

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Diane Schafer Goodstein, Circuit Court Judge

Appellate Case No. 2018-001090
Trial Court Case No. 2017-CP-10-3324

RECEIVED
APR 03 2019
SC Court of Appeals

Rosa Maritza Galban Aranda, ... Respondent,

v.

Rigoberto Ortega, ... Appellant.

RECORD ON APPEAL (Supp. #1)

Thomas O. Sanders, IV
Sanders Law Firm, LLC
1738 Three Oaks Avenue
Charleston, SC 29407
(843) 573-8828
ATTORNEY FOR APPELLANT

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) CASE NUMBER 2017-CP-10-0432 10-3324
)

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

ORDER

FILED
2018 MAY -8 AM 11:09
JULIE A. HESTER
CLERK OF COURT

JUDGE: The Honorable Diane S. Goodstein
DATE OF HEARING: March 21, 2018
PLAINTIFF'S ATTORNEY: Johnny F. Driggers, Esquire
DEFENDANT'S ATTORNEY: T. O. Sanders, IV, Esquire
COURT REPORTER: Ruth C. Weese

THIS MATTER is before the Court on Defendant's Motion to Set Aside a default judgment, pursuant to Rule 60(b), South Carolina Rules of Civil Procedure. A hearing was held on Defendant's Motion on Wednesday, March 21, 2018, at 10:00 a.m.; arguments were heard, and memoranda were submitted by each party. For the reasons set forth below, I find Defendant has not met his burden to set aside the entry of default under South Carolina Rule of Civil Procedure 60(b). And, therefore, the Court denies the motion.

PROCEDURAL BACKGROUND

Litigation¹ was commenced on January 27, 2017. Defendant was properly served on February 2, 2017. Defendant then came to Plaintiff's counsel's office, was advised no one was able to assist him and he would need to speak with his own attorney. After receiving no response, entry of default was filed May 26, 2017, more than 100 days after service. An Order of Default was entered June 7, 2017. However, it was learned the address where the incident occurred was incorrect; therefore, a voluntary dismissal was filed on August 14, 2017.

The subject lawsuit was filed June 29, 2017. Defendant was properly served on July 11, 2017. An affidavit ~~entry~~^{DSS} of Default was filed on September 6, 2017; an Order of Default was entered September 21, 2017. On October 12, 2017, Defendant was personally served with a letter notifying him a damages hearing had been scheduled for November 17, 2017. Just prior to the damages hearing, Defendant retained counsel, who filed a Notice of Appearance and Motion to Set Aside Default on November 14, 2017.

Shortly afterwards, on November 16, 2017, Defendant filed a Motion to Dismiss the Summons and Complaint.

¹The suit arises out of a slip and fall at property owned by Defendant.

LEGAL ANALYSIS

Plaintiff requests the Court not consider the affidavit of Defendant filed just prior to the commencement of the hearing, citing South Carolina Rules of Civil Procedure 6(d):

"When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served no later than two days before the hearing, unless the court permits them to be served at some other time."

Concededly, the Rule appears to require that the affidavit should have been filed contemporaneously with the motion; however, the last phrase of the rule "... unless the court permits them to be served at some other time." appears to give this Court discretion to consider affidavits at any time. After careful consideration, this Court will consider all affidavits.²

As an Order of Default Judgment was issued in this case on September 21, 2017, Defendant's Motion to Set Aside the Default is governed by Rule 60(b) and not Rule 55(c). In ***Sundown Operating Company, Incorporated vs. Intel Agenda Series, Inc.***, 383, SC 601, 606, 681 S.E. 2nd 885, 889 (2009), the Supreme Court addressed the apparent confusion in the case law regarding the different applications of the standards of relief set forth in Rule 55(c) and 60(d):

²Plaintiff's counsel had the foresight to file an affidavit of one of his staff two days prior to the hearing, and a supplemental affidavit at the hearing.

"The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). **Ricks v. Weinrauch**, 293 S.C. 372, 374, 360 S.E. 2d 535, 536 (Ct.App.1987). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default **889 once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default."

Normally, there are four factors to be considered in granting relief under Rule 60: (1) the promptness with which relief is sought; (2) the reasons for failure to act promptly; (3) the existence of a meritorious defense; and (4) prejudice to the Plaintiff if default is vacated. However, it is not necessary for this Court to "...make specific findings of fact for each factor if there is sufficient evidentiary support in the record for the finding of the lack of good cause." **Sundown**, supra, at 608.

Defendant has failed to establish even a minimum showing of "good cause." In short, this Court does not accept Defendant's purported claim of illiteracy prevented him from timely filing an answer. At the commencement of the hearing Defendant filed an affidavit, averring, in part,

"After receiving the documents, I tried to meet with attorney, Johnny Driggers to request more information, but I was told that he could not

give me any information."

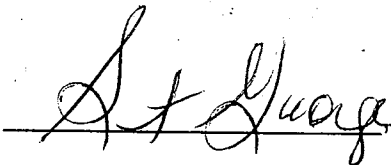
This Court considers it significant that, despite Defendant's alleged illiteracy, he attempted to speak directly with the Plaintiff's attorney. And, more importantly, he clearly understood the words and the import of those words that were communicated by the staff at Driggers Law Firm.³ Yet, for whatever reason, he chose not to retain counsel until more than four months later.

THEREFORE, IT IS ORDERED that the motion is denied.

AND IT IS SO ORDERED.



The Honorable Diane S. Goodstein
Judge of the Ninth Judicial Circuit



South Carolina

April 27, 2018

³The affidavit of Debra Curwen, Plaintiff's counsel's staff, buttresses this conclusion.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-VS-)

RIGOBERTO ORTEGA,)

Defendants.)

ORDER OF DEFAULT

FILED
2017 JUN -7 PM 3:08
CLERK OF COURT
BY

UPON reading the Summons and Complaint, and it appearing the pleadings have been properly filed with the Clerk of this Honorable Court, and it further appearing by Affidavit of Plaintiff's attorney that Defendant RIGOBERTO ORTEGA is in default for failure to answer, demurrer, or otherwise plead or appear to the Summons and Complaint, it is hereby

ORDERED that Defendant RIGOBERTO ORTEGA is hereby declared to be in default. ^{and} A hearing shall be set to determine the amount of damages.
IT IS SO ORDERED.



Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

6/5, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-3324

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

ORDER OF DEFAULT

UPON reading the Summons and Complaint, and it appearing the pleadings have been properly filed with the Clerk of this Honorable Court, and it further appearing by Affidavit of Plaintiff's attorney that Defendant RIGOBERTO ORTEGA is in default for failure to answer, demurrer, or otherwise plead or appear to the Summons and Complaint, it is hereby

ORDERED that Defendant RIGOBERTO ORTEGA is hereby declared to be in default. *OR A hearing shall be set to determine the amount of damages.*

IT IS SO ORDERED.

[Signature]
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

9/15, 2017

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P. & C.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-0432

2017

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2017 JAN 27 PM 1:10

FILED

COMPLAINT
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

1. Plaintiff is a citizen and resident of Dorchester County.

Upon information and belief, Defendant is a citizen and resident of Charleston County, South Carolina.

2. On September 28, 2015, at approximately 11:30 a.m., Plaintiff was walking up the concrete stairs of a mobile home located at 4558 W. Montague Avenue, North Charleston, owned by Defendant. Plaintiff fell and attempted to grab for the railing; but, there was no railing installed on the side where she fell. As a result, Plaintiff suffered serious and grievous injury.

3. Defendant was negligent and reckless in one or more of the following ways:

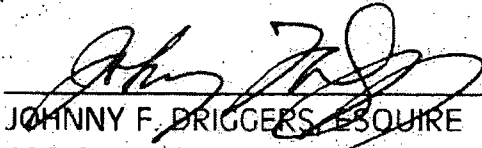
- a) In failing and neglecting to design the handrails as required by Code so they would be adequate and safe for their intended use;
- b. In failing and neglecting to construct the handrails in accordance with uniform and accepted standards applicable to their intended use;
- c. In failing and neglecting to inspect the handrails for fractures, unevenness, or other damage or defects;
- d. In failing and neglecting to make proper, necessary repairs to the handrails;
- e. In failing and neglecting to maintain the handrails in a safe condition for their intended use; and
- f. In otherwise failing and neglecting to ensure the handrails were in a safe condition for their intended use.

5. As a direct result of Defendant's negligence and recklessness, Plaintiff sustained the following damages:

- a) Physical and mental pain and suffering;
- b) Medical bills, including physician, hospital, and prescription charges;
- c) Lost wages;
- d) Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendant for such amount of actual and punitive damages as the

trier of facts shall determine, for the costs of this action, and for such further relief as the Court deems proper.



JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-3324

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)
Defendants.)

S U M M O N S
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

FILED
2017 JUN 29 PM 2:54
CLERK OF COURT

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend the action(s) set forth in the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer or Motion to the said Complaint on Johnny F. Driggers, at his office, 108 Central Avenue, Suite 7, Goose Creek, South Carolina 29445 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to appear and defend within the time aforesaid, judgment by default will be entered against you for the relief demanded in the Complaint.


JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

June 27, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10- 3324

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

COMPLAINT
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

FILED
2017 JUN 29 PM 2:54
CLERK OF COURT

1. Plaintiff is a citizen and resident of Dorchester County.

Upon information and belief, Defendant is a citizen and resident of Charleston County, South Carolina.

2. On September 28, 2015, at approximately 11:30 a.m., Plaintiff was walking up the concrete stairs of a mobile home located at 4667 Walton Street, Lot 11, North Charleston, owned by Defendant. Plaintiff fell and attempted to grab for the railing; but, there was no railing installed on the side where she fell. As a result, Plaintiff suffered serious and grievous injury.

3. Defendant was negligent and reckless in one or more of the following ways:

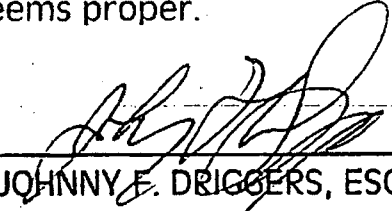
- a) In failing and neglecting to design the handrails as required by Code so they would be adequate and safe for their intended use;
- b) In failing and neglecting to construct the handrails in accordance with uniform and accepted standards applicable to their intended use;
- c) In failing and neglecting to inspect the handrails for fractures, unevenness, or other damage or defects;
- d) In failing and neglecting to make proper, necessary repairs to the handrails;
- e) In failing and neglecting to maintain the handrails in a safe condition for their intended use; and
- f) In otherwise failing and neglecting to ensure the handrails were in a safe condition for their intended use.

4. As a direct result of Defendant's negligence and recklessness, Plaintiff sustained the following damages:

- a) Physical and mental pain and suffering;
- b) Medical bills, including physician, hospital, and prescription charges;
- c) Lost wages;
- d) Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendant for such amount of actual and punitive damages as the

trier of facts shall determine, for the costs of this action, and for such further relief as the Court deems proper.



JOHNNY E. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

June 27, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

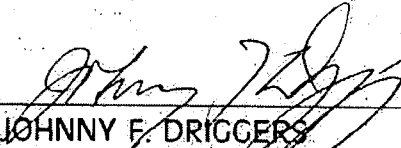
NOTICE OF VOLUNTARY
DISMISSAL WITH PREJUDICE

FILED
2017 AUG 14 PM 1:14
JULIE L ARMSTRONG
CLERK OF COURT

Plaintiff does hereby agree and consent to the dismissal of
her Complaint, with prejudice, and further

IT APPEARING Plaintiff listed the incorrect address in the
Complaint; and

THEREFORE, it is stipulated the within action be dismissed with
prejudice.


JOHNNY F. DRIGGERS
108 Central Avenue, Suite 7
Post office Box 757
Goose Creek, SC 29445
SC Bar #1754
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

August 8, 2017.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Rosa Maritza Galban Aranda,)

Plaintiff,)

vs.)

Rigoberto Ortega,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3324

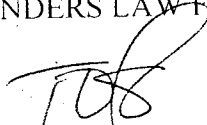
NOTICE OF APPEARANCE

FILED
2017 NOV 14 AM 10:35
JULIE J. ARMSTRONG
CLERK OF COURT
BY

TO: JOHNNY F. DRIGGERS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that the undersigned attorney hereby enters an appearance to represent Defendant Rigoberto Ortega in the above-referenced matter. The undersigned further requests that copies of all pleadings and discovery served in this action by all parties be served upon the undersigned at the address given below.

SANDERS LAW FIRM, LLC



Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843) 573-8828
ATTORNEY FOR DEFENDANT

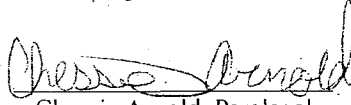
Nov. 14, 2017
Charleston, South Carolina

Counsel Served: Johnny F. Driggers, Esquire
PO Box 757
Goose Creek, SC 29445
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of the same, enclosed in a first

class, postpaid wrapper properly addressed to the
attorney(s) of record for such other party(s), in a post
office or official depository under the exclusive care
and custody of the United States Postal Service, on this
14 day of NOV, 2017.


Chessie Arnold, Paralegal

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Rosa Maritza Galban Aranda,)

Plaintiff,)

vs.)

Rigoberto Ortega,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3324

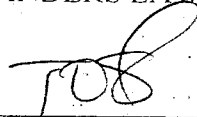
NOTICE OF MOTION AND
MOTION TO SET ASIDE DEFAULT
AS TO DEFENDANT

FILED
2017 NOV 14 AM 10:35
JULIE J. ARMSTRONG
CLERK OF COURT

TO: JOHNNY F. DRIGGERS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

BE ADVISED THAT pursuant to SCRCP 55(c), SCRCP 6(b) and SCRCP 60(b), Defendant Rigoberto Ortega ("Defendant"), by and through its undersigned attorney, will move before the presiding Judge in the Court of Common Pleas of Charleston County, South Carolina on the tenth day after the date of this Motion, or as soon thereafter as may be heard to set aside default.

SANDERS LAW FIRM, LLC



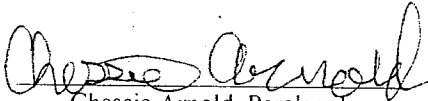
Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843) 573-8828
ATTORNEY FOR DEFENDANT

Nov. 14, 2017
Charleston, South Carolina

Counsel served: Johnny F. Driggers, Esquire
PO Box 757
Goose Creek, SC 29445
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 14 day of Nov, 2017.


Chessie Arnold, Paralegal

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Rosa Maritza Galban Aranda,)
)
Plaintiff,)
)
vs.)
)
Rigoberto Ortega,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3324

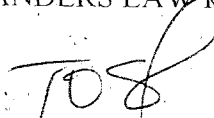
NOTICE OF MOTION AND
MOTION TO DISMISS COMPLAINT

FILED
2017 NOV 17 PM 12:01
JULIE J. ARMSTRONG
CLERK OF COURT

TO: JOHNNY F. DRIGGERS, ESQUIRE, ATTORNEY FOR PLAINTIFF:

BE ADVISED THAT pursuant to SCRCP 41 and SCRCP 12(B)(2), Defendant Rigoberto Ortega, by and through its undersigned attorney, will move before the presiding Judge in the Court of Common Pleas of Charleston County, South Carolina on the tenth day after the date of this Motion, or as soon thereafter as may be heard to dismiss Plaintiff Rosa Maritza Galban Aranda's Complaint.

SANDERS LAW FIRM, LLC



Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843) 573-8828
ATTORNEY FOR DEFENDANT

NOV. 16, 2017
Charleston, South Carolina

Counsel served: Johnny F. Driggers, Esquire
PO Box 757
Goose Creek, SC 29445
Attorney for Plaintiff.

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by

depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 16 day of November, 2017.

Nancy W. Allen
Nancy W. Allen, Legal Assistant

FILED
2017 NOV 17 PM 12:01
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Rosa Maritza Galban Aranda,)
)
Plaintiff,)
)
vs.)
)
Rigoberto Ortega,)
)
Defendant.)
)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3324

DEFENDANT'S MEMORANDUM
IN SUPPORT OF ITS
MOTION FOR RELIEF FROM JUDGMENT

FILED
2018 MAR 21 AM 9:54
JULIE J. APHISTROUD
CLERK OF COURT

Defendant Rigoberto Ortega ("Defendant"), by and through its undersigned attorney, submits this memorandum in support of its November 14, 2017 *Motion to Set Aside Default as to Defendant* in accordance with S.C.R.Civ.P. 60(b).

I. STATUS OF THE CASE

On September 15, 2017, the court signed an *Order of Default* for Defendant's failure to file an Answer. On November 14, 2017, Defendant's attorney filed a *Notice of Appearance*, a *Motion to Set Aside Default*.

II. PERTINENT FACTS

Defendant is native of Mexico with a first-grade education who cannot proficiently read or understand the English language (see Para. 2-3, Exhibit "A"). When served with the lawsuit, he was unable to understand what it meant. When he tried to get additional information from Plaintiff Rosa Maritza Galban Aranda's ("Plaintiff") attorney, he was denied (see Para. 6, Exhibit "A").

III. APPLICABLE LAW

On motion, the court may relieve a party from a final judgment, order or proceeding for mistake, inadvertence, surprise or excusable neglect or is the judgment is void. S.C.R.Civ.P. 60(b). Relief from a final judgment must be had through Rule 60, which is the mechanism for

relief from a judgment or order. Thompson v. Ballentine, 379 S.E.2d 896, 898 (S.C. 1989). The motion shall be made within a reasonable time not more than one year after the judgment, order or proceeding was entered or taken. Id. A void judgment is one that, from its inception, is a complete nullity and is without legal effect. Belle Hall Plantation Homeowner's Assn., Inc. v. Murray, 799 S.E.2d 310, 316 (S.C. 2010). The definition of "void" under the rule only encompasses judgments which failed to provide proper due process or which lacked subject matter jurisdiction. Id. Time for filing an Answer may be extended by the court "for good cause shown." S.C.R.Civ.P. 6(b).

IV. ARGUMENT

A. DEFENDANT'S ILLITERACY CONSTITUTES A VALID REASON FOR FAILURE TO FILE AN ANSWER.

Defendant's illiteracy is set forth in his March 21, 2018 *Defendant's Affidavit (in support of his Motion for Relief from Order of Default)* (Exhibit "A"). Defendant only has a first-grade education, and he cannot proficiently speak, read or understand the English Language. (Para. 1-3, Exhibit "A"). Once Defendant retained counsel through an interpreter, immediate action was taken. (Para. 8-9, Exhibit "A").

B. THE ORDER OF DEFAULT IS VOID.

The *Order of Default* in the present action is void, because the same causes of action were dismissed against Defendant with prejudice by the August 8, 2017 *Notice of Voluntary Dismissal with Prejudice* (see Exhibit "B"). The causes of action in the First Complaint (see Exhibit "C") are the exact same as those in the present action. Because of this, the court lacked jurisdiction to issue its *Order of Default*.

V. CONCLUSION

Defendant should be granted relief from the September 15, 2017 *Order of Default*.

SANDERS LAW FIRM, LLC

Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843) 573-8828
ATTORNEY FOR DEFENDANT

March 21, 2018
Charleston, South Carolina

Counsel served: Johnny F. Driggers, Esquire
PO Box 757
Goose Creek, SC 29445
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post office or official depository under the exclusive care and custody of the United States Postal Service, on this 21 day of March, 2018.

708
Thomas O. Sanders, IV

FILED
2018 MAR 21 AM 9:54
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO.: 2017-CP-10-3324
	)	
Rosa Maritza Galban Aranda,	)	
	)	DEFENDANT'S AFFIDAVIT
Plaintiff,	)	(in support of his Motion for Relief from
	)	Order of Default)
vs.	)	
	)	
Rigoberto Ortega,	)	
	)	
Defendant.	)	
_____	)	

I, Rigoberto Ortega, provide this affidavit made upon my personal knowledge, or upon information and belief after a reasonable inquiry, as to matters I believe to be true. I am competent to testify to the matters stated herein. *Because Spanish is my native language, because I do not speak English sufficiently, and because I am not proficient in reading and writing the English Language, I give this affidavit through my interpreter, Norma Lopez.*

1. Spanish is my native language, and I do not speak English proficiently.
2. I cannot proficiently read or understand the English Language.
3. In my native Mexico, I had to quit school in first grade to begin working after my father abandoned my mother, my seven siblings and me.
4. Since I was seven years old, I have been working doing manual labor.
5. On July 11, 2017, my wife was given what I now know to be the Summons and Complaint in the above-referenced action. When I got home, she gave these documents to me.
6. After receiving the documents, I tried to meet with Attorney Johnny Driggers to request more information, but I was told that he could not give me any information.
7. On November 13, 2017, I retained Attorney T.O. Sanders/Sanders Law Firm, LLC, through Interpreter Norma Lopez, to represent me.
8. Through Interpreter Norma Lopez, my attorney was able to explain to me that an Order of Default had been entered against me and that a damages hearing was pending.
9. Immediately, my attorney took action by filing Motions to Set Aside the Order of Judgment, to Dismiss the Complaint and to Continue the Damages Hearing.

Rigoberto Ortega
Rigoberto Ortega

0028

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

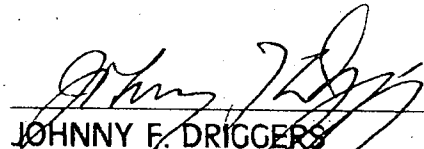
NOTICE OF VOLUNTARY
DISMISSAL WITH PREJUDICE

FILED
2017 AUG 14 PM 1:14
JULIE L. ARMSTRONG
CLERK OF COURT

Plaintiff does hereby agree and consent to the dismissal of
her Complaint, with prejudice, and further

IT APPEARING Plaintiff listed the incorrect address in the
Complaint; and

THEREFORE, it is stipulated the within action be dismissed with
prejudice.


JOHNNY F. DRIGGERS
108 Central Avenue, Suite 7
Post office Box 757
Goose Creek, SC 29445
SC Bar #1754
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

August 8, 2017.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-0432

2017

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)
Defendants.)

COMPLAINT
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

BY

JULIE J. MARSHALL
CLERK OF COURT

2017 JAN 27 PM 1:00

FILED

1. Plaintiff is a citizen and resident of Dorchester County.

Upon information and belief, Defendant is a citizen and resident of Charleston County, South Carolina.

2. On September 28, 2015, at approximately 11:30 a.m., Plaintiff was walking up the concrete stairs of a mobile home located at 4558 W. Montague Avenue, North Charleston, owned by Defendant. Plaintiff fell and attempted to grab for the railing; but, there was no railing installed on the side where she fell. As a result, Plaintiff suffered serious and grievous injury.

3. Defendant was negligent and reckless in one or more of the following ways:

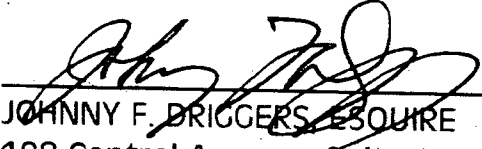
- a) In failing and neglecting to design the handrails as required by Code so they would be adequate and safe for their intended use;
- b. In failing and neglecting to construct the handrails in accordance with uniform and accepted standards applicable to their intended use;
- c. In failing and neglecting to inspect the handrails for fractures, unevenness, or other damage or defects;
- d. In failing and neglecting to make proper, necessary repairs to the handrails;
- e. In failing and neglecting to maintain the handrails in a safe condition for their intended use; and
- f. In otherwise failing and neglecting to ensure the handrails were in a safe condition for their intended use.

5. As a direct result of Defendant's negligence and recklessness, Plaintiff sustained the following damages:

- a) Physical and mental pain and suffering;
- b) Medical bills, including physician, hospital, and prescription charges;
- c) Lost wages;
- d) Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendant for such amount of actual and punitive damages as the

trier of facts shall determine, for the costs of this action, and for such further relief as the Court deems proper.


JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
Rosa Maritza Galban Aranda,)
)
Plaintiff,)
)
vs.)
)
Rigoberto Ortega,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2017-CP-10-3324

DEFENDANT'S MEMORANDUM
IN SUPPORT OF ITS
MOTION TO DISMISS COMPLAINT

FILED
2018 MAR 21 AM 9:50
JULIE J. ARMSTRONG
CLERK OF COURT

Defendant Rigoberto Ortega ("Defendant"), by and through its undersigned attorney, submits this memorandum in support of its November 16, 2017 *Motion to Dismiss Complaint*.

I. STATUS OF THE CASE

On September 15, 2017, the court signed an *Order of Default* for Defendant's failure to file an Answer. On November 14, 2017, Defendant's attorney filed a *Notice of Appearance*, a *Motion to Set Aside Default* and a *Motion to Continue Plaintiff's Damages Hearing*. On November 17, 2017, Defendant's attorney filed a *Motion to Dismiss Complaint*.

II. PERTINENT FACTS

Plaintiff Rosa Maritza Galban Aranda's ("Plaintiff") case against Defendant has already been dismissed *with prejudice* under a different case number (see Exhibit "A"). On January 27, 2017, Plaintiff filed a Complaint bearing Civil Action No.: 2017-CP-10-0432 ("the First Complaint") alleging the same, exact causes of action as those alleged in the present Complaint (see Exhibit "B"). On February 2, 2017, Defendant was served with the First Complaint (see Exhibit "C"). On June 5, 2017, the court signed an Order of Default as to the First Complaint (see Exhibit "D").

III. ARGUMENT

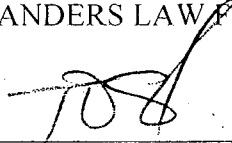
PLAINTIFF'S DISMISSAL OF THE FIRST COMPLAINT WITH PREJUDICE
ADJUDICATED ALL ALLEGATIONS AGAINST DEFENDANT.

An action may be dismissed, with prejudice, by the Plaintiff without order of court by filing a notice of dismissal at any time before service by the adverse party of an answer. S.C.R.Civ.P. 41(a)(1). "[D]ismissal with prejudice indicates an adjudication on the merits and precludes subsequent litigation to the same extent as if the action had been tried to final adjudication. Where an action has been dismissed with prejudice, the judgment operates in subsequent litigation to the same extent as if the action had been tried to a final adjudication." Jones v. City of Folly Beach, 483 S.E.2d 770, 773 (S.C. Ct. App. 1997). Plaintiff's August 8, 2017 *Notice of Voluntary Dismissal with Prejudice* (see Exhibit "A") of the First Complaint operates to prevent Plaintiff from filing the present Complaint, which contains the exact, same claims as the First Complaint. Because Plaintiff's claims against Defendant have already been adjudicated, they may not be re-litigated in the present Complaint.

IV. CONCLUSION

Defendant's *Motion to Dismiss Complaint* should be granted.

SANDERS LAW FIRM, LLC



Thomas O. Sanders, IV
1738 Three Oaks Avenue
Charleston, South Carolina 29407
(843) 573-8828
ATTORNEY FOR DEFENDANT

March 20, 2018
Charleston, South Carolina

Counsel served: Johnny F. Driggers, Esquire
PO Box 757
Goose Creek, SC 29445
Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned certifies that the pleading or paper to which this certificate is affixed was served upon the party(s) to this action by hand delivery or by depositing a copy of the same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record for such other party(s), in a post

office or official depository under the exclusive care
and custody of the United States Postal Service, on this
20 day of March, 2018.

TOS
Thomas O. Sanders, IV

FILED
2018 MAR 21 AM 9:50
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

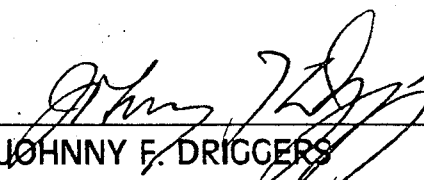
NOTICE OF VOLUNTARY
DISMISSAL WITH PREJUDICE

FILED
2017 AUG 14 PM 1:47
JULIE L. ARMSTRONG
CLERK OF COURT

Plaintiff does hereby agree and consent to the dismissal of
her Complaint, with prejudice, and further

IT APPEARING Plaintiff listed the incorrect address in the
Complaint; and

THEREFORE, it is stipulated the within action be dismissed with
prejudice.


JOHNNY F. DRIGGERS
108 Central Avenue, Suite 7
Post office Box 757
Goose Creek, SC 29445
SC Bar #1754
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

August 8, 2017.

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-0432
2017

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

COMPLAINT
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

BY
JULIE J. ARMSTRONG
CLERK OF COURT
2017 JAN 27 PM 1:50

FILED

1. Plaintiff is a citizen and resident of Dorchester County.

Upon information and belief, Defendant is a citizen and resident of Charleston County, South Carolina.

2. On September 28, 2015, at approximately 11:30 a.m., Plaintiff was walking up the concrete stairs of a mobile home located at 4558 W. Montague Avenue, North Charleston, owned by Defendant. Plaintiff fell and attempted to grab for the railing; but, there was no railing installed on the side where she fell. As a result, Plaintiff suffered serious and grievous injury.

3. Defendant was negligent and reckless in one or more of the following ways:

- a) In failing and neglecting to design the handrails as required by Code so they would be adequate and safe for their intended use;
- b. In failing and neglecting to construct the handrails in accordance with uniform and accepted standards applicable to their intended use;
- c. In failing and neglecting to inspect the handrails for fractures, unevenness, or other damage or defects;
- d. In failing and neglecting to make proper, necessary repairs to the handrails;
- e. In failing and neglecting to maintain the handrails in a safe condition for their intended use; and
- f. In otherwise failing and neglecting to ensure the handrails were in a safe condition for their intended use.

5. As a direct result of Defendant's negligence and recklessness, Plaintiff sustained the following damages:

- a) Physical and mental pain and suffering;
- b) Medical bills, including physician, hospital, and prescription charges;
- c) Lost wages;
- d) Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendant for such amount of actual and punitive damages as the

trier of facts shall determine, for the costs of this action, and for such further relief as the Court deems proper.



JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

State of South Carolina)
)
County of Charleston)
)
Rosa Maritza Galban Aranda,)
 Plaintiff(s),)
)
-versus-)
)
Rigoberto Ortega,)
 Defendant(s),)
_____)

In the Court of Common Pleas

Affidavit of Service

Case No: 2017-CP-10-0432

The undersigned, William Stephen Russell, being duly sworn says that he served the: **Civil Action Coversheet, Summons and Complaint** in this action on Rigoberto Ortega by delivering same to:

(x) By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household of suitable age and explaining the general nature of the papers: Maria Ortega (wife)

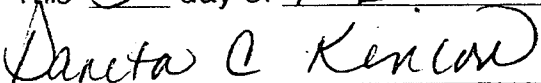
And leaving with her one copy of the same at:
4558 W. Montague, North Charleston, SC 29418 on February 2, 2017 at 7 pm

And that the deponent knows the person so served to be Rigoberto Ortega via Maria Ortega, and the deponent is not a party to, nor interested in the action.



William Stephen Russell, Private Investigator

Sworn to before me
This 3 day of Feb, 2017



Notary Public for South Carolina

My Commission expires on Sept 29, 2026

FILED
2017 FEB -8 AM 10:53
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

ORDER OF DEFAULT

FILED
2017 JUN -7 PM 3:08
CLERK OF COURT

UPON reading the Summons and Complaint, and it appearing the pleadings have been properly filed with the Clerk of this Honorable Court, and it further appearing by Affidavit of Plaintiff's attorney that Defendant RIGOBERTO ORTEGA is in default for failure to answer, demurrer, or otherwise plead or appear to the Summons and Complaint, it is hereby

ORDERED that Defendant RIGOBERTO ORTEGA is hereby declared to be in default. *A hearing shall be set to determine the amount of damages.*
IT IS SO ORDERED.

SK Jeff

Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

6/5, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-3324

ROSA MARITZA GALBAN)
ARANDA,)
)

Plaintiff,)

-vs-)

RICOBERTO ORTEGA,)
)

Defendants.)

MEMORANDUM IN OPPOSITION
TO DEFENDANT'S MOTION TO
SET ASIDE DEFAULT

On September 20, 2015, Plaintiff was attempting to enter a trailer owned by Defendant, located at 4667 Walton Street, Lot 11, North Charleston. Due to the dangerous condition of the entrance way, she fell, sustaining significant injuries. On three different occasions,— August 30, 2016, September 29, 2016, and November 9, 2016 — Plaintiff's counsel sent a letter to Defendant requesting him to notify his insurance company; inexplicably, Defendant apparently failed to do so.

PROCEDURAL BACKGROUND

After receiving no response from Defendant and/or any insurance company, litigation was commenced on January 27, 2017 (Exhibit 1). Defendant was properly served on February 2, 2017

(Exhibit 2). Defendant then came to Plaintiff's counsel's office, was advised no one was able to assist him and he would need to speak with his own attorney (Exhibit 3 - Affidavit of Debra Curwen). After receiving no response, entry of default was filed May 26, 2017, more than 100 days after service (Exhibit 4). An Order of Default was entered June 7, 2017 (Exhibit 5). However, it was learned the address where the incident occurred was incorrect; therefore, a voluntary dismissal was filed on August 14, 2017 (Exhibit 6).

The subject lawsuit was filed June 29, 2017. Defendant was properly served on July 11, 2017. An affidavit Entry of Default was filed on September 6, 2017; an Order of Default was entered September 21, 2017. On October 12, 2017, Defendant was personally served with a letter notifying him a damages hearing had been scheduled for November 17, 2017 (Exhibit 7). Just prior to the hearing, Defendant retained counsel, who filed a Notice of Appearance and Motion to Set Aside Default on November 14, 2017. Shortly afterwards, on November 16, 2017, Defendant filed a Motion to Dismiss the Summons and Complaint.

LEGAL ANALYSIS AND ARGUMENT

DEFENDANT IS NOT ENTITLED TO RELIEF FROM DEFAULT JUDGMENT UNDER THE MORE RIGOROUS RULE 60(B) STANDARD OF EXCUSABLE NEGLIGENCE

An Order of Default Judgment was issued in this case on September 21, 2017. Accordingly, Defendant's Motion to Set Aside Default is governed by Rule 60(b) and not Rule 55(c). *Sundown*, 383 S.C. at 607-608, 681 S.E. 2d at 888 (2009). In the *Sundown* case, our Supreme Court acknowledged that there has been some confusion in the case law regarding the application of the standards for relief set forth in Rule 55(c) and Rule 60(b). The Court took the opportunity in *Sundown* to "reassert the basic legal premise that the standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment". *Id.* at 607, 681 S.E. 2d at 888. "Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.' The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid default once

the court has entered a judgment, which carries greater finality."

Id. at 608, 681 S.E. 2d at 888-89 (citing Rule 60(b)) (emphasis added.)

Significantly, the Defendant seeking relief from default "has the burden of presenting evidence proving the facts essential to entitle him to relief." *Rodriguez v. Gutierrez*, 391 S.C. 323, 705, S.E.2d 94 (Ct. App. 2011).

Defendant has not provided any explanation that could constitute the required "particularized showing" of mistake, surprise, excusable neglect or any of the other Rule 60(b) facts. As Plaintiff has not been served with any supporting memorandum or affidavit from Defendant averring why he failed to promptly retain defense counsel and/or file a pro se answer, there is no need to address the factors to be considered in awarding relief.¹

Normally, there are four factors to be considered in granting relief under Rule 60: (1) the promptness with which relief is sought; (2) the reasons for failure to act promptly; (3) the existence of a meritorious defense; and, (4) prejudice to the Plaintiff if default is

¹"When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served no later than two days before the hearing, unless the court permits them to be served at some other time." South Carolina Rules of Civil Procedure 7(b)(1).

vacated. However, the law is clear the Court is not required to address or make specific findings with respect to these factors unless and until Defendant has shown it was entitled to relief under any of the grounds specified in Rule 60(b). Again, as Defendant elected not to attach any affidavit and/or supporting documents to its Motion for Relief from Default, there is a complete and utter lack of any showing that one entitled Defendant to relief from default. Even if the Court engages in the analysis outlined above, Defendant still fails to establish it is entitled to relief under the excusable neglect standard governing Rule 60(b) motions.

As recited above, Plaintiff firmly believes the Court should deny Defendant's motion because Defendant has not made the required particularized showing of the excusable neglect factors specified under Rule 60(b). However, a review of the four prong test in which a court would normally engage upon a showing of mistake, surprise, excusable neglect, or one of the other 60 (b) factors, lends additional support for defining that Defendant is not entitled to relief.

1. Timing of Defendant's Motion for Relief -

On this issue, it bears noting that the within action is actually the second summons and complaint that was served on Defendant. And, as noted in the affidavit of Debra Curwen, legal assistant to Plaintiff's counsel, she informed Defendant that he needed to contact an attorney.

In the present action, the affidavit and entry of default was filed September 6, 2017, almost 2 months after Defendant had been served with the summons and complaint. An Order of Default was entered September 21, 2017. Defendant was served with default papers and notice of hearing on October 12, 2017. Nonetheless, Defendant waited an additional month before filing a motion for relief from default on November 14, 2017.

The foregoing timeline is clear evidence of Defendant's disregard for the time limits clearly set forth in the South Carolina Rules of Civil Procedure.

2. Reasons for Defendant's failure to act promptly -

Again, Defendant has not offered any reason why it failed to retain counsel and/or timely file an answer. And, again, Defendant was informed he needed to retain an attorney.

3. Whether Defendant has a meritorious defense -

"[A] meritorious defense is more than merely a factor to consider under certain 60(b) grounds for setting aside default judgments." *McClurg v. Deaton*, 380 S.C. 563, 574, 671 S.E.2d 87, 93 (Ct.App.2008).

[O]ur courts have held that in order to obtain relief from a default judgment under Rule 60(b)(1) or 60(b)(3), not only must the movant make a proper showing he is entitled to relief based upon one of the specified grounds, he must also make a prima facie showing of a meritorious defense....[A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence. *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487 (2011).

Plaintiff was injured when she fell on the steps of Defendant's property. Plaintiff has retained an expert to inspect the property, take photographs, and prepare a report (Exhibit 8). The subject property was not constructed or maintained in

compliance with applicable code provisions; consequently, it appears Defendant does not have any meritorious defense.

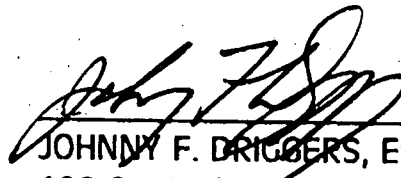
4. Degree of prejudice to Plaintiff -

While conceding a preference by judicial system to have cases determined, on the merits, there can also be no question that granting the motion would cause considerable delay in Plaintiff's attempt to obtain a judgment against Defendant for damages. The initial lawsuit was filed over a year ago; the second and present lawsuit was filed nine months ago. If the Court were to grant the motion, that would be a considerable delay to Plaintiff, having her "day in court" . In the words of one author whose name presently escapes Plaintiff's counsel — "justice delayed is justice denied."

CONCLUSION

For the foregoing reasons, Plaintiff respectfully requests the Court deny Defendant's Motion to Set Aside the Judgment of Default and refer this matter without discovery to the Master-in-Equity of Charleston County for a damages hearing pursuant to SCRCP 53.

(Signature page follows)



JOHNNY F. DRIGGERS, ESQUIRE

108 Central Avenue, Suite 7

Goose Creek, SC 29445

(843) 572-8222

(843) 797-2114 (facsimile)

ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

March 20, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

ROSA MARITZA GALBAN ARANDA

Plaintiff(s)

vs.

RIGOBERTO ORTEGA

Defendant(s)

Submitted By: JOHNNY F. DRIGGERS

Address: 108 CENTRAL AVENUE, SUITE 7

GOOSE CREEK SC 29445

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2017-CP - 10- 0432

SC Bar #: 001754

Telephone #: 843-572-8222

Fax #: 843-797-2114

Other:

E-mail: JAYESQUIRE@AOL.COM

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 <u>NI</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Label (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement-Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: [Signature]

Date: JANUARY 24, 2017

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



Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

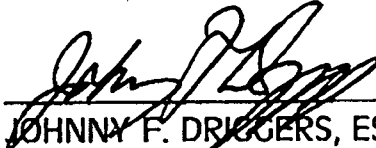
RIGOBERTO ORTEGA,)

Defendants.)

FILED
2017 JAN 27 PM
JULIE L. ADAMS
CLERK OF COURT
BY
S U M M O N S
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend the action(s) set forth in the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer or Motion to the said Complaint on Johnny F. Driggers, at his office, 108 Central Avenue, Suite 7, Goose Creek, South Carolina 29445 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to appear and defend within the time aforesaid, judgment by default will be entered against you for the relief demanded in the Complaint.


JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

COMPLAINT
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

2017 JAN 27 11:41
JULIA A. BROWN
CLERK OF COURT

1. Plaintiff is a citizen and resident of Dorchester County.
Upon information and belief, Defendant is a citizen and resident of Charleston County, South Carolina.

2. On September 28, 2015, at approximately 11:30 a.m., Plaintiff was walking up the concrete stairs of a mobile home located at 4558 W. Montague Avenue, North Charleston, owned by Defendant. Plaintiff fell and attempted to grab for the railing; but, there was no railing installed on the side where she fell. As a result, Plaintiff suffered serious and grievous injury.

3. Defendant was negligent and reckless in one or more of the following ways:

- a) In failing and neglecting to design the handrails as required by Code so they would be adequate and safe for their intended use;
- b. In failing and neglecting to construct the handrails in accordance with uniform and accepted standards applicable to their intended use;
- c. In failing and neglecting to inspect the handrails for fractures, unevenness, or other damage or defects;
- d. In failing and neglecting to make proper, necessary repairs to the handrails;
- e. In failing and neglecting to maintain the handrails in a safe condition for their intended use; and
- f. In otherwise failing and neglecting to ensure the handrails were in a safe condition for their intended use.

5. As a direct result of Defendant's negligence and recklessness, Plaintiff sustained the following damages:

- a) Physical and mental pain and suffering;
- b) Medical bills, including physician, hospital, and prescription charges;
- c) Lost wages;
- d) Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendant for such amount of actual and punitive damages as the

trier of facts shall determine, for the costs of this action, and for such further relief as the Court deems proper.



JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

State of South Carolina)

In the Court of Common Pleas

County of Charleston)

Affidavit of Service

Rosa Maritza Galban Aranda,)
Plaintiff(s),)

Case No: 2017-CP-10-0432

-versus-)

Rigoberto Ortega,)

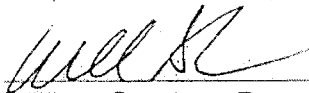
Defendant(s),)

The undersigned, William Stephen Russell, being duly sworn says that he served the: **Civil Action Coversheet, Summons and Complaint** in this action on Rigoberto Ortega by delivering same to:

(x) By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household of suitable age and explaining the general nature of the papers: Maria Ortega (wife)

And leaving with her one copy of the same at:
4558 W. Montague, North Charleston, SC 29418 on February 2, 2017 at 7 pm

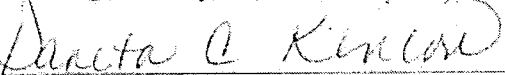
And that the deponent knows the person so served to be Rigoberto Ortega via Maria Ortega, and the deponent is not a party to, nor interested in the action.



William Stephen Russell, Private Investigator

Sworn to before me

This 3 day of Feb, 2017



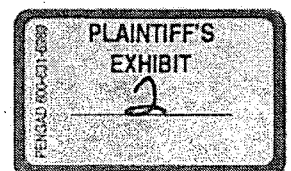
Notary Public for South Carolina

My Commission expires on Sept 29, 2026

BY

2017 FEB -8 AM 10:53
JULIE L. ARMSTRONG
CLERK OF COURT

FILED



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-3324

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-VS-)

RIGOBERTO ORTEGA,)

Defendants.)
_____)

AFFIDAVIT

PERSONALLY APPEARED before me the undersigned, who
being duly sworn, deposes and says:

1. My name is Debra Curwen, and I am employed with
Driggers Law Firm as a legal assistant.

2. On January 27, 2017, we filed a lawsuit in this case
against Defendant Rigoberto Ortega.

3. Defendant Ortega was served with the lawsuit on
February 2, 2017.

4. Defendant Ortega came by our office unannounced
after being served with the lawsuit. I explained to him we could not
talk to him as we did not represent him. I suggested he have his
attorney contact us directly.



5. We never received an answer or any kind of response from Defendant or an attorney to the lawsuit.

6. On May 26, 2017, we filed default papers with the Clerk of Court for Charleston County.

Further affiant saith not.

Debra Curwen
Debra Curwen

SWORN to before me this

19 day of March, 2018.

Landra Kay Wilkinson
Notary Public for South Carolina
My Commission expires 7-31-2018

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

AFFIDAVIT OF DEFAULT FOR
RIGOBERTO ORTEGA

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2017 MAY 26 AM 8:38

FILED

PERSONALLY APPEARED before me, Johnny F. Driggers, Esquire

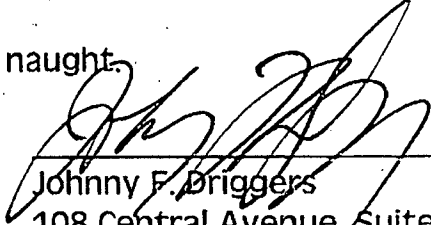
who being duly sworn, deposes and says:

1. He is the attorney for Plaintiff Rosa Maritza Galban Aranda in the above-entitled action.
2. He filed a Summons and Complaint against Defendant Rigoberto Ortega in this action in the Court of Common Pleas for Charleston County on January 27, 2017. (Exhibit A)
3. Service was perfected against Rigoberto Ortega by personal substitute service on Maria Ortega as wife of Defendant at 4558 W. Montague, North Charleston, South Carolina where Defendant resides. (Exhibit B)



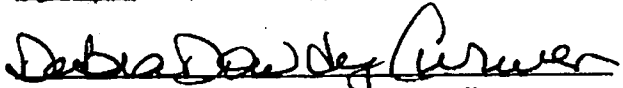
4. More than thirty (30) days have elapsed since the date of service upon Defendant Rigoberto Ortega and no answer, notice, appearance or demurrer or any other pleadings have been served on Plaintiff's counsel or filed herein by Defendant Rigoberto Ortega.

Further affiant saith naught.


Johnny F. Briggers
108 Central Avenue, Suite 7
P. O. Box 757
Goose Creek, South Carolina 29445
(843) 572-8222
(843) 797-2114 (fax)
Attorney for Plaintiff

SWORN TO BEFORE ME this

22 day of May, 2017.


Notary Public for South Carolina
My Commission Expires: 07/07/19

COUNTY OF CHARLESTONROSA MARITZA GALBAN ARANDA

Plaintiff(s)

CIVIL ACTION COVERSHEET

2017-CP - 10- 0432

vs.

RIGOBERTO ORTEGA

Defendant(s)

Submitted By: JOHNNY F. DRIGGERSAddress: 108 CENTRAL AVENUE, SUITE 7GOOSE CREEK SC 29445SC Bar #: 001754Telephone #: 843-572-8222Fax #: 843-797-2114

Other:

E-mail: JAYESQUIRE@AOL.COM

2017 JAN 11 1:41

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

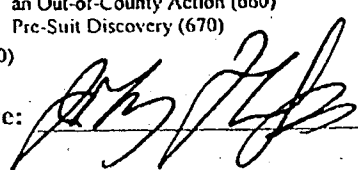
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 ____ -NI- ____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (990)
☐ Employment Security Comm (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in
an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: Date: JANUARY 24, 2017

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

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

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

Pursuant to the ADR Rules, you are required to take the following action(s):

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

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

S U M M O N S

(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

2017 JAN 27 PM 4:41

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to appear and defend the action(s) set forth in the Complaint herein, a copy of which is served upon you, and to serve a copy of your Answer or Motion to the said Complaint on Johnny F. Driggers, at his office, 108 Central Avenue, Suite 7, Goose Creek, South Carolina 29445 within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to appear and defend within the time aforesaid, judgment by default will be entered against you for the relief demanded in the Complaint.


JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2016-CP-10-

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

COMPLAINT
(Slip and Fall -Personal Injury)
(Jury Trial Demanded)

2017 JAN 27 1:41
CLERK OF COURT

1. Plaintiff is a citizen and resident of Dorchester County.

Upon information and belief, Defendant is a citizen and resident of Charleston County, South Carolina.

2. On September 28, 2015, at approximately 11:30 a.m., Plaintiff was walking up the concrete stairs of a mobile home located at 4558 W. Montague Avenue, North Charleston, owned by Defendant. Plaintiff fell and attempted to grab for the railing; but, there was no railing installed on the side where she fell. As a result, Plaintiff suffered serious and grievous injury.

3. Defendant was negligent and reckless in one or more of the following ways:

- a) In failing and neglecting to design the handrails as required by Code so they would be adequate and safe for their intended use;
- b. In failing and neglecting to construct the handrails in accordance with uniform and accepted standards applicable to their intended use;
- c. In failing and neglecting to inspect the handrails for fractures, unevenness, or other damage or defects;
- d. In failing and neglecting to make proper, necessary repairs to the handrails;
- e. In failing and neglecting to maintain the handrails in a safe condition for their intended use; and
- f. In otherwise failing and neglecting to ensure the handrails were in a safe condition for their intended use.

5. As a direct result of Defendant's negligence and recklessness, Plaintiff sustained the following damages:

- a) Physical and mental pain and suffering;
- b) Medical bills, including physician, hospital, and prescription charges;
- c) Lost wages;
- d) Loss of enjoyment of life.

WHEREFORE, Plaintiff demands judgment against Defendant for such amount of actual and punitive damages as the

trier of facts shall determine, for the costs of this action, and for such further relief as the Court deems proper.



JOHNNY F. DRIGGERS, ESQUIRE
108 Central Avenue, Suite 7
Goose Creek, SC 29445
(843) 572-8222
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

January 24, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

**AFFIDAVIT OF NON-MILITARY
SERVICE**

2017 MAY 26 AM 8:39
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

FILED

PERSONALLY APPEARED before me Johnny F. Driggers, Esquire,

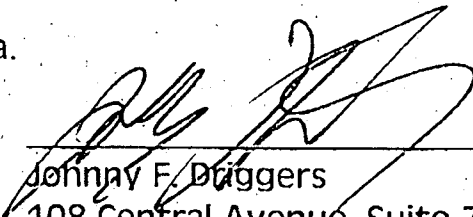
who being duly sworn, deposes and says:

He is familiar with provisions of 50 App. Section 520, Civil Relief Act of 1940, and to induce the Court to enter a default judgment against Defendant RIGOBERTO ORTEGA, represents to the Court that from his file in this matter, and on information and belief based on the hereinafter enumerated facts, Defendant Rigoberto Ortega is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto.

The source of information on which I base my belief is as follows:

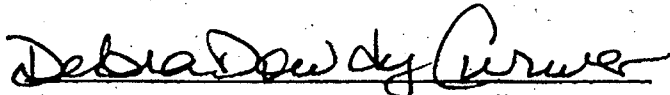
Research made by Johnny F. Driggers, attorney for Plaintiff

Rosa Maritza Galban Aranda.



Johnny F. Driggers
108 Central Avenue, Suite 7
P. O. Box 757
Goose Creek, South Carolina 29445
(843) 572-8222
(843) 797-2114 (fax)
Attorney for Plaintiff

SWORN TO BEFORE ME this
22 day of May, 2017.



Notary Public for South Carolina
My Commission Expires: 07/07/19

State of South Carolina)
)
 County of Charleston)
)
 Rosa Maritza Galban Aranda,)
Plaintiff(s),)
)
 -versus-)
)
 Rigoberto Ortega,)
Defendant(s),)
 _____)

In the Court of Common Pleas

Affidavit of Service

Case No: 2017-CP-10-0432

The undersigned, William Stephen Russell, being duly sworn says that he served the:
Civil Action Coversheet, Summons and Complaint in this action on Rigoberto Ortega by delivering same to:

(x) By leaving copies at the dwelling house or usual place of abode of the person being served with a member of the household of suitable age and explaining the general nature of the papers: Maria Ortega (wife)

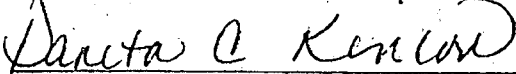
And leaving with her one copy of the same at:
4558 W. Montague, North Charleston, SC 29418 on February 2, 2017 at 7 pm

And that the deponent knows the person so served to be Rigoberto Ortega via Maria Ortega, and the deponent is not a party to, nor interested in the action.



William Stephen Russell, Private Investigator

Sworn to before me
 This 3 day of Feb, 2017



Notary Public for South Carolina

My Commission expires on Sept 29, 2026

BY _____

JULIE J. ARMSTRONG
 CLERK OF COURT

2017 FEB -8 AM 10:53

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)

ORDER OF DEFAULT

2017 JUN -7 PM 3:10
JULIE J. ARMSTRONG
CLERK OF COURT

UPON reading the Summons and Complaint, and it appearing the pleadings have been properly filed with the Clerk of this Honorable Court, and it further appearing by Affidavit of Plaintiff's attorney that Defendant RIGOBERTO ORTEGA is in default for failure to answer, demurrer, or otherwise plead or appear to the Summons and Complaint, it is hereby

ORDERED that Defendant RIGOBERTO ORTEGA is hereby declared to be in default. ^{Dgt} A hearing shall be set to determine the amount of damages.
IT IS SO ORDERED.

S/ Dgt Jeff
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina

6/5, 2017

ATTEST A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK OF COURT
By [Signature]
DEPUTY CLERK



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-0432

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-VS-)

RIGOBERTO ORTEGA,)

Defendants.)

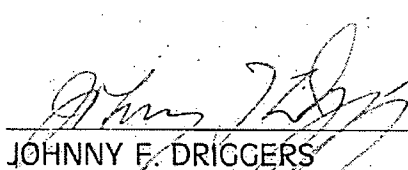
NOTICE OF VOLUNTARY
DISMISSAL WITH PREJUDICE

FILED
CLERK OF COURT
AUG 14 PM 1:40

Plaintiff does hereby agree and consent to the dismissal of
her Complaint, with prejudice, and further

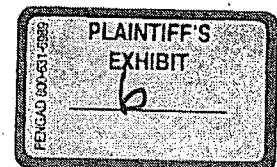
IT APPEARING Plaintiff listed the incorrect address in the
Complaint; and

THEREFORE, it is stipulated the within action be dismissed with
prejudice.


JOHNNY F. DRIGGERS
108 Central Avenue, Suite 7
Post office Box 757
Goose Creek, SC 29445
SC Bar #1754
ATTORNEY FOR PLAINTIFF

Goose Creek, South Carolina

August 8, 2017.



JOHNNY F. DRIGGERS
TRIAL ATTORNEY
105 CENTRAL AVENUE, SUITE 7
P.O. BOX 757
GOOSE CREEK, SOUTH CAROLINA 29445

E-MAIL ADDRESS: JFDRIGGERS@AOL.COM

TELEPHONE: (843) 572-8333
FAX: (843) 597-2114

October 11, 2017

Rigoberto Ortega
4558 W. Montague Street
North Charleston SC 29418

RE: ROSA MARITZA GALBAN ARANDA V. RIGOBERTO ORTEGA
CIVIL ACTION NO. 2017-CP-10-3324

Dear Mr. Ortega:

Please be advised the default hearing before the Honorable J. C. Nicholson, Jr., for Charleston County, has been scheduled for Friday, November 17, 2017, at 10:00 a.m. The hearing will be held at Charleston County Courthouse, 100 Broad Street, Courtroom 3E, Charleston, South Carolina 29401.

With kindest regards, I am

Very truly yours,

Johnny F. Driggers/ddc

JOHNNY F. DRIGGERS
JFD/ddc

cc: Don C. Gibson, Esquire
Rosa Maritza Galban Aranda



State of South Carolina)
County of Charleston)
Rosa Maritza Galban Aranda,)
Plaintiff(s),)
-versus-)
Rigoberto Ortega,)
Defendant(s),)
_____)

In the Court of Common Pleas

Affidavit of Service

Case No: 2017-CP-10-332

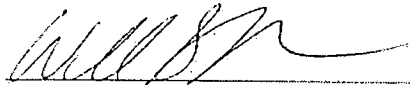
FILED
2017 OCT 23 PM 2:15
CLERK OF COURT

The undersigned, William Stephen Russell, being duly sworn says that he served the: **Civil Action Coversheet, Summons, Complaint, Order of Default** scheduled for **November 17, 2017 at 10:00 am, Affidavit of Default for Rigoberto Ortega and Exhibit(s)** in this action on Rigoberto Ortega by delivering same to:

(x) Rigoberto Ortega: Personally,

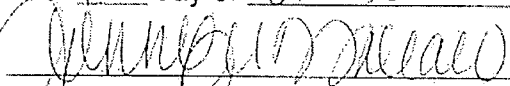
And leaving with him one copy of the same at:
4558 W. Montague, North Charleston, SC 29418 on October 12, 2017 at 5 pm

And that the deponent knows the person so served to be Rigoberto Ortega and the deponent is not a party to, nor interested in the action.



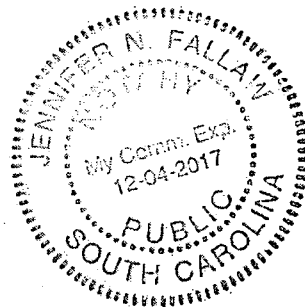
William Stephen Russell, Private Investigator

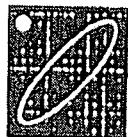
Sworn to before me
This 13th day of October, 2017


Notary Public for South Carolina

My Commission expires on 12-04-2017

Unifred SCDLA 008776139





**ORBITAL ENGINEERING
AND CONSULTING, LLC**
FORENSIC ENGINEERING SERVICES

February 23, 2016

Via E-Mail
dgibson@dgibsonlaw.com

Don C. Gibson, Esquire
Don Gibson Law Firm, LLC
5422 Rivers Avenue
North Charleston, SC 29406

RE Rosa Marixa Galvan
Stair Fall at 4667 Walton Street - Lot 11

Dear Mr. Gibson:

At your request, I have twice visited the scene of Ms. Galvan's fall. Once on January 5, 2016 and again on February 12, 2016 to obtain stair measurements and photographs. In my opinion, and within a reasonable standard of engineering certainty, the lack of handrails on both sides of the stairs, as required by Code, were the proximate cause of your client's fall. Had a Code compliant handrail been present, it would have prevented your client's injury.

Your client's fall occurred when she fell off the pre-cast concrete stairs on the side which had no handrail installed. The photographs on the following pages show existing conditions at the fall site. The existing handrail is not Code compliant since it is not graspable due to the pickets extending up beyond the handrail. Also, the handrail is not well secured and the connection on both ends is very weak. The pickets are not supported by the stair treads. And finally, the required handrail is missing from the other side of these stairs. These are all Code violations as highlighted in the Code extract attached.

Thank you for the opportunity to be of service. I have approximately 15 digital photographs on file for future reference. Please let me know if you have any questions or need any additional information.

Sincerely,

Leonard A. Greene, P.E.

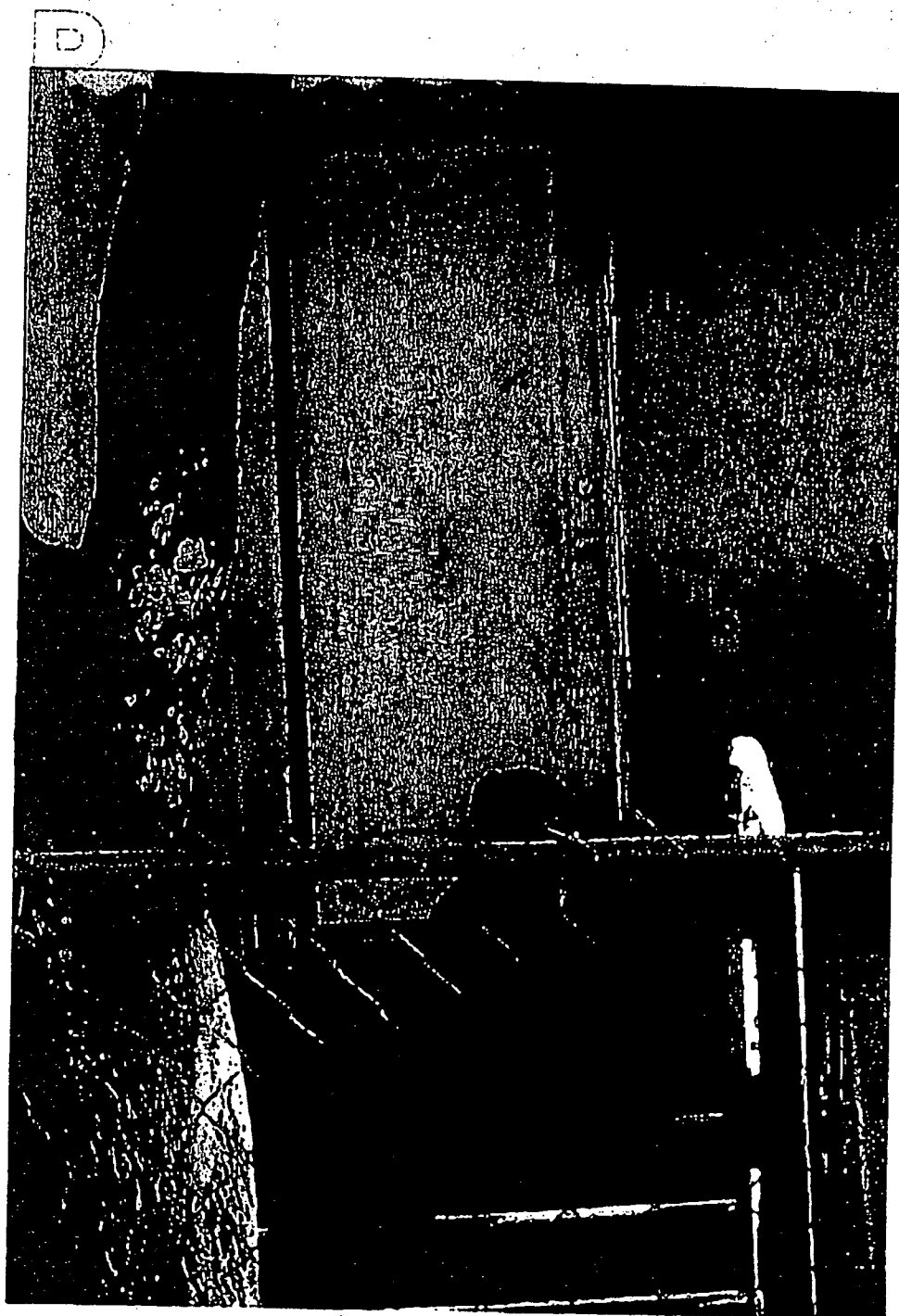
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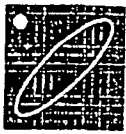


ORBITAL ENGINEERING AND CONSULTING, LLC

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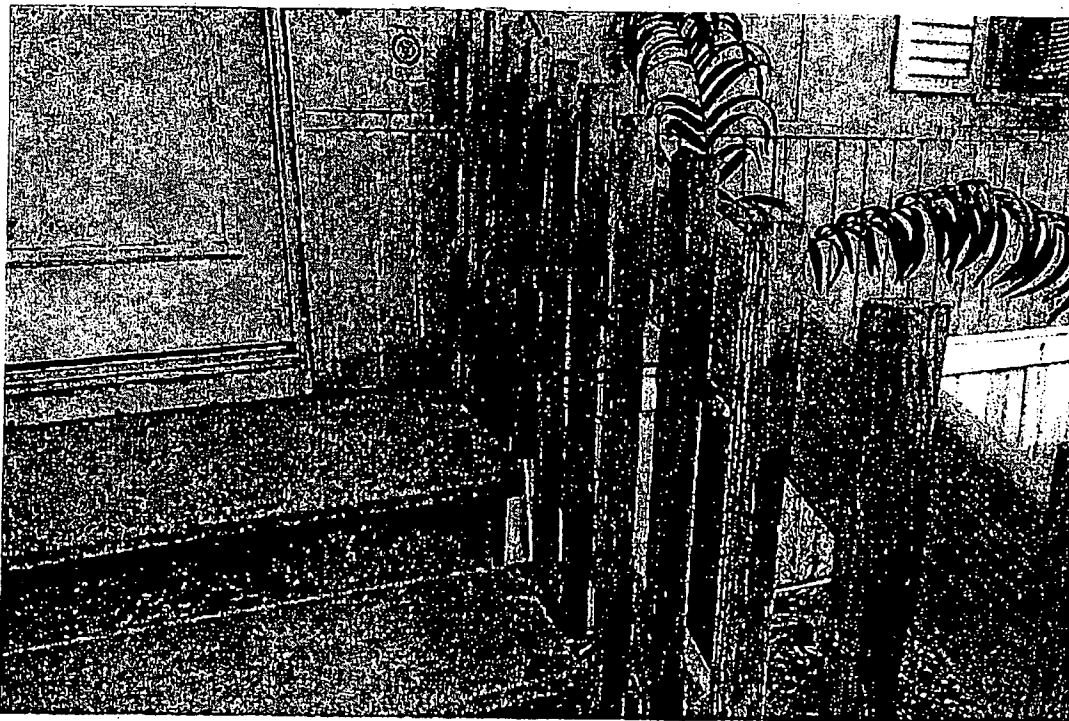
View of Lot 11
stairs.



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Overall view of entrance stairs.



View of existing handrail. Note pickets extend above handrail and pickets are not securely attached to stairs.

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View of bottom step. Arrow indicates where a handrail post had been securely bolted to step at one time.

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COURT OF COMMON PLEAS

2017-CP-10-03324

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Ruth C. Weese, RDR
Court Reporter

(The following proceedings were held
March 21, 2018, Charleston County, South Carolina,
@ 11:31 a.m.)

THE COURT: No. 49, Aranda versus
Ortega. We have a motion for damages hearing, a
motion to dismiss the complaint and a motion to set
aside default.

MR. SANDERS: Correct, Your Honor.

THE COURT: All right. I think let's
begin then with the motion to set aside default.

MR. SANDERS: Your Honor, I will be
happy to start with that. But it makes more sense
if I started with the motion to dismiss if it
pleases the Court.

THE COURT: Okay. How are you going to
make a motion to dismiss if you're in default?

MR. SANDERS: Well, because the present
action contains the same injury claim that the
previous complaint contained and it was dismissed
with prejudice. So our position on the motion to
dismiss is that the present lawsuit shouldn't have
been filed to start with because the same claims,
the exact same claims, were previously made and
dismissed with prejudice.

In both lawsuits the Plaintiff claims

1 that she was hurt at the Defendant's mobile home
2 when she fell off a porch and that same injury
3 claim is in both lawsuits. The only difference
4 between the two lawsuits is the address where --
5 the address where the fall occurred. This is not a
6 determinative factor in the Plaintiff's injury
7 claim because Plaintiff's injury is alleged to have
8 occurred in a mobile home owned by the Defendant,
9 which is true. The case law in Jones versus City
10 of Folly Beach tells us --

11 THE COURT: Hold up. So here's -- you
12 are telling me that you think that it's the same
13 lawsuit, but it's a different address.

14 MR. SANDERS: Um-hmm.

15 THE COURT: But you are in default.

16 MR. SANDERS: We are.

17 THE COURT: Okay. I think you got to
18 do the default first.

19 MR. SANDERS: Okay. Your Honor, may I
20 approach?

21 THE COURT: Sure.

22 MR. SANDERS: Here is a memo in support
23 of that which is probably not in your file.

24 THE COURT: Thank you.

25 MR. SANDERS: Your Honor, we filed a

1 motion for relief from judgment under Rule 60(b).
2 Although it's captioned as a motion to set aside
3 the default, it does reference rule 60(b) and with
4 this motion we ask for relief from the order of
5 default that was entered by the Court in 2017.

6 And our argument relies on two things.
7 One is the Defendant is illiterate. He has a first
8 grade education in Mexico and he can't efficiently
9 speak, read or understand the English language.

10 And in my memo under Exhibit A there's the
11 Defendant's affidavit and it was given through an
12 interpreter.

13 Now, I to need the let the Court know
14 that I didn't provide the Plaintiff with two day's
15 notice of this affidavit, only one day's notice.
16 And if Plaintiff believes this lack of notice would
17 prejudice him, I have previously agreed to continue
18 this hearing to allow him time to provide an
19 affidavit in rebuttal if desired. The affidavit
20 was tardy due to a family medical emergency which
21 has disrupted my home life and limited my time at
22 work. So that's the reason the affidavit is late.

23 (THE COURT: All right. Mr. Driggers,
24 are you okay to go forward?

25 MR. DRIGGERS: Yes, I'm going forward.

1 Plaintiffs's attorney. So I have a rebuttal
2 affidavit which I would -- if the Court is going to
3 consider the affidavit then I have a rebuttal
4 affidavit prepared by my assistant.

5 THE COURT: Okay. So I think you are
6 ready to go.

7 MR. DRIGGERS: Yes, ma'am.

8 THE COURT: Okay. Very well. So....

9 MR. SANDERS: So we have the
10 Defendant's affidavit that he's illiterate and the
11 second basis of this motion is that the order of
12 default is void. The August 8th, 2017, voluntary
13 dismissal with prejudice dismissed the lawsuit that
14 had -- the first lawsuit that has the same causes
15 of action as in the present complaint.

16 If we go back to the case law of Jones
17 versus City of Folly Beach, that case tells us to
18 focus on causes of action which are the exact same.
19 So again what we are asking you to do is set aside
20 the order of default so that we can file an answer.

21 And as soon as the Defendant came to
22 me, he came to me through an interpreter, the same
23 interpreter that helped him do this affidavit, we
24 immediately took action and filed our motions. So
25 we reacted as quickly as we could.

1 said that he was served?

2 MR. DRIGGERS: Yes, ma'am. It's
3 attached to our paperwork. His wife was served.
4 But he was served --

5 THE COURT: He was served with the
6 notice of default judgment.

7 MR. DRIGGERS: The order for --

8 THE COURT: The order where he was held
9 in contempt and then the request for damages.

10 MR. DRIGGERS: Undersigned served the
11 civil cover sheet order of default scheduled for
12 November 17th, 2017, at 10:00 a.m. on Roberto
13 Ortega personally at 4558 West Montague Avenue.

14 So again he acknowledges he received
15 the original. This was the default papers that he
16 waited over a month to get release from. And so
17 real quickly the reasons for his failure to act
18 promptly, either he is now saying he doesn't
19 understand the significance of the proceedings.
20 There's no been argument of an existence of a
21 meritorious defense. We have attached -- by the
22 way, Judge, we e-mailed the documents to you
23 yesterday. I will be glad to hand you a paper copy
24 if you want.

25 As you can see, we are very antigreen.

1 I saw an iPad today. That will never be our MO.
2 You can see we burn forests when we come here. But
3 I did present an extra copy that has all the
4 exhibits if you would like one.

5 THE COURT: I think I have got them. I
6 have been using the file.

7 MR. DRIGGERS: Okay. And there has
8 been no argument about a meritorious defense. We
9 have got a report, our engineering expert talking
10 about all the code defects of what happened.

11 So there has been no addressing that
12 issue. No addressing the prejudice to the
13 Plaintiff and again, this is now --

14 THE COURT: I notice -- let me just say
15 I noticed also in the documentation that there was
16 apparently voluntary nonsuit with prejudice on the
17 other address. This is a different address.

18 MR. DRIGGERS: The point, Your Honor,
19 it's hard to win a case for something that never
20 occurred and I don't know if that's why he just
21 didn't respond. He was like well, I know nobody
22 fell on my property and in hindsight would it have
23 been better to dismiss without prejudice? Yeah.
24 No harm no foul. And it would be no different than
25 me suing in a car wreck that I got the wrong date,

1 I got the wrong location. I don't know how I am
2 going to win the lawsuit. Wait a minute, again we
3 dismissed an action for an event that simply never
4 occurred.

5 We filed it again with the right
6 address and we noticed it when we got to the
7 hearing because I could easily see if we got a
8 default judgment having that collaterally attacked
9 by saying wait a minute, wait a minute, that
10 judgment is void. That didn't happen. So we got
11 it right and again we served him with the lawsuit,
12 served his wife. He acknowledges he got it.
13 Didn't do anything. Came to our office. Spoke
14 with my staff and then again once he got served
15 with his default papers, just waited another month
16 before getting an attorney.

17 So now here we are almost three years
18 afterward. I got associated with the case in late
19 2016. As I mentioned in my memorandum he was given
20 three chances to hire an attorney and respond.

21 He didn't and again I don't want it to
22 be looked at as a void he gets served with papers
23 and just no habla ingles and I didn't know what to
24 do. This gentleman was served with three letters,
25 served with three -- with a lawsuit, second lawsuit

1 and again the time between when he was first served
2 and the motion for relief was filed was four
3 months. So I just think it's a classic case of an
4 individual just decides not to respond to a lawsuit
5 and that's why we have a default.

6 THE COURT: Thank you, sir. Response?

7 MR. SANDERS: May it please the Court,
8 Your Honor, the issue is that the Defendant did not
9 understand the document that he received. That's
10 understandable given his lack of education. He's a
11 simple minded guy with a first grade education. I
12 don't know about the Defendant's extensive property
13 holdings. If that's the case I'd like to know more
14 about that. I do know about this old mobile home
15 he bought with cash where this lady claims that she
16 fell and got injured.

17 So he's not an extensive property
18 holder to my knowledge. The order of default is
19 void as a result of the stipulation of dismissal
20 with prejudice. And honestly I think that was a
21 tactical error to file that stipulation of
22 dismissal with prejudice. It should have been
23 without prejudice, but it was filed with prejudice.
24 So he can't come and make the same claims later for
25 the same injury on the same woman against the same

1 Defendant. So again we would ask for the order of
2 default judgment to be -- to have removed from
3 that.

4 THE COURT: All right. Proposed orders
5 please, gentlemen, 30 days.

6 MR. SANDERS: Do you want to take up
7 the motion to dismiss? The motion for relief from
8 judgment is what we just argued.

9 THE COURT: That's right. And then you
10 have got your motion to dismiss the complaint.

11 MR. SANDERS: Do you want to continue
12 the motion to dismiss the complaint along with the
13 damages hearing then?

14 THE COURT: Yes. Definitely.

15 MR. DRIGGERS: Our position is, Judge,
16 the motion to dismiss is moot because if he was
17 going to file it it should have been filed before
18 default. I think it's one of the motions we filed
19 before responsive pleading for lack of personal
20 jurisdiction so I think one resolves the other.
21 Whichever way you hold, so now the lawsuit goes
22 forward the motion to dismiss is moot. If you
23 grant our -- deny the motion it is moot again
24 because it's untimely.

25 We will be glad to address that in --

1 rather than argue I will address that in our
2 proposed orders why we think it's moot whichever
3 way the Court rules.

4 MR. SANDERS: I would prefer it be
5 rescheduled because no answer has been filed and
6 Rule 6 allows an extension.

7 THE COURT: Seems to me that the
8 default is the place to begin.

9 MR. SANDERS: Your Honor, may I hand up
10 a memo that was filed that pertains --

11 THE COURT: I thought I had it.

12 MR. SANDERS: Well, actually I did give
13 it to you.

14 (These proceedings were concluded at
15 11:57 a.m., March 21, 2018, Charleston County,
16 South Carolina.)
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STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
CASE NUMBER 2017-CP-10-3324

ROSA MARITZA GALBAN)
ARANDA,)

Plaintiff,)

-vs-)

RIGOBERTO ORTEGA,)

Defendants.)
_____)

AFFIDAVIT

FILED
2018 DEC -7 PM 2:57
CLERK OF COURT

PERSONALLY APPEARED before me the undersigned, who
being duly sworn, deposes and says:

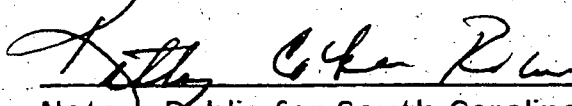
1. My name is Debra Curwen, and I am employed with Driggers Law Firm as a legal assistant.
2. I have reviewed the Affidavit of Defendant Rigoberto Ortega. To the best of my recollection, my conversation with him was after the first lawsuit. However, he came into the office again after being served with the second lawsuit.
3. Mr. Ortega had no problem relaying to me he wanted to speak with Mr. Driggers. When I told him Mr. Driggers could not speak with him, I suggested he contact an attorney. He clearly appeared to understand my statement to him.

Further affiant saith not.


Debra Curwen

SWORN to before me this

21 day of March, 2018.



Notary Public for South Carolina

My Commission expires 9-22-2026

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

/s/ Thomas O. Sanders, IV

Thomas O. Sanders, IV

Sanders Law Firm, LLC

1738 Three Oaks Avenue

Charleston, SC 29407

(843) 573-8828

ATTORNEY FOR APPELLANT

March 29, 2019

Charleston, South Carolina