogatories and request to produce, all of
17 which was related to when did they receive notice of this
18 lawsuit, when did they first receive a copy of this
19 lawsuit. The discovery that I served was related to this
20 motion, this motion being the motion to set aside default.
21 And as we'll get to when we get to my motion to compel,
22 they danced around the issue. And the only thing they
23 would say is they have notice of the complaint in this
24 action on October 24th, which is the same day I emailed it
25 to Mr. MacClenahan. They obviously had it before because

1 when Mr. MacClenahan contacted me on the 24th, he knew we
2 were attempting service by publication. Well, the
3 sheriff's office had knocked on their door eight times; UPS
4 had knocked on their door four times. They were clearly
5 avoiding service.

6 So, I want to know when they knew about the complaint,
7 and I think that's relevant to this motion, and that's why
8 I served that discovery. We've not served discovery for
9 the whole case. All we've done is serve discovery to try
10 to disprove their argument that they have good cause for
11 setting aside the default because they knew about this
12 complaint a long time ago. There was no surprise on
13 October 24th, but they danced around it and they said --
14 and I don't want to get into the merits of the motion to
15 compel, but they said we're not going to tell you when we
16 found out about the complaint because that communication
17 would be attorney-client privileged. But we will tell you
18 we got it on the 24th of October when you sent it to Mr.
19 MacClenahan. Well, I know they did because I sent it to
20 them. My question is how long sooner than that.

21 We'd been trying to serve them for almost six months,
22 and so they've not yet answered that question
23 satisfactorily. They've claimed privilege on that. But,
24 Your Honor, they have not shown good cause. What they've
25 shown is delay. They've shown multiple delay. They have

1 shown intentional delay. They have shown intentional
2 efforts to evade service. So in terms of good cause, they
3 haven't shown it.

4 In terms of meritorious defense, they haven't shown
5 any because I -- their defenses are just, like, eight
6 defenses that are -- they're putting their defenses to
7 every declaratory judgment action. There's no facts
8 pleaded.

9 And lastly as a prejudice, as I said already, this
10 case was filed June 16, 2016. If they had been served and
11 answered, we'd be on the trial roster now. So, there is
12 significant prejudice to us. What Mr. MacClenahan is
13 asking you to do is say, okay, now we can start a year
14 after I filed the lawsuit, nine months after I got them
15 held in default.

16 Of course there's prejudice. The defendants have had
17 their money since June 2015. It was a \$100,000 settlement.
18 My client's one-third fee plus some costs that he advanced,
19 which nobody seems to dispute, but it still is in Mr.
20 Protopapas's hands. So, my client is the only one being
21 prejudiced by the delays in this case. So, we are
22 adamantly opposed to setting, setting aside the default
23 judgment.

24 I don't think Mr. MacClenahan accused me of going
25 behind his back and going to Judge Benjamin. I listened

1 carefully. We did serve the motion for entry of default
2 judgment on him when we emailed it to him on November 14,
3 2016. He knew about my filing as much as I did it. He got
4 it; he responded to it. The only thing he didn't do was
5 contact Judge Benjamin's office, and it obviously worked
6 its way to the top at Judge Benjamin's office and she
7 signed it. Nobody had brought to her attention apparently
8 the motion that Mr. MacClenahan and filed, and that wasn't
9 my responsibility to do.

10 Your Honor, we think the motion to set aside default
11 judgment has absolutely no merit. There is no good cause
12 shown. There is considerable prejudice to my clients, and
13 what we do know is that they intentionally waited five
14 weeks to answer because the email from Mr. MacClenahan on
15 the -- I think it was the 15th he emailed me or maybe it
16 was the 14th, and he said I'm working on the answer. Well,
17 he was going to get around to it when he felt like it, sort
18 of like his clients. They were going to get around to
19 accepting service when they had no other choice.

20 Twelve times we attempted service through the
21 sheriff's office and UPS, and we didn't accomplish it.
22 These defendants have had every opportunity to properly
23 defend this case. My clients have been without -- my
24 client's been without his money for two years. There is
25 significant prejudice if, if default judgment is set aside.

1 Your Honor, we would ask that you enter an order denying
2 the motion to set aside the judgment, which would then make
3 the motion to compel our discovery moot. Thank you, Your
4 Honor.

5 THE COURT: Briefly.

6 MR. MACCLENAHAN: Yes, Your Honor. Briefly on a few
7 different issues here. The -- going to the no prejudice
8 issue, again the reason why they're, they're also not
9 prejudiced. It's not as if these funds are in my clients'
10 bank account and there's some danger of liquidating them or
11 getting rid of them. The funds are being held in trust by
12 Mr. Protopapas here. So, the, the, the -- it's not as if
13 the plaintiffs are facing a situation of a client -- excuse
14 me, of a defendant who is going to be judgment proof at
15 some point down the road, Your Honor. The funds are there;
16 they're being held in trust at Mr. Protopapas's law firm.
17 My clients don't object to that and don't -- or any sort of
18 that matter. It should be held in trust until this matter
19 is resolved, Your Honor. So, they certainly aren't facing
20 a prejudice of being unable to collect at some point down
21 the road here.

22 I also want to address the issue of delay. The motions
23 were filed promptly and by me. As soon as I received
24 notice of them, I filed my motion to set aside the entry of
25 default. This got set for a hearing on -- and I don't have

1 this printed out because I didn't realize this was going to
2 be an issue today, but on January 4, 2017, I sent an email
3 to Judge Manning, copying all counsel here, Your Honor --
4 and I'm happy to print it or send it to you for your
5 consideration -- notifying him that I represented these
6 folks, that these motions were pending. The email's long
7 but the pertinent part says:

8 After speaking with counsel for all parties, it
9 was brought up that you might have concerns about
10 ruling on the motion to set aside a default
11 judgement since you did not sign the order.

12 Counsel for all parties wanted to make you aware
13 of this issue and inquire if you were willing to
14 hear this motion or prefer that it be set for
15 hearing in front of Judge Benjamin since she
16 signed the order at issue. I have copied all
17 counsel of record so that they are aware of this
18 communication. Please let us know at your
19 earliest convenience if you would like us to
20 proceed with the hearing tomorrow or prefer that
21 we reschedule it in front of Judge Benjamin.

22 Thank you in advance for your consideration.

23 Please don't hesitate to contact me.

24 The usual sort of closing statements that are made at
25 the end of a correspondence, Your Honor.

1 The -- I didn't ask Judge Manning for a continuance.
2 I simply brought to his attention after discussing it with
3 counsel that he might have an issue deciding it because
4 I've had that happen. And, Your Honor, I'm in Greenville.
5 My -- so, I'm just going to drive out here and they had
6 another -- matters to work on as well, and we don't want to
7 spend the court's time if Judge Manning simply was going to
8 say this is not for me to decide. It should be decided by
9 Judge Benjamin.

10 The, the day of the hearing I was preparing to leave.
11 We had not received any communication from Judge Manning.
12 I contacted his clerk and simply said has Judge Manning
13 made a decision, and he told me Judge Manning would not
14 want to hear this and for me to notify the other parties,
15 which I also did as soon as I received a message for that.

16 Ms. Ballard got crosswise with me, thinking I had done
17 some sort of *ex parte* communication as opposed to simply
18 inquire about scheduling on that. But that's the way it
19 went down, and we have the emails back and forth that I'm
20 happy to submit to the court if this is going to be an
21 issue.

22 But as far as an attempt to delay on my part in
23 January, that simply wasn't the case. I asked the court if
24 that was going to be an issue for them or not. If it
25 wasn't, we were ready to go and hadn't heard. If it was,

1 it would move over to Judge Benjamin. Judge Manning
2 decided that he did not want to enter that order from it,
3 Your Honor.

4 So, the delay was not any sort of intentional delay,
5 or it wasn't a request for a continuance even. That -- I
6 didn't make a request for a continuance. There was no
7 motion in there that I would have filed for a continuance
8 on this matter. It was simply an inquiry to the court as
9 to whether or not Judge Manning felt this was a matter that
10 should be in front of him.

11 The other issues going towards the discovery, the
12 discovery they served me with, Your Honor, does in fact go
13 to issues beyond just the, the service in this case.
14 They're asking witness lists. They're asking for document
15 lists. They're asking for email. They're asking for phone
16 calls and text messages, et cetera. The -- it's -- it goes
17 beyond simply when were you served, how were you served
18 discovery. And again I'll be happy to provide all the
19 discovery for the court to review it.

20 Any event, Your Honor, all we want to do is proceed on
21 the merits here. That's what the court system prefers, and
22 my clients would ask that you set aside the default
23 judgment and the entry of default so that we can move
24 forward with this matter and get it resolved quickly. As I
25 said, I'm more than willing to enter into an accelerated

1 scheduling order should, should the court grant our motion.

2 THE COURT: Let's hear about the motion to compel.

3 MS. BALLARD: Thank you, Your Honor. After ---

4 THE COURT: Briefly.

5 MS. BALLARD: Yes, Your -- yes, Your Honor. After Mr.

6 MacClenahan communicated with Judge Manning and I

7 affirmatively objected to continuing that hearing, which

8 request, by the way, was made ---

9 THE COURT: I'm on the motion to compel.

10 MS. BALLARD: Okay. I, I understand. That day I

11 served him with interrogatories and request to produce

12 relative to the, the argument that he was making in the

13 motion to set aside default that he had good cause to --

14 good cause for setting aside the default. And what I got

15 back was -- I said when did you have -- I'm looking for the

16 actual complaint, the actual question. I said to them I

17 wanted:

18 Any and all copies in -- of the complaint in this

19 action received by you from any source, including

20 any envelope in which the copy was received or

21 email to which the complaint was attached.

22 The response was:

23 The defendants object on the basis of

24 attorney-client privilege and/or work product

25 doctrine. Subject to and without waiving the

1 foregoing objections, defendants respond that
2 they received via counsel a copy of the complaint
3 on October 24, 2016.

4 I consulted with Mr. MacClenahan. I said that was not
5 a sufficient answer. Obviously you know what I'm looking
6 for. So, he supplemented the answer and he added an
7 additional sentence that just said:

8 Defendants did not receive any other non-
9 privileged documents that are responsive to this
10 request.

11 That takes us back, Your Honor, to the answer that was
12 filed by Mr. Protopapas. Mr. Protopapas filed an answer
13 indicating that his representation of these defendants
14 ended in June of 2015 when the federal court action was
15 over. Our transmission to Mr. Protopapas of the complaint
16 and our request that he be allowed to accept service
17 occurred after that date. So by definition, Mr.
18 Protopapas's communications with the defendants after June
19 of 2015 when he was no longer representing them is not
20 privileged. And we have a right to know when they became
21 aware of the complaint because it's relevant to the motion
22 to set aside the default. We have a right to know how many
23 times they received a copy of the complaint. We have a
24 right to know how actively they were, in fact, ducking
25 service. And that's why we're entitled to know how many

1 times they got a copy of this complaint before I send it to
2 Mr. MacClenahan on the 24th of October 2016.

3 So, they've claimed privilege. They've included a
4 privilege log that has, I believe, twenty-five
5 communications with Mr. Protopapas's office. I may have
6 miscounted, but communications with Mr. Protopapas's office
7 that covers, let's see, five, five and a half pages of
8 communications with Mr. Protopapas's office after Mr.
9 Protopapas ceased being their lawyer. I'm entitled to all
10 of those. I'm entitled to those to know if they got a copy
11 of the complaint. I'm entitled to those to know everything
12 I need to know relevant to their attempt to show good cause
13 and their attempt to show meritorious defense.

14 So, their claim of attorney-client privilege is just
15 not valid because Mr. Protopapas's answer says he ceased
16 representing them in June of 2015. So, from that date
17 forward, July 2nd, an email from Peter Protopapas to
18 Stephen Bretzinger and the -- maybe it's more like
19 thirty-five or forty-five communications with Mr.
20 Protopapas's office, four and a half pages, none of which
21 are privileged, none of which have been produced, all of
22 which are relevant to the motion to set aside default that
23 Your Honor is considering today.

24 THE COURT: The privilege log is not in the file.
25 It's not attached to ---

1 MS. BALLARD: It is attached to my memorandum in
2 support.

3 THE COURT: Okay.

4 MS. BALLARD: I'll hand up another copy of it, Your
5 Honor.

6 THE COURT: And if it's attached to your memorandum in
7 support, then that's fine.

8 MS. BALLARD: It is. It's attached.

9 THE COURT: It's attached to the motion?

10 MS. BALLARD: It's attached to -- as Exhibit B to my
11 memorandum in support.

12 THE COURT: Okay.

13 MS. BALLARD: And so the objection based on
14 attorney-client privilege just doesn't hold water. And I
15 think it's relevant to this court's consideration of the
16 merits on the motion to set aside default just how far
17 these defendants have gone to duck service and avoid this
18 action. Thank you, Your Honor.

19 THE COURT: Yes.

20 MR. PROTOPAPAS: Your Honor, Peter Protopapas.

21 THE COURT: Yes, sir.

22 MR. PROTOPAPAS: I have no dog in this fight. I just
23 want to make sure, want to make sure I'm clear with my
24 answer.

25 I responded to an allegation that asserted that my law

1 firm -- paragraph 13 of the complaint:

2 That defendant Protopapas assumed representation
3 of Bretzinger and Holsinger in November 2014.

4 THE COURT: You need to speak up because the court
5 reporter can't hear you.

6 MR. PROTOPAPAS: I apologize, Your Honor.

7 THE COURT: As long as you're looking up while you're
8 speaking.

9 MR. PROTOPAPAS: Yes, Your Honor.

10 That defendant Protopapas assumed representation
11 of Bretzinger and Holsinger in November 2014 and
12 remained as counsel through conclusion of the
13 federal action.

14 I amended that portion of the allegation, but I
15 wouldn't want to characterize my communications with my
16 clients after the end of the federal action as not
17 attorney-client simply because I had duties to them at the
18 time, and I was giving you legal advice, and they were at
19 the worst former clients.

20 They -- their -- whether they -- the communication
21 could be turned over I think is a separate issue, but I
22 would hate to have it classified that I was not their
23 lawyer at the time because I know they were looking to me
24 to be giving them advice. I know I was representing them
25 through the disbursement of the settlement proceeds and,

1 and, and even after. And so when you terminate
2 representation, even if they're my former client, I still
3 have communication duties to them that I think would
4 properly be considered attorney-client. Whether the
5 property producible here -- I will, I will not intervene
6 in, but I, I wouldn't want that characterization to be
7 there. If I put that characterization out there, it was
8 only an admission to the specific language of the complaint
9 because I'm trying to stay out on the dispute itself.

10 THE COURT: Thank you.

11 Yes, sir, Mr. MacClenahan.

12 MR. MACCLENAHAN: Thank you, Your Honor. The -- that
13 shortens a little bit of my rebuttal here so far as to say
14 simply that Mr. Protopapas did continue to have some legal
15 representation. I was going to give him the opportunity to
16 speak to that.

17 The, Your Honor, the -- we've identified in the
18 privilege log what these emails are back and forth. The --
19 and we've, we've asked that they -- we've decided -- or,
20 rather, let me rephrase that. We've asserted that those
21 are privileged communications. Mr. Protopapas just
22 represented to the court as well that in his view those
23 were representations between him as a lawyer and client on
24 there and would classify as attorney-client communications
25 on there. Now, whether the court decides that these are

1 properly producible in spite of that is a separate issue,
2 Your Honor. But I had properly raised that objection on
3 there. I would argue that they're not properly producible
4 in spite of that.

5 The, the main issue simply being however many
6 complaints or, you know, folks from UPS showed up isn't
7 relevant to the -- whether good cause exists. People don't
8 have to, you know, just stand around saying here I am.
9 Serve me with your lawsuit on there. I'm not -- I don't
10 know if my clients ducked service or didn't duck service.
11 All I know is at service of publication time, the -- I was
12 provided a copy of that. The -- I filed my answer after
13 that. All these other issues as far as:

14 All copies of the complaint received by you
15 from any source or envelope which was received
16 via ---

17 Excuse me.

18 Any and all copies of the complaint in this
19 action received by you from any source, including
20 any envelope in which the copy was received or
21 email to which the complaint was attached.

22 I simply answered:

23 Other than when I received it from these folks,
24 any other communications that might address that
25 issue are privileged communications between

1 lawyers.

2 And provided the privilege log to that.

3 That's not really relevant to the motion to set aside
4 default judgment or set aside entry of default. The, the
5 -- nowhere in the case law that I found said that however
6 many copies of a complaint you received is a factor to
7 consider, or the method in which you received them is a
8 factor to consider whether to decide entry of default or a
9 default judgment, Your Honor. So, I objected to producing
10 those. I did provide them with a privilege log. They were
11 properly objected to, and I don't think that they're
12 producible.

13 The -- in any event, should Your Honor grant the
14 motions, that issue no longer even applies anymore because
15 the, the default judgment is set aside, I mean, as a
16 factor. So, however many times that they received a copy
17 of the complaint goes nowhere towards the merits of this
18 case, Your Honor. So, for those reasons the motion to
19 compel should, should be denied.

20 MS. BALLARD: Brief reply, Your Honor?

21 THE COURT: Very brief.

22 MS. BALLARD: Thank you, Your Honor.

23 THE COURT: I think I've heard quite a bit.

24 MS. BALLARD: Thank you, Your Honor.

25 In our memorandum in, in support of our motion to

1 compel, we cited the case law regarding the attorney-client
2 privilege. We also cited the case law that indicates that
3 it is the defendant's burden to establish both that the
4 communications were confidential and that the
5 attorney-client relationship existed.

6 Mr. Protopapas's neutralizing of what he said in his
7 answer is not the defendants in this case establishing the
8 burden of proving that the communication was confidential,
9 or that the attorney-client relationship continued to
10 exist.

11 I've also cited the 2003 case, Your Honor, that
12 suggests that Your Honor may have to review *in camera* or
13 may elect to view *in camera* the communications themselves
14 to determine whether they are privileged.

15 And lastly, Your Honor -- what was the third point?
16 The third point has escaped my sixty-three year-old mind.
17 I apologize. Thank you.

18 THE COURT: Thank you. I will review the matters and
19 issue an order.

20 MS. BALLARD: Thank you, Your Honor.

21 THE COURT: Thank you.

22 MR. MACCLENAHAN: Thank you, Judge.

23 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 11TH DAY OF JULY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

/s/ELIZABETH B. HARRIS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

FEBRUARY 8TH, 2018