

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
Stone International, LLC, and)
Eugene E. Stone, IV,)
)
Plaintiffs,)
)
v.)
)
Byte Software, LLC; Byte Software)
Services, LLC; Benjamin Gause;)
Janice Gause, f/k/a Janice Archer,)
f/k/a Janice Barnett; Carolina First)
Bank; Branch Banking and Trust)
Company; Greg Corbitt;)
Contemporary Solutions-USA, Inc.;)
International Modapts Association,)
Inc.; and South Carolina Department)
of Employment and Workforce,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
BUSINESS COURT

C.A. No.: 2009-CP-23-5000

AMENDED ORDER

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SC Court of Appeals

This matter came before the Court on February 19, 2019, upon motion of both parties for partial summary judgment and upon Defendants' Motion to Dismiss pursuant to Rule 41, SCRPC. Present at the hearing were the Plaintiff, represented by his counsel, Jacob M. Hughes, Esq., and Randall S. Hiller, Esq., on behalf of Defendants Byte Software, LLC, Byte Software Services, LLC, Benjamin Gause, and Janice Gause. The parties submitted memoranda in support of their motions for summary judgment, along with accompanying discovery documents, deposition testimony, and affidavits.

After careful consideration of the memoranda, exhibits, testimony, affidavits, and history of proceedings in this action, the Court finds it unnecessary to address the specific issues raised by

either party under their motions for partial summary judgment as to each particular cause of action given that the Court decides to dismiss the entire action pursuant to Rule 41, SCRCP.

This lawsuit began by the filing of a summons and complaint on June 12, 2009, which, although stating numerous causes of action, essentially alleged a breach of contract, namely, the Management Agreement with Option to Purchase. The case proceeded along the course of business litigation for several years. Plaintiffs' original counsel was substituted on September 2, 2009. Again, on April 8, 2010, Plaintiffs' counsel was substituted, and the complaint was subsequently amended twice. At some point, "Stone was no longer able to pay its legal fees." (Aff. of Josh Smith ¶ 2.) The answer to the Third Amended Complaint was filed on July 13, 2012. No other activity occurred from July 2012 until April 6, 2017, when Plaintiffs' counsel filed a motion to withdraw. Mr. Hughes filed a notice of appearance on July 7, 2017.

Defense counsel has moved to dismiss the case for failure to prosecute pursuant to Rule 41, SCRCP, relying upon *McComas v. Ross*, 368 S.C. 59, 626 S.E.2d 902 (Ct. App. 2006). *McComas* itself cites a decision of the Fourth Circuit Court of Appeals setting forth four factors that must be considered by the trial court before dismissing an action for failure to prosecute. *See McCargo v. Hedrick*, 545 F.2d 393, 396 (4th Cir. 1976) (noting "dismissal is . . . a harsh sanction . . . [and] should be resorted to only in extreme cases") (internal quotation marks omitted). The factors are: (1) the plaintiff's degree of personal responsibility; (2) the amount of prejudice caused the defendant; (3) the presence of a drawn-out history of deliberately proceeding in a dilatory fashion; and (4) the effectiveness of sanctions less drastic than dismissal. *McComas*, 368 S.C. at 63, 626 S.E.2d at 904.

Based upon these factors, the Court hereby **GRANTS** Defendants' Motion to Dismiss for failure to prosecute pursuant to Rule 41, SCRCP.

It is so ordered.

The Honorable Edward W. Miller

March 4, 2019
Greenville, South Carolina

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

FORM 4
JUDGMENT IN A CIVIL CASE

CASE NO. 2009 CP-23-5000

Stone International, LLC, et al

Byte Software, LLC, et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Randall S. Hiller

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

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

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.
9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.



Greenville Common Pleas

Case Caption: Stone International LLC , plaintiff, et al vs. Byte Software LLC ,
defendant, et al
Case Number: 2009CP2305000
Type: Order/Dismissal

So Ordered

s/ Edward W. Miller

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