

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM HORRY COUNTY  
COURT OF COMMON PLEAS

The Honorable Steven H. John, Circuit Court Judge Presiding

Docket No. 2009-CP-26-8477

CHANNEL GROUP, LLC,  
*Plaintiff-Appellant,*

vs.

WILLIAM A. PARKS,  
*Defendant-Appellee.*

**FINAL BRIEF OF APPELLANT**

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FEB 26 2013

**SC Court of Appeals**

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**STATEMENT OF ISSUE UPON APPEAL**

Appellant presents the following issues upon appeal:

1. Was the Circuit Court in error when it entered an Order denying the motion to

amend the Judgment and directing that the Judgment heretofore entered be marked "completely satisfied and null and void", when the record reflects no evidence whatsoever that the Judgment has in fact been satisfied, and further reflects no evidence whatsoever that the Judgment entered in this civil action is void or is subject to being declared void?

### STATEMENT OF THE CASE

On August 28, 2009, the Plaintiff-Appellant herein filed the instant civil action in the Court of Common Pleas of Horry County, South Carolina, alleging that it was entitled to have Judgment of the Defendant-Appellee upon a credit account in arrears, now owned by the Plaintiff-Appellant. R. pp. 5-9. As set forth in the Complaint, the Defendant-Appellee against whom the civil action was prosecuted is "William A. Parks." As the Defendant-Appellee did not answer the complaint as required by Rule 12, SCRCF, the Plaintiff-Appellant applied for, and was granted, Judgment of the trial court, pursuant to Rule 55, SCRCF. R. pp. 11-17. That Judgment was entered on April 23, 2010, and reflects, in both its caption and in the body, that the Judgment is entered against "William A. Parks." R. p. 4.

On July 26, 2012, the Plaintiff-Appellant herein filed with the court below a motion to alter or amend the Judgment, such that the name of the Judgment debtor would

be reflected therein as "William A. Parks, Jr." R. pp.18-22. As set forth in that motion, the sole purpose of the amendment requested by the Plaintiff-Appellant is to clarify that the Judgment is against only the "William A. Parks" who is known as "William A. Parks, Jr.," and is not against (and does not encumber the real property of) "William A. Parks, Sr." On July 26, 2012, the court below entered an Order, denying the motion to amend, and further directing that the Plaintiff file a request to the Clerk of the court indicating that the judgment had been "completely satisfied and null and void due to the error of the Plaintiff." R. pp. 2-3. It is from this Order that the present appeal has been taken.

### ARGUMENT

**1. Was the Circuit Court in error when it entered an Order denying the motion to amend the Judgment and directing that the Judgment heretofore entered be marked "completely satisfied and null and void", when the record reflects no evidence whatsoever that the Judgment had in fact been satisfied, and further reflects no evidence whatsoever that the Judgment entered in this civil action is void or is subject to being declared void?**

The sole issue to be resolved by this Court is whether the trial court below was in error, both in denying the motion to amend the Judgment, and in directing Plaintiff's

counsel to file with the Clerk of Circuit Court a statement, to the effect that the Judgment herein was both "completely satisfied" and "null and void", when in fact neither of those conditions had been actually met, in that the Judgment had not been satisfied in any part, and the Judgment was neither void ab initio, nor voidable for cause shown. The court below cited, in support of its ruling, the "error of the Plaintiff" set forth in the Plaintiff's motion.

The motion, of course, discloses no error whatsoever on the part of the Plaintiff. The motion merely reflects that the Judgment appearing of record herein requires modification to avoid having an impact upon innocent third-parties not rightfully subject to its terms. Nothing within the text of the motion reveals any basis upon which the court below could rightfully have concluded that the Judgment was void, whether for want of jurisdiction or for any other reason.

Under South Carolina law, a decision to grant or deny a motion to alter or amend a judgment pursuant to Rule 60, SCRCP, lies within the sound discretion of the trial court. *Coleman v. Dunlap*, 306 S.C. 491, at 494 (1991)(citing *Tri-County Ice and Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237 (1990)). As the Supreme Court held in *Tri-County*, the

"Court has been faced with this issue in a number of cases and has allowed amendment of the record to substitute one name for another. In *Waldrop v. Leonard*, 22

S.C. 118 (1885), we addressed the issue of whether a judgment could be amended to change the name of an individual when the writ was served on the correct person. In *Waldrop* we considered whether such an error "should be considered a mere misnomer, or as going deeper and touching the very jurisdiction of the Court." *Id.* at 20. We concluded that we agreed with the jurisdictions which held that: "where a party is served by a wrong name, and the writ is served on the party intended to be served and he fails to appear and plead the misnomer in abatement, and suffers judgment to be obtained by default against him in the erroneous name, he is concluded, and execution may be issued on the judgment in that name and levied upon the property and effects of the real defendant."" *Tri-County*, 303 S.C. at 239-240.

In the cause at bar, the record reflects that due and proper service of the summons and complaint was made upon the Defendant under the name of "William A. Parks", R. p. 10, that no answer thereto was filed by the Defendant, and that accordingly the Judgment herein entered was done in accordance with the provisions of Rule 55, SCRPC, allowing judgment to be entered by default. The amendment sought by the Plaintiff-Appellant below, merely seeks to clarify that the "William A. Parks" against whom this civil action has been prosecuted to Judgment, is not the same as that "William A. Parks, Sr." who is the Defendant-Appellee's father. No party can complain of any prejudice caused by such amendment.

The trial court's decision to deny the motion was, itself, a clear abuse of

discretion, inasmuch as it conflicts with the decisional law of this state, promulgated by the Supreme Court over a century ago, expressly allowing such amendments. The order from which appeal has been taken, however, surmounts error with error, by not merely denying the relief sought, but by directing the Plaintiff-Appellant to instruct the clerk of the court below to mark the judgment heretofore entered as both "completely satisfied" and "null and void" in the entire absence of any evidence that the judgment has been, in fact, satisfied, and further in the absence of any grounds at law upon which the court below might have found the judgment to be "null and void."

### CONCLUSION

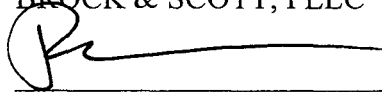
Because the trial court was in error when it denied the motion to amend, and further was in error in directing the Plaintiff-Appellant to file with the clerk of the trial court a statement to the effect that the Judgment herein was both "completely satisfied" and "null and void", the Court ought to reverse the ruling of the court below, and remand the civil action to that court for further proceedings, including inter alia direction to grant the motion to amend the Judgment.

CERTIFICATE OF COMPLIANCE WITH RULE 211(B), SCACR

The undersigned hereby certifies that the foregoing Final Brief of Appellant complies with the provisions of Rule 211(b), SCACR.

Respectfully Submitted, this the 25 day of February, 2013.

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