

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge
Trial Case No.: 2014-CP-26-07617

APPELLATE CASE NO.: 2018-001724

RECEIVED

NOV 19 2018

SC Court of Appeals

Jerald W. Jones Appellant

v.

Captain's Harbour and Racquet Club
Homeowners Association, Inc. Respondent

APPELLANT JERALD W. JONES'S
RETURN IN OPPOSITION TO
CAPTAIN'S HARBOUR AND RACQUET CLUB
HOMEOWNERS ASSOCIATION, INC.'S
MOTION TO DISMISS APPEAL

John M. Leiter, Esquire
LAW OFFICES OF JOHN M. LEITER, PA
1203 48th Avenue North, Suite 109
Myrtle Beach, South Carolina 29577
(843) 449-1451
(843) 449-4884 (fax)
Attorney for Appellant

INTRODUCTION

Respondent, Captain's Harbour and Racquet Club Homeowners Association, Inc. (hereinafter "Captain's Harbour"), moved this Court to dismiss this appeal alleging that the Notice of Appeal filed by Appellant Jerald W. Jones (hereinafter "Jones") was not timely. Jones's Notice of Appeal was timely filed. As the facts set forth below will demonstrate, the Notice of Appeal was filed within thirty (30) days after Jones learned of the entry of the formal Order [denying reconsideration], although the formal Order has not been served on the parties or their counsel.

The specific issue is whether the Notice of Appeal was served "... within thirty (30) days after receipt of written notice of entry of the order or judgment". Rule 203(b)(1), SCACR. Jones did file his Notice of Appeal within thirty (30) days after learning that the formal Order [denying reconsideration] had been filed. Prior to then, the parties had not received written notice of the entry of the Order.

PROCEDURAL STATEMENT OF FACTS

In order to understand Jones's position that the parties or their attorneys had not received written notice of the entry of the formal Order [denying reconsideration], a review of the procedural history of this case is necessary. This review demonstrates that the attorneys of record did not receive written notice of the entry of the formal Order [denying reconsideration].

The relevant facts of the history of this case are summarized as follows:

- 11-12-14 Captain's Harbour files¹ lawsuit seeking a monetary judgment against Jones, which Complaint was timely answered.
- 12-22-15 Captain's Harbour files a Motion for Summary Judgment.
- 01-11-16 Jones files a Motion for Summary Judgment.
- 01-25-16 Captain's Harbour files an Amended Motion for Summary Judgment.
- 02-18-16 After a hearing, the Honorable R. Lawton McIntosh files a Form 4 Order granting Captain's Harbour's Motion for Summary Judgment and denying Jones's Motion for Summary Judgment (see attached Exhibit 1). The Form 4 Order states that a formal Order is to follow.
- 03-11-16 Jones files a Motion for Reconsideration (see attached Exhibit 2).
- 04-12-16 Judge McIntosh's formal Order granting Captain's Harbour's Motion for Summary Judgment and denying Jones's Motion for Summary Judgment (hereinafter referred to as "the Judgment") is filed (see attached Exhibit 3).
- 09-16-16 Judge McIntosh files a Form 4 Order denying Jones's Motion to Reconsider with the indication that Mr. Mackelcan would prepare a formal order (see attached Exhibit 4).
- 10-04-16 The Form 4 Order filed on September 16, 2016 is re-filed by the Clerk of Court with an addendum showing that the copy mailed to Thomas Winslow, Esq. was returned by the U.S. Postal Service as

¹ Unless indicated otherwise, all filings refer to documents filed with the Horry County Clerk of Court.

undeliverable and unable to forward as addressed (see attached Exhibit 5).

- 11-15-16 Jones files the (first) Notice of Appeal (Appeal #2014-002299) with the South Carolina Court of Appeals to protect the appeal in the event the formal Order denying reconsideration was signed, filed and served.
- 11-18-16 Captain's Harbour's counsel, Mr. Mackelcan sends to Jones's appellate counsel, Mr. Leiter, a copy of the proposed formal order with a cover to Judge McIntosh dated November 17, 2018 [sic] (see attached Exhibit 6).
- 11-28-16 Formal Order [denying reconsideration] was filed (see attached Exhibit 7).
- 12-19-16 Mr. Leiter emails Captain's Harbour counsel asking Mr. Mackelcan if he had received the formal Order [denying reconsideration] yet (see attached Exhibit 8A).
- 12-20-16 Mr. Mackelcan responds by email stating that he had not received a formal Order [denying reconsideration] yet, and that he will send it when he does (see attached Exhibit 8B).
- 02-16-17 Mr. Leiter writes to the Clerk of the South Carolina Court of Appeals (with a copy to Mr. Mackelcan) asking this Court to consider holding this appeal in abeyance until a formal Order [denying reconsideration] is filed (see attached Exhibit 9).

- 03-15-17 Clerk of Court of Appeals writes to Mr. Leiter asking for the status of the formal order (with a copy to Mr. Mackelcan as well as to the Honorable Lawton R. McIntosh) (see attached Exhibit 10).
- 03-27-17 Mr. Leiter responds to the Clerk of the Court of Appeals' letter (with a copy to Mr. Mackelcan) stating what Mr. Leiter then understood, which was that Captain's Harbour's counsel stated that the formal order had not been entered and filed (see attached Exhibit 11).
- 04-19-17 This Court issues an order dismissing the appeal without prejudice and issued a Remittitur (see attached Exhibit 12).
- 05-16-17 This Court mails Remittitur to Horry County Clerk of Court, and case is remanded (with a copy to Judge McIntosh and Mr. Mackelcan) (see attached Exhibit 13).
- 08-23-18 Jones provides Mr. Leiter with a copy of a Writ of Execution has been served on him by the Sheriff of Horry County (see attached Exhibit 14).
- 08-28-18 Mr. Mackelcan confirms by telephone to Mr. Leiter that he has not received a copy of the formal Order [denying reconsideration].
- 08-30-18 Thomas Winslow, Esquire, Jones's prior counsel, confirms that he has not received a copy of the formal Order [denying reconsideration] (see attached Exhibit 15).

ARGUMENT AND CITATION OF AUTHORITY

The filing of a Rule 59(e), SCRPC, Motion for Reconsideration stays the time in which to file a Notice of Appeal; the Notice of Appeal is filed only after receipt of written notice of entry of an order granting or denying the Motion for Reconsideration. This is based on Rule 203(b)(1), SCACR, Rules 50(e), 52(c) and 59(f), SCRPC. USAA Property and Casualty Ins. Co. v. Clegg, 377 S.C. 643, 651, 661 S.E.2d 791, 775 (2008). “A motion under Rule 59(e) is timely if it is ‘served not later than ten (10) days after receipt of written notice of the entry of the order’. If a timely motion is made pursuant to Rule 59, the time for appeal runs from the receipt of written notice of entry of the order disposing of the motion.” Id. citing Coward Hund Constr. Co. v Ball Corp., 336 S.C. 1, 3, 518 S.E.2d 56, 57 (Ct. App., 1999).

The procedural history demonstrates that notice of entry of the formal Order [denying reconsideration] filed on November 28, 2016 was not received by the attorneys of record. Both Mr. Mackelcan and Mr. Winslow, Jones’s counsel at the time, had not received a copy of the formal Order [denying reconsideration] after it was filed (see Exhibit 8B). In his Motion to Dismiss Appeal, Mr. Mackelcan does not indicate that he received a copy of the formal Order [denying reconsideration] before August, 2018.

As pointed out in its Motion to Dismiss Appeal, the formal Order [denying reconsideration] bears, on the first page, the stamp notation “COPIES MAILED”. This stamp notation, however, is not certification by the Horry County Clerk of Court’s office that copies of the Order had been mailed by the Clerk or her staff. As explained by Bridgett Williamson, Supervisor, Horry County Court of Common Pleas, the stamp “COPIES MAILED” is simply confirmation that the Clerk’s office had returned a stamped copy of a

particular document to the attorney [or in this case, judge] who requested it, and who had supplied an envelope to the Clerk's office for that purpose (see Affidavit of Bridgett Williamson, attached hereto as Exhibit 16.) In this case, Ms. Williamson believes the "COPIES MAILED" stamp was inadvertently applied to the formal Order [denying reconsideration].

The Clerk's office uses a more formal method to document the official mailing of an order. An example of this formal certification can be found on other orders in this case, e.g., the Form 4 Order of Judge McIntosh (see Exh. B to Williamson Affidavit). This specific certification is not found on the formal Order [denying reconsideration] and for this reason, it is Ms. Williamson's opinion that the formal Order [denying reconsideration] was not mailed to the parties' counsel or to the parties themselves.

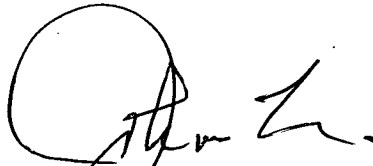
Jones notified his counsel that he had been served with a Writ of Execution on or about August 23, 2018. Upon learning this, Jones's counsel filed with the South Carolina Clerk of Appeals the second Notice of Appeal on September 20, 2018, which is the subject of this instant Motion to Dismiss Appeal, and which was received by this Court on September 24, 2018. The filing of the second Notice of Appeal was within the thirty (30) days required by Rule 203(b)(1), SCACR.

This is not a situation where counsel was served by a means other than U.S. mail, such as by way of email. The record shows that no one has been served with written notice of the entry of the Order by any means. See Wells Fargo v. Fallon Properties, 422 S.C. 211, 810 S.E.2d 856 (2018). Counsel for Captain's Harbour has not taken the position that he served or caused Jones's counsel to be served.

CONCLUSION

Notwithstanding the notation "COPIES MAILED", the Clerk of Court for Horry County has not served a copy of the formal Order [denying reconsideration] on counsel of record. For the foregoing reasons, the Motion to Dismiss Appeal should be denied.

Respectfully submitted,



John M. Leifer, Esquire
LAW OFFICES OF JOHN M. LEITER, PA
120348th Avenue North, Suite 109
Myrtle Beach, South Carolina 29577
(843) 449-1451; (843) 449-4884 fax
Counsel for Appellant

November 15, 2018

INDEX TO EXHIBITS

No.	Date	Description
1	2/18/16	Lawton Form 4 Order granting Summary Judgment
2	3/11/16	Jones Motion for Reconsideration
3	4/12/16	Order granting Judgment
4	9/16/16	Form 4 Order
5	10/4/16	Form 4 Order with mail returned
6	11/17/18	Mackelcan cover letter enclosing proposed order to Judge McIntosh
7	11/28/16	Formal Order [Denying Reconsideration]
8A	12/19/16	Email from Mr. Leiter to Mr. Mackelcan
8B	12/20/16	Mr. Mackelcan's reply
9	02/16/17	Mr. Leiter's letter to Clerk, SC Court of Appeals
10	03/15/17	Court of Appeals letter to Mr. Leite requesting status
11	03/27/17	Mr. Leiter's letter to Clerk, SC Court of Appeals with status
12	04/19/17	Order of Dismissal of Appeal with Prejudice
13	05/16/17	Remittitur to Horry County
14	08/03/18	Writ of Execution
15	08/30/18	Email from Tom Winslow, never been served
16	11/13/18	Affidavit of Bridgett Williamson

#10 i #11
2-17-16

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2014CP2607617

Capital Harbour And
Racquet Club Homeowners
Association Inc

Jerald W Jones

FILED
FEB 19 2016
CLERK OF COURT

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____ Attorney for: Plaintiff Defendant
 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit);
 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

Plaintiff's Motion for Summary Judgment granted in that the attorney's fees incurred by the Defendant were based on individual charges against him, and the agreement was between the Plaintiff and the Corporate management company. Therefore, Defendant was not entitled to indemnification through the agreement for personal charges. Defendant's Motion for Summary Judgment denied. Mr. MacKelan to prepare formal order.

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 (List amount(s) below)
n/a	n/a	n/a

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.

 2155 2/18/2016
Circuit Court Judge R. Lawton McElrath Judge Code Date

For Clerk of Court Office Use Only

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

Douglas Walker MacKelcan III 40 Calhoun St., Ste. 400
Charleston, SC 29401

Thomas William Winslow I 1019 Tournament Blvd. PO Box
829 Murrells Inlet, SC 29576

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Teresa Bantz

Melanie Huggins-Ward - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Captain's Harbour and Racquet Club
Homeowners Association, Inc.,

C/A No.: 2014-CP-26-7617

Plaintiff ;

**DEFENDANT'S NOTICE OF
MOTION AND MOTION FOR
RECONSIDERATION**

v.

Jerald W. Jones,

Defendant .

HORRY COUNTY
CLERK OF COURT
JUGGINS-WARD
MAR 11 AM 8:56

COMES NOW, Defendant Jerald W. Jones ("Defendant"), by and through its undersigned attorney, and urges the Court to reconsider its ruling regarding the inapplicability of the contract to the Defendant Jerald W. Jones and the Summary Judgment against said Defendant. As detailed below, Plaintiff believes the Court's discretion is inconsistent with case precedent, and applies a sanction unfairly prejudicial to the Plaintiff.

A motion was brought forward by the Plaintiff claiming that the indemnity clause within the Contract (Exhibit 1) was not applicable to the Defendant. The contract clearly states that the agreement is between the Plaintiff and the "manager." As indicated in the signature block of the contract the Defendant is the clearly noted manager for this property. It was the intent of all parties that the Defendant be recognized as the manager for this HOA, therefore covered by the attached contract under the plain reading of the contract.

The Court is urged to reconsider its ruling that the contract is not applicable to the Defendant and that Summary Judgment should be issued to the Plaintiff. The Defendant ask that the Summary Judgment be rescinded.

(Signature page is next page)

Respectfully submitted,

GOLDFINCH WINSLOW, LLC

By:  _____

Thomas Winslow
Post Office Box 829
Murrells Inlet, SC 29576
t. 843.357.9301 / f. 843.357.9303
tom@goldfinchwinslow.com
ATTORNEY FOR DEFENDANT

Murrells Inlet, South Carolina

March 9, 2016

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

Captain's Harbour and Racquet Club
Homeowners Association, Inc.,

Plaintiff,

v.

Jerald W. Jones,

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

C/A No.: 2014-CP-26-7617

**CERTIFICATE OF SERVICE
NOTICE OF MOTION AND MOTION
FOR RECONSIDERATION
JUDGMENT**

The undersigned certifies that a true copy of the foregoing **DEFENDANT'S NOTICE OF MOTION AND MOTION FOR RECONSIDERATION** was served upon the following parties or counsel of record on the 10TH OF MARCH, 2016 via the following method(s):

United States Postal Service Facsimile Email

Douglas W. MacKelcan
Carlock Copeland & Stair, LLP
40 Calhoun St., Ste. 400
Charleston, SC 29401
(dmackelcan@carlockcopeland.com)

*Attorney for Plaintiff Captain's Harbour
and Racquet Club Homeowners Association,
Inc.*

HORRY COUNTY
2016 MAR 11 AM 8:56
MELANIE HUGGINS-WARD
CLERK OF COURT

Ronald S Solomon
Ronald S. Solomon, Paralegal

Murrells Inlet, South Carolina

March 10, 2016

summary judgment, "the court must view the facts and inferences therefrom in a light most favorable to the nonmoving party." *Bravis v. Dunbar*, 316 S.C. 263, 265, 449, S.E.2d 495, 496 (Cl. App. 1994). "A party opposing a properly supported Motion for Summary Judgment, however, may not rest on the mere allegations or denials of its pleading, but must set forth or point to specific facts showing that there is a genuine issue of material fact. Thus, the existence of a mere scintilla of evidence in support of the nonmoving party's position is not sufficient to overcome a motion for summary judgment." *Dickert v. Metropolitan Life Insurance Company*, 306 S.C. 311, 313, 411, S.E.2d 672, 673 (Cl. App. 1991), *reversed in part on other grounds*, 311 S.C. 218, 428, S.E.2d 700 (1993).

FINDINGS

In this case, Plaintiff seeks to recover from Defendant for conversion of funds from the Plaintiff's operating account. Jones, without authorization from Plaintiff, used Plaintiff's funds to pay for personal criminal defense legal fees and personal medical bills following physical altercations on July 7, 2014 that led to his arrest. At the time, Jones was an employee of ACE Management ("ACE"), the property management company for Plaintiff's regime pursuant to a management agreement ("the Agreement"). Jones claims he was entitled to use the Plaintiff's funds under the terms of the Agreement.

In October of 2012 Plaintiff entered the management agreement with ACE "for the orderly and uniform administration, operation, maintenance, and management of the Association and for the promotion, preservation, and the protection of property values in the regime." The parties to the Agreement are identified in the first paragraph of the Agreement:

THIS AGREEMENT, made and entered into this 1st day of October 2012, by and Between Captains Harbour and Racquet Club Homeowners Association, a nonprofit corporation organized and existing under the laws of South Carolina, hereinafter called "The Association" and American Contracting Engineers, PA, a Corporation organized and existing under the laws of Delaware and doing business as (dba) ACE Management hereinafter called "The Manager".

The Agreement outlined the responsibilities and duties ACE owed to Plaintiff and contained an indemnity provision, upon which Defendant relies to justify his use of Plaintiff's operating account funds. The indemnity provision in the Agreement states:

VI. HOLD HARMLESS

A. Section III, Item B (4): The Association shall indemnify the Manager from any claims, demands, judgments or suits that may be brought against or incurred by the Manager by reason of the Manager's recommendations unless such acts shall be caused by said Manager's gross negligence of willful misconduct.

B. Section III, Item D: The Association specifically agrees and shall indemnify the Manager from any claims demands, judgments or suits or damages that may be brought against or incurred by the Manager by reason of Manager's role in assisting the Board with regard to the services set forth in this Section III, Item D. Manager agrees to use Manager's best efforts to investigate and recommend qualified, reputable subcontractors; however Manager shall not be responsible for any nonperformance, negligence or any loss or damages resulting from the provision of these services unless such acts shall be caused by said Manager's gross negligence or willful misconduct.

C. General: Including Items A and B above, the Manager shall not be liable to the Association and/or its Members for any loss or damage caused by acts of the Manager unless said acts constitute gross negligence, and said Association and its Members, do hereby agree to indemnify and save harmless the Manager from any such liability for all damage, costs, and expense (including attorney fees incurred by the Manager in defending legal action), arising from any injury to any person or property in, about and in connection with the Association, its Common

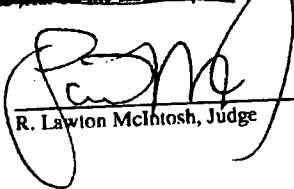
Elements, Limited Common Elements, and Dwellings, from any cause whatsoever, unless such injury shall be caused by said Manager's gross negligence or willful misconduct.

The plain language of the Agreement identifies the parties to the contract as Plaintiff and ACE. Defendant is not a party to the Agreement, and therefore, is unable to claim contractual indemnification in this case.

CONCLUSION

Plaintiff is entitled to damages from the Defendant in the amount of: \$12,788.80, representing the money converted from Plaintiff's operating account for Defendant's personal use, pre-judgment interest beginning September 1, 2014 of \$1,847.71, and costs involved in instituting this action of \$1,684.63. Therefore, the total actual damages Defendant owes Plaintiff are: \$16,321.14, and this case will proceed to trial on the issue of punitive damages.

This issue of punitive damages was not addressed at the hearing. RLM
IT IS SO ORDERED.



R. Lawton McIntosh, Judge

This 7 day of April, 2016
Anderson, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-26-7617

CAPTAIN'S HARBOUR AND RACQUET CLUB HOMEOWNERS
 ASSOCIATION, INC.

JERALD W. JONES

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: DOUGLAS W. MACKELCAN

Attorney for: Plaintiff or
 Defendant
 Self-Represented Eligible

DISPOSITION TYPE (CHECK ONE)

JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.

ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other

ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other

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 (List amount(s) below)
CAPTAIN'S HARBOUR AND RACQUET CLUB HOMEOWNERS ASSOCIATION, INC.	JERALD W. JONES	\$16,321.14
		\$
		\$

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.

APR 12 2015
 Horry County
 10:00 AM

McIntosh, Lawton Secretary (Susan Stanfield)

From: McIntosh, Lawton Law Clerk (Elizabeth Nicholson)
Sent: Thursday, March 17, 2016 8:49 AM
To: McIntosh, Lawton Secretary (Susan Stanfield)
Subject: FW: Captain's Harbour and Racquet Club Homeowners Assoc., Inc. v. Jerald W. Jones; Case No.: 2014-CP-26-7617; CCS File No.: 50328
Attachments: Letter to Judge McIntosh encl proposed Order.PDF; Order (proposed) (3).DOC
Follow Up Flag: Follow up
Flag Status: Flagged

Another order.

From: Rewt, Teri J. [<mailto:trrewt@carlockcopeland.com>] On Behalf Of Mackelcan, Douglas W.
Sent: Wednesday, March 16, 2016 4:03 PM
To: McIntosh, Lawton; McIntosh, Lawton Law Clerk (Elizabeth Nicholson)
Cc: tom@goldfinchwinslow.com; Mackelcan, Douglas W.
Subject: Captain's Harbour and Racquet Club Homeowners Assoc., Inc. v. Jerald W. Jones; Case No.: 2014-CP-26-7617; CCS File No.: 50328

Dear Judge McIntosh and Ms. Nicholson,

On behalf of Attorney Doug Mackelcan, please see attached letter and proposed Order. I have also attached the proposed Order as a Word document, as stated in Doug's letter. If you have any questions, please do not hesitate to give Doug a call.

Respectfully,



Teri Rewt
Secretary
Carlock, Copeland & Stair, LLP
843.329.8346 | f: 843.727.2995 | trrewt@carlockcopeland.com
40 Calhoun Street, Suite 400, Charleston, South Carolina 29401

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-7617

Captain's Harbour and Racquet Club Homeowners
 Association, Inc.

Jerald W. Jones

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

2016 SEP 14 11:27
 PH 2-27

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
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- 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

THE COURT DENIES DEFENDANT'S MOTION FOR RECONSIDERATION. INASMUCH AS IDENTICAL GROUNDS WERE ARGUED AT PREVIOUS HEARING THE REQUEST FOR A HEARING ON THIS MOTION IS DENIED. THE COURT NOTES THAT DEFENDANT'S MOTION FOR RECONSIDERATION WAS NOT PROVIDED TO THE COURT UNTIL AUGUST 25, 2016. PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER.

This order ends does not end the case.

Additional Information for the Clerk :

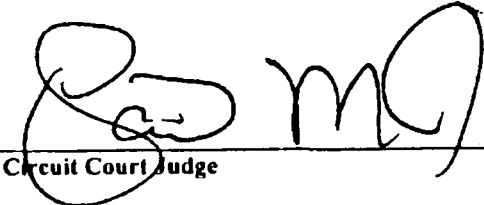
INFORMATION FOR THE JUDGMENT INDEX

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		\$
		\$
		\$

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Circuit Court Judge

2155
Judge Code

9-1-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 16 day of Sept, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this 19 day of Sept, 2016 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)
Melanie Suggins Ward
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-7617

Captain's Harbour and Racquet Club Homeowners
 Association, Inc.

Jerald W. Jones

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff	<input type="checkbox"/> Defendant
	or	
	<input type="checkbox"/> 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2016 OCT 4 AM 8:52
 CLERK OF COURT

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

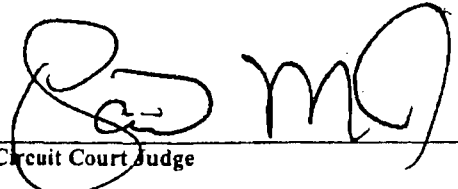
THE COURT DENIES DEFENDANT'S MOTION FOR RECONSIDERATION. INASMUCH AS IDENTICAL GROUNDS WERE ARGUED AT PREVIOUS HEARING THE REQUEST FOR A HEARING ON THIS MOTION IS DENIED. THE COURT NOTES THAT DEFENDANT'S MOTION FOR RECONSIDERATION WAS NOT PROVIDED TO THE COURT UNTIL AUGUST 25, 2016. PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER.

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 (List amount(s) below)
		\$
		\$
		\$

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

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


Circuit Court Judge

2155
Judge Code

9-1-16
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 _____ 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)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

copy of order,
filed 10-4-16 mailed to all
parties not in default on 10-11-16
Initials zwe



After Five Days Return To

Melanie Huggins -- Ward
Clerk of Court of Horry County

P.O. Box 677

Conway, South Carolina 29528-0677

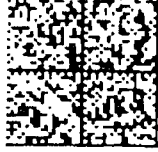
CLERK OF COURT
WARD

16 OCT 28 AM 9:26

FILED
CLERK OF COURT

D/S AUTH 530
CHARLOTTE NC

PRESORTED
FIRST CLASS



U.S. POSTAGE PITNEY BOWES



ZIP 29526 \$ 000.45²
02 1W
0001399797 OCT 13 2016

Thomas W. Winslow
11019 Tournament Blvd.
Murrells Inlet SC 29576

WFW

MIXED 296 DE 127A 001074716

RETURN TO SENDER
NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

SC: 29528067777 *2480-00993-24-29

977549680 34 INT-INT 2888827

LAW OFFICES

CARLOCK, COPELAND & STAIR, LLP

A LIMITED LIABILITY PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

DOUGLAS W. MACKELCAN

DIRECT DIAL NUMBER
(843) 266-8228E-MAIL ADDRESS
dmackelcan@carlockcopeland.com40 Calhoun Street, Suite 400
CHARLESTON, SC 29401

TELEPHONE (843) 727-0307

FAX (843) 727-2995

www.carlockcopeland.com

ATLANTA OFFICE
191 Peachtree Street, N.E.
Suite 3600
Atlanta, Georgia 30303
(404) 522-8220

REPLY TO SC OFFICE

November 17, 2016

VIA EMAIL AND REGULAR MAILThe Honorable R. Lawton McIntosh
P.O. Box 8002
Anderson, SC 29622
lmcintoshj@sccourts.org; lmcintoshlc@sccourts.orgRe: Captain's Harbour and Racquet Club Homeowners Association, Inc. v.
Jerald W. Jones
Case No.: 2014-CP-26-7617
CCS File No.: 4145-50328

Dear Judge McIntosh:

Enclosed please find the (proposed) Formal Order in this case, pursuant to the Form-4 Order filed on September 16, 2016. I am also providing a copy of the Order in Word format via email so that you can make any changes necessary.

I have copied opposing counsel on this correspondence. If you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,



DOUGLAS W. MACKELCAN

DWM:tjr

Enclosures

cc: Thomas Winslow, Esq. (via email only)

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2014-CP-26-7617
)	
CAPTAIN'S HARBOUR AND)	
RACQUET CLUB HOMEOWNERS)	
ASSOCIATION, INC.,)	ORDER
)	
Plaintiff,)	
vs.)	
)	
JERALD W. JONES,)	
)	
Defendant.)	
_____)	

This matter came before the Court for consideration of Defendant's Motion for Reconsideration, filed on March 11, 2016. Plaintiff's and Defendant's Motions for Summary Judgment were heard on February 17, 2016. The Court issued a Form-4 Order Granting Plaintiff's Motion for Summary Judgment and Denying Defendant's Motion for Summary Judgment on February 18, 2016. The Court entered a Formal Order on the motions dated April 7, 2016. Counsel for the Defendant requested the Court consider the Motion for Reconsideration, and, in response, Plaintiff requested that the Court consider the Motion without a hearing and deny the Motion on the ground that Defendant failed to assert any new or supplemental arguments beyond those presented in prior written submissions to the Court or heard at the February 17, 2016 hearing.

Because Defendant has not asserted any new or alternative grounds in support of his Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment,

the Court **DENIES** Defendant's request for a hearing on his Motion to Reconsider, and **DENIES** Defendant's Motion for Reconsideration.

IT IS SO ORDERED.

R. Lawton McIntosh, Judge

This _____ day of _____, 2016
Anderson, South Carolina

COPIES MAILED

EXH. 7

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CASE NO.: 2014-CP-26-7617
)	
CAPTAIN'S HARBOUR AND)	
RACQUET CLUB HOMEOWNERS)	
ASSOCIATION, INC.,)	ORDER
)	
Plaintiff,)	
vs.)	
)	
JERALD W. JONES,)	
)	
Defendant.)	

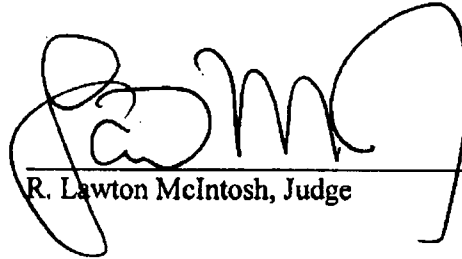
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Because Defendant has not asserted any new or alternative grounds in support of his Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment,

2016 NOV 28 AM 8:29
 CLERK OF COURT
 JUDICIAL CIRCUIT

the Court **DENIES** Defendant's request for a hearing on his Motion to Reconsider, and **DENIES** Defendant's Motion for Reconsideration.

IT IS SO ORDERED.



A handwritten signature in black ink, appearing to read 'R. Lawton McIntosh', is written over a horizontal line. The signature is stylized and cursive.

R. Lawton McIntosh, Judge

This 21 day of November, 2016
Anderson, South Carolina



State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
Judge

November 21, 2016

Post Office Box 8002
100 South Main Street
Anderson, SC 29622-8002
Phone: (864) 260-4059
Fax: (864) 224-6320
lmcintoshj@sccourts.org

Honorable Melanie Huggins-Ward
Clerk of Court for Horry County
Post Office Box 677
Conway, South Carolina 29528

Dear Madame Clerk:

Please find enclosed an original Order signed by Judge McIntosh in the following case:

Captain's Harbour and Racquet Club Homeowners Association Inc. V. Jerald W. Jones
2014-CP-26-7617

Please file these in your office and provide certified copies to the attorneys of record pursuant to your customary procedure. Thank you for your assistance in this matter.

Sincerely,

Tammy Jennings
Administrative Assistant to
R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

Enclosures

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On 12/20/2016 11:07 AM, Mackelcan, Douglas W. wrote:

John,

No, I have not received it. I will send when I do.

I assume you have not had any luck getting Mr. Jones to agree to making a settlement offer?

EXH. 8B

Doug



Douglas W. Mackelcan
Partner

Carlock, Copeland & Stair, LLP

843.266.8228 | f: 843.727.2995 | dmackelcan@carlockcopeland.com

40 Calhoun Street, Suite 400, Charleston, South Carolina 29401

From: John Leiter [<mailto:jleiter@48th.com>]

Sent: Monday, December 19, 2016 3:33 PM

To: Mackelcan, Douglas W.

Cc: Suzy Pettipas

EXH. 8A

Subject: Re: Captain's Harbour v. Jones

Doug,

Have you received the signed order yet? Let me know. In the meantime have a merry Christmas.

Sincerely,

John M. Leiter

Law Offices of John M. Leiter PA

1203 48th Ave. N., Suite 109

Myrtle Beach, SC 29577

ph. 843.449.1451

fax 843.449.4884

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LAW OFFICES OF
JOHN M. LEITER, PA
ATTORNEYS AND COUNSELORS AT LAW

1203 48TH AVE. N. SUITE 109
MYRTLE BEACH, SC 29577

TELEPHONE (843) 449-1451
FACSIMILE (843) 449-4884
E-MAIL jleiter@48th.com

February 16, 2017

Honorable Jenny Abbott Kitchings
Clerk of the Court
South Carolina Court of Appeals
Post Office Box 116929
Columbia, South Carolina 29211

Attn: Elizabeth

Re: *Captains Harbour and Racquet Club Homeowners Association, Inc.*
v. Jerald W. Jones
Appeal from Horry County
Appellate Case No. 2016-CP-26-002299

Dear Elizabeth:

This is to follow up on your telephone call with my paralegal, Suzy Pettipas, last week.

The above-referenced appeal was timely filed on or about November 15, 2016 after a Form 4 Order was entered in Horry County on October 4, 2016. A copy of the Form 4 Order was attached to and filed with our Notice of Appeal; however, I am enclosing a another, highlighted, copy for your convenience.

As you can see, the Form 4 Order notes "PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER." In an overabundance of precaution, I filed the Notice of Appeal, thinking that the Order referenced in the Form 4 Order would be filed shortly thereafter and that I would amend the Notice of Appeal. As of this date, a formal order has not been entered by the trial court.

As the Form 4 Order contemplated a more formal order was to follow, I probably could have waited to file the Notice of Appeal. See Rule 203(b)(1), SCACR and Doe v. Berkeley Publishers, 322 S.C. 307, 471 S.E.2d 731 (Ct. App. 1996), *reversed on other grounds*, 329 S.C. 412, 496 S.E.2d 636 (1998). In Appellate Practice in South Carolina, 2nd ed., at 121, the following suggestion is made:

Although the Rules do not specifically address the issue, if a party appeals a form order that indicates a more complete order is to follow, the prudent practice may be to serve and file a second notice of appeal when the complete order is issued to preempt any argument that the appellate court lacks jurisdiction to review the complete order. No additional filing fee will be necessary in this situation.

South Carolina Court of Appeals
February 17, 2017
Page Two

Once the more complete order is filed and entered, we would file a second Notice of Appeal as indicated above.

I would ask the Court to consider holding this matter in abeyance until the more complete Order is filed. If it would be more expedient, I can file a Motion to Stay proceedings until the Formal Order is entered. Under the circumstances, I would also request that all the timelines in the appeal be stayed until the Formal Order is entered and the appeal is ready to proceed.

I look forward to hearing from you.

Sincerely yours,

LAW OFFICES OF JOHN M. LEITER, PA

COPY

John M. Leiter

JML/mbk
Enclosure

cc: Douglas Walker MacKean, III - w. encl.
Jerald Jones - w. encl.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

March 15, 2017

Mr. John M. Leiter, Esquire
1203 48th Ave. North, Ste. 109
Myrtle Beach SC 29577

Re: Captain's Harbour v. Jerald Jones
Appellate Case No. 2016-002299

Dear Counsel:

The Court received your letter dated February 16, 2017, regarding the Form 4 order directing counsel to draft a formal order. You must provide a status update regarding the formal order within 10 days of the date of this letter, or your appeal will be dismissed.

Very truly yours,

A handwritten signature in black ink, appearing to read "Jenny A. Kitchings". The signature is fluid and cursive.

CLERK

cc: Douglas Walker MacKelcan, III, Esquire
The Honorable R. Lawton McIntosh

RECEIVED MAR 17 2017

LAW OFFICES OF
JOHN M. LEITER, PA
ATTORNEY AND COUNSELOR AT LAW

1203 48TH AVE. N. SUITE 109
MYRTLE BEACH, SC 29577

TELEPHONE (843) 449-1451
FACSIMILE (843) 449-4884
E-MAIL jleiter@48th.com

March 27, 2017

Honorable Jenny Abbott Kitchings
Clerk of the Court
South Carolina Court of Appeals
Post Office Box 116929
Columbia, South Carolina 29211

Via facsimile (803) 734-1839
and U.S. Mail

Re: *Captains Harbour and Racquet Club Homeowners Association, Inc.*
v. Jerald W. Jones
Appeal from Horry County
Appellate Case No. 2016-CP-26-002299

Dear Ms. Kitchings:

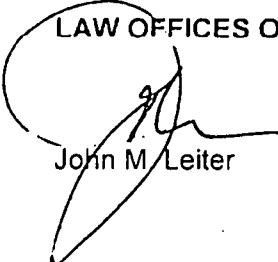
Thank you for your letter of March 15, 2017. As you requested, I am writing regarding the status of the formal Final Order.

Douglas W. MacKelcan, III, Esq., the attorney for Captains Harbour and Racquet Club Homeowners Association, Inc., submitted a proposed Final Order to Judge R. Lawton McIntosh on or about November 18, 2016. A copy of Mr. MacKelcan's letter and proposed Order are enclosed for your file. I followed up with Mr. MacKelcan on December 20, 2016. He had not yet received the formal order and he told me he would let me know when he received it. According to the Horry County public index, the Final Order has not been entered.

Please let me know if there is any additional information I can provide.

Sincerely yours,

LAW OFFICES OF JOHN M. LEITER, PA



John M. Leiter

JML/smp
Enclosures

cc: Douglas W. MacKelcan, III, Esq.
Jerald Jones

The South Carolina Court of Appeals

Captain's Harbour and Racquet Club Homeowners'
Association, Inc., Respondent,

v.

Jerald W. Jones, Appellant.

Appellate Case No. 2016-002299

The Honorable R. Lawton McIntosh
Horry County
Trial Court Case No. 2014CP2607617

ORDER

This matter is dismissed without prejudice pursuant to *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). The remittitur will be sent as provided by Rule 221(b) of the South Carolina Appellate Court Rules.

FOR THE COURT

BY


CLERK

Columbia, South Carolina

cc:

John M. Leiter, Esquire
Douglas Walker MacKelcan, III, Esquire
The Honorable R. Lawton McIntosh

FILED

April 19, 2017



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29244
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

May 16, 2017

The Honorable Renee Elvis
PO Box 677
Conway SC 29528-0677

RECEIVED MAY 18 2017

REMITTITUR

Re: Captain's Harbour v. Jerald Jones
Lower Court Case No. 2014CP2607617
Appellate Case No. 2016-002299

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,

V. Claire Allen, Deputy

CLERK

Enclosure

cc: John M. Leiter, Esquire
Douglas Walker MacKelcan, III, Esquire

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
In Re: 2014-CP-26-7617

Captain's Harbour and Racquet Club)
Homeowners Association, Inc.,)

Plaintiff,)

v.)

Jerald W. Jones,)

Defendant.)

WRIT OF EXECUTION

Judgment Roll No.: 2014-CP-26-7617

Judgment Date: April 12, 2016

Judgment Entered: April 12, 2016

Amount: \$16,321.14

This figure does not reflect post-judgment costs or post-judgment interest from the date of entry of judgment.

Please contact this office for payoff before accepting payment.

TO THE SHERIFF OF HORRY COUNTY:

WHEREAS, judgment was rendered and entered on the dates shown above in the above-referenced case in favor of Plaintiff against Defendant in the amount set forth; and

WHEREAS, judgment was docketed in your County on the date shown, or, if your county is other than that where the judgment was originally entered, a transcript thereof was entered in your county on the date indicated above; and

WHEREAS, the amount set forth above is due and owing.

THEREFORE, the undersigned attorneys for Plaintiff command you to satisfy the said judgment out of the personal property of said judgment debtor within your county, or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County or from real property thereafter, regardless of the person now claiming ownership or possession, and to duly return this execution, according to law, to the Clerk of the Court.

McCUTCHEN, MUMFORD, VAUGHT
& GEDDIE, P.A.

s/ Luther O. McCutchen, IV

Luther O. McCutchen, IV (SC Bar 100688)
4610 Oleander Drive, Ste. 203
Myrtle Beach, SC 29577
(843) 449-3411 (o) (843) 449-2317 (f)
lom@lawyersatthebeach.com



HORRY COUNTY SHERIFF'S OFFICE

Phillip E. Thompson, Sheriff

www.HorryCounty.org

Post Office Box 380 • Horry County Judicial Complex • 1301 2nd Avenue • Conway, South Carolina 29528-0380
Office: (843) 915-5450 • Fax: (843) 915-6451 • Warrant Division: (843) 915-8347 • Fax: (843) 915-6142

August 15, 2018

Jerald W. Jones
105 Lac Court
Myrtle Beach, SC 29579

RE: Captain's Harbour & Racquet Club HOA, Inc. vs. Jerald W. Jones

Case #: 2014-CP26-07617

Dear Sir/Madam:

A Judgment has been filed with the Clerk of Court for Horry County in regard to the above referenced case. An *Execution Against Property* has been submitted to this office for processing in accordance with State law.

This notice is not required by law but is a courtesy extended to you by the Horry County Sheriff's Office to avoid any possible embarrassment and inconvenience to you. Pursuant to South Carolina State Law, it is incumbent upon the Sheriff to seek Payment In Full for this outstanding judgment. The method of payment may be by certified check, money order or cash. Please call our office to get the complete total amount, as there will be a Sheriff's fee included, as well as \$10.00, which the plaintiff paid to the Clerk of Court, and \$25.00, which the plaintiff paid to the Sheriff's office in order to collect. Failing to pay this judgment, the Sheriff must seek out any property owned by the judgment debtor and sell at public auction to satisfy the Judgment. Failure by you to respond within 10 days from the date of this letter will result in the Sheriff's Office proceeding to execute on the Judgment as provided by State Statute.

A copy of the *Execution against Property*, which includes the amount due and owed has been included for you to review. Any dispute or disagreement you have with this execution must be resolved by the Court. The Horry County Sheriff's Office cannot resolve any such dispute. This execution will proceed after the ten (10) day period, as referred above, and can only be stayed by appropriate Court Order.

I will be available, except on holidays, Tuesday through Friday between the hours of 8:00 A.M. and 5:00 P.M. My office is located at the Horry County Judicial Center 1301 2nd Ave. Conway, SC 29526. Please contact me at (843) 915-8055 within the next ten (10) days to arrange Payment In Full.

Sincerely,

Christy Cox
Administrative Assistant
Judgment/Execution Division
Horry County Sheriff's Office
843-915-8055

Subject: Re: Captains Harbor v Jones
From: Tom Winslow <tom@goldfinchwinslow.com>
Date: 8/30/2018 11:12 PM
To: "suzy@48th.com" <suzy@48th.com>

I don't have a copy of the order either

Thomas W. Winslow
Attorney At Law



11943 Grandhaven Drive, Suite A-2
Post Office Box 829
Murrells Inlet, SC 29576

Phone: (843)357-9301
Mobile: (843)655-7333
Fax: (843)357-9303
e-mail: tom@goldfinchwinslow.com
Website: www.goldfinchwinslow.com

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IRS CIRCULAR 230 DISCLOSURE: Pursuant to requirements imposed by the IRS, any tax advice contained in this communication (including any attachments) is not intended to be used, and cannot be used, for purposes of avoiding penalties imposed under the United States Internal Revenue Code for promoting, marketing or recommending to another any tax-related matter.

From: Suzy Pettipas <suzy@48th.com>
Organization: Law Offices of John M. Leiter, PA
Reply-To: "suzy@48th.com" <suzy@48th.com>
Date: Thursday, August 30, 2018 at 3:28 PM
To: Thomas Winslow <tom@goldfinchwinslow.com>
Subject: Captains Harbor v Jones

Tom,

I called you the other day, I think I left a voice mail but I haven't heard back. Can you give me

a call when you have a minute?

If you will remember this case, John Leiter filed a Notice of Appeal before a Final Order was entered. He dismissed the appeal because no Final Order was served.

It appears that the Judge filed the Order directly. Mr. Leiter asked me to confirm whether your office was ever served with a copy of the Final Order in the Jerrald Jones case. Mr. Mackelcan was not aware that the Order had even been entered. Mr. Jones denies being served.

Do you have a record of being served with a clocked copy of the Final Order?

--

Sincerely,

Suzy M. Pettipas

Paralegal

Law Offices of John M. Leiter PA

1203 48th Ave. N., Suite 109

Myrtle Beach, SC 29577

ph. 843.449.1451

fax 843.449.4884

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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
)

AFFIDAVIT OF
BRIDGETT WILLIAMSON

PERSONALLY APPEARED before me the undersigned who, first being duly sworn, deposes and states as follows:

1. I am a resident of Horry County, South Carolina, am over eighteen (18) years of age, and make this Affidavit of my own personal knowledge and to the best of my recollection.
2. I am the Common Pleas Supervisor for the Horry County Clerk of Court, and have served in this capacity since 2013. As Common Pleas Supervisor, I am primarily responsible for the maintenance of all Common Pleas files, including the mailing of orders and judgments.
3. From October, 2007 until I became the Supervisor, I was an Administrative Assistant in the Clerk of Court's Office.
4. At the request for John M. Leiter, Esquire, I reviewed the file maintained by the Clerk's Office in the case of Captain's Harbour and Racquet Club Homeowners Association, Inc. v. Jerald W. Jones, being Civil Action No. 2014-CP-26-7617, hereinafter referred to as the Captain's Harbour file (or case). Mr. Leiter specifically asked me if a copy of the Order signed by the Honorable R. Lawton McIntosh, signed on November 21, 2018 and filed with the Clerk's office on November 28, 2016 had ever been sent to counsel of record in the Captain's Harbour case by the Clerk of Court's office. A copy of this Order is attached hereto as Exhibit A.
5. Based on my review of the Captain's Harbour file, and based on my knowledge of the procedures and practice of the Clerk's office with respect to the mailing of orders and judgments, it is my opinion that the Order of Judge McIntosh filed with the Clerk's office on November 28, 2016 was not mailed to counsel for any of the parties or the parties themselves.
6. I base my opinion on the normal and customary practice of the Clerk's office. Specifically, the Clerk's office uses different formats to document when the Clerk's office mails a copy of a filed order or judgment.
 - A. If the order or judgment comes directly from the bench, the Clerk's office will mail the order or judgment to counsel of record or a party and document the mailing by the use of a rubber stamp where the Clerk will fill in the date that the order or judgment was filed and the

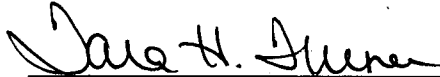
date that it was mailed. An example of this, in the Captain's Harbour case, is a copy of the Form 4 Order signed by the Honorable R. Lawton McIntosh on October 4, 2016 in this matter. Again, on example Exhibit B, I personally filled out the mailing information on the second page of the Form 4 Order.

- B. In some circumstances, when an attorney supplies the Clerk with a self-addressed, stamped envelope, asking that a clocked copy of an order be returned to the attorney, the Clerk's office will use a stamp that simply says "COPIES MAILED" as is seen on Exhibit A. This is to signify that the Clerk has returned a clocked copy of the order, judgment or other document requested by the attorney back to the attorney. In the Captain's Harbour case, the Order of Judge McIntosh signed November 28, 2016 has stamped at the top of the Order the notation "COPIES MAILED". In further reviewing the file, I saw a letter from Tammy Jennings, Administrative Assistant to Judge McIntosh dated November 21, 2016 enclosing the original order for the Horry County Clerk's Office to file, and further requesting that the Clerk provide copies to the attorneys of record pursuant to customary procedures of the Horry County Clerk of Court's Office. A copy of that letter is attached hereto as Exhibit C. I believe that the Clerk who filed Judge McIntosh's order misunderstood the request from his office and inadvertently applied the stamp "COPIES MAILED" to the Order.
- C. In other circumstances, when an Order is mailed in by the attorney without a self-addressed envelope, the Order information is given to Joyce Todd, an administrative assistant in the Clerk's office, to mail the copies and provide a certificate of mailing. An example of this document is attached hereto as Exhibit D.
7. If a copy of Judge McIntosh's November 28, 2018 Order had been mailed, based on the Clerk's Office's usual procedure, there would either have been a certification similar to the one in Exhibit D, or a stamp filled in by the Clerk showing the date filed and the date it was mailed, together with initials of the Clerk who mailed it. Neither of these appears in the file for that Order.
8. For the reasons stated above, I believe that Judge McIntosh's Order was not mailed to counsel of record.

IN WITNESS WHEREOF, I have set my hand and seal this 13th day of November, 2018.

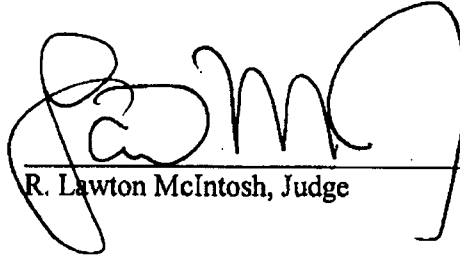

BRIDGETT WILLIAMSON

SUBSCRIBED AND SWORN BEFORE ME, a notary public in and for the State of South Carolina, this 13th day of November, 2018.


Printed Name: Tara H. Turner
Notary Public for South Carolina
My Commission Expires: 10-28-2024

the Court **DENIES** Defendant's request for a hearing on his Motion to Reconsider, and **DENIES** Defendant's Motion for Reconsideration.

IT IS SO ORDERED.



A handwritten signature in black ink, appearing to read 'R. Lawton McIntosh', is written over a horizontal line. The signature is stylized and cursive.

R. Lawton McIntosh, Judge

This 21 day of November 2016
Anderson, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2014-CP-26-7617

Captain's Harbour and Racquet Club Homeowners
Association, Inc.

Jerald W. Jones

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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

2016 OCT 4 AM 8:52
COURT

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

THE COURT DENIES DEFENDANT'S MOTION FOR RECONSIDERATION. INASMUCH AS IDENTICAL GROUNDS WERE ARGUED AT PREVIOUS HEARING THE REQUEST FOR A HEARING ON THIS MOTION IS DENIED. THE COURT NOTES THAT DEFENDANT'S MOTION FOR RECONSIDERATION WAS NOT PROVIDED TO THE COURT UNTIL AUGUST 25, 2016. PLAINTIFF'S COUNSEL TO PREPARE A FORMAL ORDER.

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 (List amount(s) below)
		\$
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the SC 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

2155
Judge Code

9-1-16
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 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)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

Copy of Order,
filed 10-4-16 mailed to all
parties not in default on 10-11-16
Initials fw



EXHIBIT C

State of South Carolina
The Circuit Court of the Tenth Judicial Circuit

R. Lawton McIntosh
Judge

November 21, 2016

Post Office Box 8002
100 South Main Street
Anderson, SC 29622-8002
Phone: (864) 260-4059
Fax: (864) 224-6320
lmcintoshj@sccourts.org

Honorable Melanie Huggins-Ward
Clerk of Court for Horry County
Post Office Box 677
Conway, South Carolina 29528

Dear Madame Clerk:

Please find enclosed an original Order signed by Judge McIntosh in the following case:

Captain's Harbour and Racquet Club Homeowners Association Inc. V. Jerald W. Jones
2014-CP-26-7617

Please file these in your office and provide certified copies to the attorneys of record pursuant to your customary procedure. Thank you for your assistance in this matter.

Sincerely,

Tammy Jennings
Administrative Assistant to
R. Lawton McIntosh, Judge
Tenth (10th) Judicial Circuit

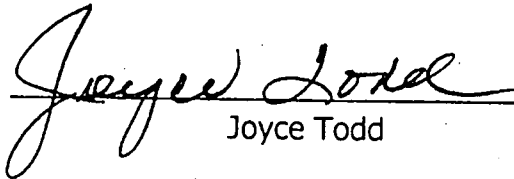
Enclosures

IN THE COURT OF COMMON PLEAS

THIS IS TO CERTIFY THAT I, MELANIE HUGGINS-WARD, THE CLERK OF COURT OF Horry County, OR MY DESIGNEE DID MAIL COPIES OF ORDERS/JUDGMENTS FILED ON APRIL 12TH 2016, TO ALL PLAINTIFFS / ATTORNEYS AND DEFENDANTS / ATTORNEYS THAT ANSWERS WERE IN CASE FILES ON CASES LISTED BELOW:

- 2016-CP-26-02194
- 2009-CP-26-08969
- 2015-CP-26-06567
- 2016-CP-26-00002
- 2015-CP-26-08881
- 2015-CP-26-08178
- 2015-CP-26-07394
- 2015-CP-26-08178
- 2015-CP-26-07162
- 2014-CP-26-07617
- 2015-CP-26-07130

FILED
HORRY COUNTY
2016 APR 18 PM 12: 52
MELANIE HUGGINS-WARD
CLERK OF COURT


Joyce Todd

HORRY COUNTY
CONWAY, SOUTH CAROLINA

(11)

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge
Trial Case No. 2014-CP-26-07617

RECEIVED

NOV 19 2018

SC Court of Appeals

Appellate Case No. 2018-001724

Jerald W. Jones Appellant

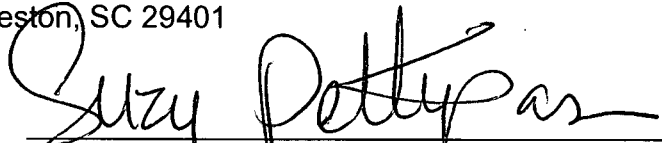
v.

Captains Harbour and Racquet Club
Homeowners Association, Inc. Respondent

PROOF OF SERVICE

I certify that I have served a copy of **Appellant Jerald W. Jones's Return to Respondent's Motion to Dismiss Appeal** by depositing a copy of the same in a post office or official depository under the exclusive control of the United States Postal Service, with sufficient postage pre-paid, on November 15, 2018, addressed to the attorney of record:

Douglas Walker MacKelcan, III
40 Calhoun Street, Suite 400
Charleston, SC 29401



Suzy Pettipas, Paralegal to John M. Leiter, Esq.
Law Offices of John M. Leiter, PA
1203 48th Ave., North, Suite 109
Myrtle Beach, SC 29577
(843) 449-1451
Attorney for Appellant

November 15, 2018

LAW OFFICES OF
JOHN M. LEITER, PA
ATTORNEY AND COUNSELOR AT LAW

1203 48TH AVE. N. SUITE 109
MYRTLE BEACH, SC 29577

TELEPHONE (843) 449-1451
FACSIMILE (843) 449-4884
E-MAIL jleiter@48th.com

November 15, 2018

Honorable Jenny Abbott Kitchings
Clerk of the Court
South Carolina Court of Appeals
Post Office Box 116929
Columbia, South Carolina 29211

Re: *Captains Harbour and Racquet Club Homeowners Association, Inc.*
v. Jerald W. Jones
Appellate Case No.: 2018-001724

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of the Appellant's Return to Respondent's Motion to Dismiss Appeal for filing, together with my Proof of Service of the same.

I am enclosing an extra copy of the Return to Motion (without Exhibits). I would appreciate your returning the extra copy, date-stamped, to me, in the enclosed, self-addressed, stamped envelope.

Thank you for your assistance in this matter.

Sincerely yours,

LAW OFFICES OF JOHN M. LEITER, PA


Suzy Pettipas
Paralegal

RECEIVED

NOV 19 2018

SC Court of Appeals

/smp
Enclosures

cc: Douglas W. MacKelcan, III, Esq.
Jerald W. Jones

RECEIVED

NOV 19 2018

SC Court of Appeals

