

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Innovative Waste Management Inc., Crest Energy
Partners LP, Edward H. Girardeau, Plaintiffs,

Of Whom Innovative Waste Management, Inc. is the
Appellant,

v.

Crest Energy Partners GP, LLC, Dunhill Products GP,
LLC, Henry Wuertz, Innovative Waste Management Inc.,
Crest Energy Partners LP, Dunhill Products LP, Edward
H. Girardeau, C. Russ Lloyd, Defendants,

Of Whom Crest Energy Partners GP, LLC, Crest Energy
Partners LP, Dunhill Products LP, Henry Wuertz, and
Edward H. Girardeau are the Respondents.

Appellate Case No. 2015-002024

Appeal From Dorchester County
Maité Murphy, Circuit Court Judge

Opinion No. 5561
Submitted December 5, 2017 – Filed May 23, 2018

REVERSED AND REMANDED

Frederick John Jekel, of Jekel Law, LLC, of Columbia,
Patrick Aulton Chisum and William Michael Gruenloh,
both of Gruenloh Law Firm, of Charleston, and Brian
Ross Holmes, of Green Law Firm, LLC, of Columbia, all
for Appellant.

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

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David B. Marvel, of Charleston for Respondents.

HILL, J.: After mediation, Innovative Waste Management (IWM) and Respondents signed an agreement promising to settle their claims and dismiss their lawsuit in exchange for Respondents paying IWM \$450,000.00 within 30 days. The agreement further stated the parties "hereby authorize and direct their attorneys to execute and file a stipulation of dismissal with prejudice" once payment was received.

A few days later, Respondents' counsel emailed the circuit court's law clerk and copied an employee at the Dorchester County clerk of court, advising of the settlement and noting "we will file a stipulation of dismissal once the settlement is consummated." Less than a week later, the clerk of court generated and filed a Form 4 dismissal order, which reflected: "It is Ordered and Adjudged: See attached order, (formal order to follow)", and "This order ends . . . the case." The Form 4, entitled "Judgment in a Civil Case," was signed by the clerk of court, not a circuit judge. No order was attached, but the Form 4 was accompanied by the mediator's "Proof of ADR" form, which indicated: "As a result of the ADR, this case should be considered . . . Fully Settled . . . Voluntary Dismissal to be filed by [counsel for Respondents]."

After Respondents failed to meet the payment deadline, IWM's counsel contacted the clerk of court to restore the case to the active roster, only to learn the lawsuit had been dismissed. IWM then filed a Rule 60(b), SCRPC, motion to vacate the settlement and restore the case to the active docket, which the trial court denied after hearing. After the trial court denied its motion to alter or amend, IWM filed this appeal.

I.

Rule 60(b)(4), SCRPC, provides a court may, "upon such terms as are just," relieve a party from a void judgment or order. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect." *Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (Ct. App. 2017) (quoting *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)). Void judgments are defined as those from courts that lacked personal or subject matter jurisdiction, or failed to provide due process. *Id.* at 617–18, 799 S.E.2d at 316.

A void judgment is far different from one merely "voidable." *Thomas & Howard Co., Inc. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). A voidable judgment is nothing more than one made in error by a court with jurisdiction, as our facts can show.

Given the stage of IWM's case, it could have been voluntarily dismissed only by a stipulation of dismissal signed by all parties. Rule 41(a)(1), SCRPC. Consequently, even if, after notice and hearing, a circuit judge had signed the Form 4 purportedly ending the case pursuant to Rule 41(a), it would have been error. But it would have been an error fixable by the trial court on reconsideration, or by this court on appeal: the error not being one of jurisdiction, the judgment would have been voidable, not void. *See Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343 ("Irregularities which do not involve jurisdiction do not render a judgment void."); *Piana v. Piana*, 239 S.C. 367, 372, 123 S.E.2d 297, 299 (1961) ("There is a wide difference between a want of jurisdiction in which case the court has no power to adjudicate at all, and a mistake in the exercise of undoubted jurisdiction in which case the action of the trial court is not void although it may be subject to direct attack" (citation omitted)). But the Form 4 ending IWM's case was signed without notice or hearing and by the clerk of court, who had no authority to do so. The tasks of the clerk of court are ministerial, always subject to judicial control and the rules of court. *See* S.C. Code Ann. § 14-7-220 (2017); Rules 58 and 77(c), SCRPC. A clerk of court may only sign and enter judgment without court direction and approval when the judgment merely confirms a jury's general verdict, or upon the court's decision "that a party shall recover only a sum certain or costs or that all relief shall be denied" Rule 58(a)(1), SCRPC.

Lyles v. Bolles, 8 S.C. 258 (1876) endorsed the following language: "A sentence professing on its face to be the sentence of a judicial tribunal, if rendered by a self-constituted body, or a body not empowered by its government to take cognizance of the subject it had decided, could have no legal effect whatever." *Id.* at 262 (quoting *Rose v. Himely*, 8 U.S. 241, 268–69 (1808) (Marshall, C.J.)). Both *Lyles* and *Rose* used the traditional term of art, *coram non iudice*, "'before a person not a judge' — meaning, in effect, that the proceeding in question was not a *judicial* proceeding because lawful judicial authority was not present, and could therefore not yield a *judgment*." *Burnham v. Superior Court of California, Cty. of Marin*, 495 U.S. 604, 609 (1990).

The record discloses no action of the court authorizing the Form 4 dismissal, much less after notice and hearing, as due process required. It is therefore void, and "is, in legal effect, nothing." *Turner v. Malone*, 24 S.C. 398, 401 (1886). "All acts performed under it, and all claims flowing out of it, are void." *Id.*; *see also Burke v.*

C. I. R., 301 F.2d 903 (1st Cir. 1962) ("[C]ourts render judgments; clerks only enter them on the court records. What is determinative therefore is the action of the court, not that of the clerk"); *Downing v. O'Brien*, 325 A.2d 526, 528 (Me. 1974) *overruled on other grounds by Architectural Woodcraft Co. v. Read*, 464 A.2d 210 (Me. 1983)("It seems obvious that since the Clerk is performing only a ministerial function and is not empowered to perform a judicial function, whenever a Clerk acts in excess of the authority granted by the Rule and purports to enter a judgment in a case where he has no authority to do so, the judgment so entered is void.").

Although we typically review denials of Rule 60, SCRCP, motions for abuse of discretion, a court has no discretion to perpetuate a void judgment. The Form 4 is vacated, and the order of the trial court denying IWM relief from the void judgment is

REVERSED AND REMANDED.

LOCKEMY, C.J., and HUFF, J., concur.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

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August 20, 2018

The Honorable Cheryl L. Graham
5200 E Jim Bilton Blvd
St George SC 29477-8020

REMITTITUR

AUG 22 2018

Re: Innovative Waste v. Crest Energy
Lower Court Case No. 2012CP1801227
Appellate Case No. 2015-002024

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

Handwritten signature of Jenny A. Kitchings in black ink.

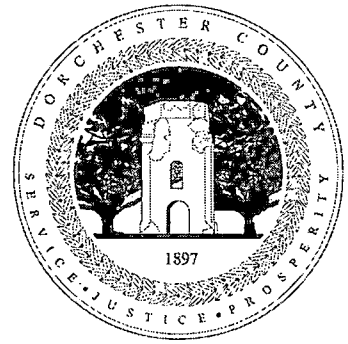
CLERK

Enclosure

cc: William Michael Gruenloh, Esquire
Patrick Aulton Chisum, Esquire
Brian Ross Holmes, Esquire
Frederick John Jekel, Esquire
David B. Marvel, Esquire

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CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY
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DORCHESTER COUNTY CLERK OF COURT
Cheryl Graham, Clerk of Court
5200 East Jim Bilton Blvd.
St. George, SC 29477



September 4, 2018

Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

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SC Court of Appeals

Re: Innovative Waste v. Crest Emery
Appellate Case No: 2015-002024
Lower Court Case No: 2012CPI801227

Dear Clerk of Court:

Pursuant to the Order issued on August 29, 2018, enclosed please find the Remittitur that was filed on August 22, 2018.

With best regards, I am

Sincerely yours,

Becky Stevens
Chief Deputy Clerk/Common Pleas

Enclosure: Original/Sealed Remittitur filed 8/22/2018

CHERYL GRAHAM

CLERK OF COURT
DORCHESTER COUNTY
5200 East Jim Bilton Blvd.
St. George, SC 29477

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