

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Benjamin H. Culbertson, Circuit Court Judge
Larry B. Hyman, Jr., Circuit Court Judge

RECEIVED

APR 18 2019

SC Court of Appeals

Appellate Case No. 2018-001497
Civil Action No. 2015-CP-26-05633

Bobby Foster,..... Appellant,

v.

Julian Neil Armstrong,..... Respondent,

RECORD ON APPEAL

Eric M. Poulin
S.C. Bar No.: 100209
Roy T. Willey, IV
S.C. Bar No.: 101010
Lane D. Jefferies
S.C. Bar No.: 101764
Kenneth T. David
S.C. Bar No.: 103434
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Linda Weeks Gangi
S.C. Bar No.: 2365
Thompson & Henry, PA
Conway, SC 29528
(843) 248-5741

Attorneys for Appellant

Attorneys for Respondent

BOBBY FOSTER V. JULIAN NEIL ARMSTRONG

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IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

ORDER FOR PUBLICATION

FILED
HORRY COUNTY
15 NOV 23 PM 1:13
CLERK OF COURT
MELANIE HIGGINS-WARD

THIS MATTER comes before the Court pursuant to the Plaintiff's petition requesting an Order of Publication authorizing the service of the Defendant via publication.

Having reviewed the Plaintiff's Petition, and Affidavit, the Court finds that after due diligence, the Defendant cannot be found in this state, or at Defendant's last known residence. The Court finds that it is appropriate and necessary to serve the Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, that service upon the Defendant shall be effectuated by publishing the Summons, and notice of filing of the Complaint in the above referenced case in local newspaper, once weekly for three (3) consecutive weeks, and by forwarding a copy of the pleadings to the Defendant at Defendant's last known address.

IT IS SO ORDERED.

Melanie Higgins-Ward
Clerk of Court
PRESIDENT JUDGE COURT OF COMMON PLEAS
HORRY JUDICIAL CIRCUIT

DATED: 11/24/15

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

PETITION FOR PUBLICATION

FILED
HORRY COUNTY
15 NOV 23 PM 10:13
CLERK OF COURT

The Plaintiff herein would respectfully show unto this Honorable court as follows:

1. That this is an action of Common Pleas, based upon automobile accident case against the Defendant, Julian Neil Armstrong, whose last known address was 186 Williamsburg Road, Little River, South Carolina.
2. That, although due and diligent search has been made for the Defendant, the Plaintiff has been unable to locate the Defendant in the County of Horry, State of South Carolina (see attached affidavit of non-service).
3. The Plaintiff is informed and believes that it is necessary that the Defendant be served by publication, and it requests that this Court issue an Order allowing such service, and that this Court issue an Order authorizing service of the Summons, and Notice of filing the Complaint in a daily newspaper of the city of the Defendant's last known address.

WHEREFORE, the Plaintiff must request this Court enter an Order authorizing service by publication of this matter.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC


Sam Flynn, Esquire
SC Bar Number: 101729
Anastopoulos Law Firm, LLC
2557 Ashley Phosphate Rd.
North Charleston, SC 29418
(843) 614-8888

Charleston, South Carolina
Nov. 19, 2015

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

AFFIDAVIT FOR PUBLICATION

RECORDED
CLERK OF COURT
15 NOV 23 PM 11:13
HORRY COUNTY

Personally appeared before me, Sam Flynn, who being duly sworn, states that:

1. I am an attorney for the Plaintiff, BOBBY FOSTER, in the above referenced action. The Plaintiff and Defendant have an action of Common Pleas for an automobile accident.
2. My office has attempted to serve the Defendant, Julien Neil Armstrong, through the Horry County Sheriff's Office. An Affidavit of Non-Service was issued by the Sheriff's Office and stated that the Defendant moved and left no forwarding address.
4. The last known address for the Defendant, Julian Neil Armstrong, was 186 Williamsburg Road, Little River, South Carolina; however the Sheriff confirmed that Defendant is not at this address, and his whereabouts are unknown. (Exhibit A)
5. I believe that although the Plaintiff has tried to contact the Defendant with due diligence, the Defendant cannot be located at this time.

ANASTOPOULOU LAW FIRM, LLC

Sam Flynn, Esquire
SC Bar Number: 101729
Anastopoulo Law Firm, LLC
2557 Ashley Phosphate Rd.
North Charleston, SC 29418

Sworn to and subscribed before me
this 19th day of November, 2015
Michael C. Gaskin
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 12-4-2017

STATE OF SOUTH CAROLINA,)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the

VS
JULIAN NEIL ARMSTRONG

Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.

Phillip H. Campbell
Phillip H. Campbell
Sheriff of Horry County

Joyce B. Jenkins
JOYCE B. JENKINS
NOTARY PUBLIC FOR SOUTH CAROLINA

David Floyd
DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
Horry County
15-00723 PHW:13
CLERK OF COURT

STATE OF SOUTH CAROLINA,)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

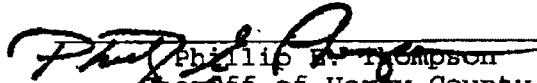
NON-SERVICE

AFFIDAVIT

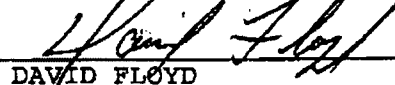
Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG
Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.


Phillip E. Thompson
Sheriff of Horry County


NOTARY PUBLIC FOR SOUTH CAROLINA


DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
HORRY COUNTY
15-NOV-23 PM 10:13
CLERK OF COURT
JULIAN NEIL ARMSTRONG

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

FILED
MAR 10 2016
MELANIE HUGHES-WARD
CLERK OF COURT
2016 MAR -8 PM 3:16

Plaintiff's Attorney: Matthew Nall, Eric Poulin, Roy Willey
Bar Number: 102329, 100209, 101010
Address: 62 Columbus St., Charleston SC 29403
Phone: 843-614-8888 Fax: 843-853-2291
E-Mail: matt@akimlawfirm.com, eric@akimlawfi

Defendant's Attorney:
Bar Number:
Address:

Phone:
E-Mail:

PAID

☒ MOTION HE/
☐ FORM MOTI
☐ PROPOSED O

Nature of Motion
Estimated Time 1

☐ Written motion
☒ Form Motion /
I hereby mo

*When Completed.
Let Linda Johnson
to know so she can
set a hearing. *

☒ PAID - AMOI

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCR)
☐ Proposal order submitted at request of the court; or, reduced to writing from
motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.
☐ Other:

JUDGE

CODE: _____ DATE: _____

February 10, 2016
mitted

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

FILED
CLERK OF COURT
2016 MAR - 8 PM 3:16
MELANIE HUGHES-WARD

Plaintiff's Attorney: Matthew Nall, Eric Poulin, Roy Willey
Bar Number: 102329, 100209, 101010
Address: 62 Columbus St., Charleston SC 29403
Phone: 843-614-8888 Fax: 843-853-2291
E-Mail: matt@akimlawfirm.com,
eric@akimlawfirm.com, roy@akimlawfirm.com

Defendant's Attorney:
Bar Number:
Address:
Phone:
E-Mail:

PAID

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS III and III)
☐ **PROPOSED ORDER / CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Entry of Default – Request for Damages Hearing
Estimated Time Needed: 15 Min. Court Reporter Need: ☒ YES / ☐ NO

SECTION II: Motion / Order Type

- ☐ Written motion attached
☒ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Wednesday, February 10, 2016

Signature of Attorney for ☒ Plaintiff / ☐ Defendants Date Submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: _____ DATE: _____

CLERK'S SECTION

Collected by: 4025, ~~50~~

Date Filed:

3/7/16

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

**PLAINTIFF'S MOTION FOR ENTRY
OF DEFAULT AND REQUEST FOR
HEARING ON DAMAGES**

FILED
HORRY COUNTY
CLERK OF COURT
2016 FEB 8 PM 3:16
MELANIE J. GINS, J.A.C.
CLERK OF COURT

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Julien Neil Armstrong and schedule a hearing to determine damages.

INTRODUCTION

1. Plaintiff brought this action against Defendant Julian Neil Armstrong as a result of injuries suffered in an automobile accident that occurred on April 8, 2013. After an unsuccessful attempt to serve the Defendant personally through certified mail and the Horry County Sheriff, Plaintiff published Notice of the Summons and Complaint in The North Myrtle Beach Times. Defendant Julien Neil Armstrong did not file a responsive pleading or otherwise defend the suit.

2. Plaintiff is, therefore, entitled to entry of default and a hearing on damages.

ARGUMENT AND AUTHORITIES

3. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

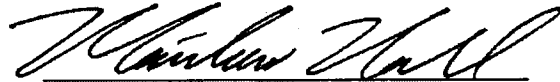
4. Rule 55(b) permits the court to enter default judgment against a party against whom

PRAYER

13. For these reasons, Plaintiff asks the Court to enter a Default against Defendant Julien Neil Armstrong and to schedule an evidentiary hearing to determine Plaintiff's damages.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Matthew L. Nall, Esquire
SC Bar Number: 102329
Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Charleston, South Carolina
March 2, 2016

EXHIBIT A
(Affidavit of Counsel)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

AFFIDAVIT OF MATTHEW NALL

FILED
HORRY COUNTY
2016 MAR - 8 PM 3:16
MEAGAN HUGGINS-WARD
CLERK OF COURT

COMES NOW, the affiant, Matthew Nall, and first being duly sworn upon his oath

under the pains and penalties of perjury now states the following:

1. I am the above named affiant, Matthew Nall.
2. I, Matthew Nall, am an attorney with Anastopoulo Law Firm, LLC.
3. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. The package was sent to Defendant's last known address:

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

4. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015.

5. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7.

6. Upon information and belief, Defendant Julian Neil Armstrong is neither an infant nor incompetent adult.

7. As of today's date, March 2, 2016, Defendant Julian Neil Armstrong has failed to file a responsive pleading.

SIGNATURE ON FOLLOWING PAGE

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

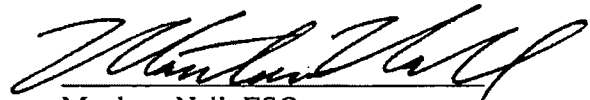
**AFFIDAVIT OF NON-MILITARY
SERVICE**

FILED
CLERK OF COURT
2016 MAR -8 PM 3:16
MELANIE HOGGINS-MAN

Personally appeared before me the undersigned attorney, who first being duly sworn,
deposes and says:

That he is familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940,
and to induce the Court to enter a default judgment against Defendant Julian Neil Armstrong,
represents to the Court that from his file in this matter, and on information and belief based on
the hereinafter enumerated facts, Defendant Julian Neil Armstrong is/are not in the Military
Service of the United States and is/are not entitled to the protection of the Civil Relief Act of
1940 and Amendments thereto. The source of information on which he bases his belief is as
follows: Research made by the Anastopoulos Law Firm, LLC and Bobby Foster, Plaintiff herein.

Signature of Affiant:


Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016.


NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 12-4-2017

EXHIBIT C
(Proof of Service)

ANASTOPOULO

LAW FIRM

Akim A. Anastopoulos (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Mariantha L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilenaky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1(800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AkimLawFirm.com

Thursday, August 13, 2015

Sent Via Certified Mail, Restricted Delivery
7015 0640 0005 7946 3544

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

RE: *Bobby Foster v. Julian Neil Armstrong*
Case No.: 2015-CP-26-5633

Dear Mr. Armstrong:

Enclosed for service upon you, and pursuant to Rule 5 of the S.C.R.C.P., please find a copy of the Summons & Complaint that has been filed in the above referenced action.

Upon receipt, please forward this letter and these important legal papers to your insurance company immediately. These documents are time sensitive.

Sincerely,


Peggy Teasley
Litigation Manager

Enclosure

Cc: Bobby Foster

Mailing: 62 Columbus Street, Charleston, South Carolina 29403
North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201
Appointment Only: Myrtle Beach * Wilmington, North Carolina

FILED
CLERK OF COURT
2015 MAR -8 PM 3:17
MELANIE HUGGINS-WARD



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Tracking Number: 70150640000579463544

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail Restricted Delivery Return Receipt

See tracking for related item: 9590952106150123692623

DATE & TIME	STATUS OF ITEM	LOCATION
September 4, 2015, 12:52 am	Departed USPS Facility	CHARLESTON, SC 29423

Your item departed our USPS facility in CHARLESTON, SC 29423 on September 4, 2015 at 12:52 am.
The item is currently in transit to the destination.

September 3, 2015, 1:37 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
September 2, 2015, 3:42 pm	Departed USPS Facility	COLUMBIA, SC 29201
August 31, 2015, 9:05 am	Unclaimed/Max Hold Time Expired	LITTLE RIVER, SC 29566
August 15, 2015, 1:13 pm	Notice Left	LITTLE RIVER, SC 29566
August 14, 2015, 8:55 am	Arrived at USPS Facility	COLUMBIA, SC 29201
August 14, 2015, 6:26 am	Departed USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 10:45 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 4:30 pm	Acceptance	CHARLESTON, SC 29403

FILED
CLERK OF COURT
2016 MAR -8 PM 3:17
MELANIE HUGGINS-WARD

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

Sign up for My USPS ›



STATE OF SOUTH CAROLINA,)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG

Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.

Phillip E. Thompson
Phillip E. Thompson
Sheriff of Horry County

Jane B. Jenkins
NOTARY PUBLIC FOR SOUTH CAROLINA

David Floyd
DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
CLERK OF COURT
MELANIE HUGGINS-WARD
2016 MAR -8 PM 3:17

AFFIDAVIT OF PUBLICATION FILED

State of South Carolina

County of Horry

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the

Legal Notice

was printed and published in said newspaper

for and during the weekly publication,

and appeared in the issues of the

North Myrtle Beach Times December 24th 31st

and January 7th A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

this

7th

day of

January

A.D. 2016

Henry C. Hecker, Sr.

Notary Public for South Carolina

Commission Expires May 26, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-28-5633
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT

SUMMONS

TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Anas-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.

s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

NOTICE

TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE, that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
Court of Common Pleas, on the
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888

ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina

N 12/24, 81, 1/7-STC

FILED
2016 MAR -8 PM 3:17
MELANIE HUGGINS-WARD
CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

**ORDER FOR ENTRY OF DEFAULT
AND REFERRAL FOR HEARING ON
DAMAGES**

FILED
HORRY COUNTY
2016 MAR -8 PM 3:17
MELANIE HIGGINS-WARD
CLERK OF COURT

The Notice of Summons and Complaint in this matter was published in The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. Defendant Julien Neil Armstrong failed to submit a responsive pleading or defend the suit and on March 2, 2016, Plaintiff filed a Motion for Entry of Default and Request for a Hearing on Damages.

THE COURT HEREBY FINDS Defendant Julien Neil Armstrong was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the last day of publication and Plaintiff properly moved for entry of default on March 2, 2016.

IT ORDERED that Defendant Julien Neil Armstrong, is in Default and this Entry of Default is considered effective as of March 2, 2016, the date the Court was first notified of Defendant Julien Neil Armstrong's default through Plaintiff's Motion For Entry of Default.

IT SO FURTHER ORDERED that this matter is to be set on the Court's docket for a hearing on damages pursuant to Plaintiff's request.

Dated: 3/8/16

Melanie Higgins-Ward
Clerk of Court
Horry County Court of Common Pleas

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-26-05633

Bobby Foster

Julian Neil Armstrong

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk of Court

Attorney for : ☐ Plaintiff ☐ Defendant

or

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

Defendant Motion to Set Aside Default - Granted
Atty Gangi to submit a formal order

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A
		\$
		\$

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

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

SCRCP Form 4C (03/2013)

10-17-16

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Samuel Robert FlynnLinda Weeks GangiEric Marc PoulinMatthew Nall**ATTORNEY(S) FOR THE PLAINTIFF(S)****ATTORNEY(S) FOR THE DEFENDANT(S)****CLERK OF COURT****Court Reporter:** Natalie Dahl**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bobby Foster,
☐ Plaintiff

v.

Julian Neil Armstrong,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015--CP-26-5633

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Matthew Nall, Bar No. Address: 62 Columbus St, Charleston, SC 29403 phone: 843-614-8888 fax: 843-853-229 e-mail: matt@akimlawfirm.com other:	Defendant's Attorney: Linda Weeks Gangi, Bar No. 002365 Address: POB 1740, Conway, SC 29528-1740 phone: 843-248-5741 fax: 843-248-5112 e-mail: lgangi@thompsonlaw.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Order Setting Aside Order for Publication, Default & Referral for Hearing on Damages Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
SECTION III: Motion Fee	
☐ PAID - AMOUNT: ☒ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)

copies mailed

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

BOBBY FOSTER,)

Plaintiff,)

vs.)

JULIAN NEIL ARMSTRONG,)

Defendant.)

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633**

**ORDER SETTING ASIDE
ORDER FOR PUBLICATION AND
SETTING ASIDE ORDER FOR ENTRY
OF DEFAULT AND REFERRAL FOR
HEARING ON DAMAGES**

PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
HEARING DATE:
PRESIDING JUDGE:

MATTHEW NALL, ESQ.
LINDA WEEKS GANGI, ESQ.
OCTOBER 17, 2016
BENJAMIN H. CULBERTSON

2016 OCT 26 PM 3:08
CLERK OF COURT
HORRY COUNTY

The Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication on September 21, 2016. Thereafter, that Motion came to be heard before the undersigned on October 17, 2016. The Plaintiff was represented by Matthew Nall, Esq. of Anastapoulo Law Firm, LLC and the Defendant was represented by Linda Weeks Gangi, Esq. of Thompson & Henry, P.A. at the time of the hearing. This Court heard such arguments of counsel and reviewed all documents filed with the Court in this action.

One basis for the Defendant's Motion is that the Plaintiff's Summons is insufficient. Rule 4(b) of the *South Carolina Rules of Civil Procedure* specifically requires the following:

"The Summons shall . . . contain . . . the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

The Summons filed in this action does not notify the Defendant that if he fails to appear and defend

MHC

a judgment by default will be rendered against him. The failure of the Summons to comply with the provisions of Rule 4(b) of the *South Carolina Rules of Civil Procedure* results in the court having no personal jurisdiction over the defendant; thus, the Orders issued in this case are void. Ex parte *South Carolina Dept. of Revenue*, 350 S.C. 404, 566 S.E.2d 196 (S.C. App. 2001) and *State Board of Medical Examiners vs. Finwick Hall, Inc.*, 387 S.E.2d 458 (1990). Furthermore, the Summons published in the newspaper does not comply with S.C. Code Ann. §15-9-740 which requires that the information which is published must state the time and place of filing the Summons and Complaint. The publication of the Summons in this case does not state the date of the filing of the Summons in the Court of Common Pleas for Horry County, South Carolina. Failure to comply with S.C. Code Ann. §15-9-740 results in this Court having no personal jurisdiction over the Defendant.

The Order for Publication signed by the Clerk of Court and dated November 24, 2015 required that the Defendant be served "via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Summons was published in the North Myrtle Beach Times. The Defendant did not live in North Myrtle Beach at the time of the accident or at any time subsequent thereto. The North Myrtle Beach Times is not a newspaper of general circulation in Horry County. Publication of the Summons in the North Myrtle Beach Times is not proper service and does not meet the requirements of S.C. Code Ann. §15-9-740.

The Defendant never received notice of this lawsuit until August of 2016. The Defendant moved from 186 Williamsburg Road, Little River, South Carolina to 4153 Horseshoe Road, Little River, South Carolina in August of 2015. The Affidavit signed by the Sheriff's deputy who attempted service of the Summons and Complaint on the Defendant at 186 Williamsburg Road, Little River, South Carolina indicated that the Defendant had moved. The Defendant's cellphone

number is reflected on the Accident Report. That cellphone number is still the Defendant's cellphone number so his location could have easily been determined by calling the Defendant's cellphone number. S.C. Code Ann. §15-9-740 requires that reasonable diligence be used to ascertain the residence of the Defendant. If the Plaintiff had used reasonable diligence as required by S.C. Code Ann. §15-9-740, the Defendant's whereabouts could easily have been ascertained and proper service effected.

Based on the failure of the original Summons filed with the Court to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, the failure of the publication to include the date of filing of the Summons and Complaint as required by S.C. Code Ann. §15-9-740, the failure to publish the Summons in a newspaper of general circulation in Horry County, and the failure of the Plaintiff to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740, this Court finds that this Court has no personal jurisdiction over the Defendant and that service of the Summons and Complaint was not properly perfected on the Defendant. The Order for Publication and the Order for Entry of Default and Referral for Hearing on Damages are hereby set aside and declared null and void and of no force and effect. The Plaintiff shall amend the Summons to comply with Rule 4(b). The Defendant through his attorney, Linda Weeks Gangi, Esq., has agreed to accept service of the Summons and Complaint in the above-captioned action and will file an Answer within thirty (30) days from the date of receipt of this Order.

AND IT IS SO ORDERED this the 21st day of October, 2016.

In Chambers


The Honorable Benjamin H. Culbertson
Presiding Judge of the Fifteenth Judicial Circuit

FORM 4

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

**JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605633**

**Bobby Foster
Matthew L. Nall**

Julian Neil Armstrong

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant

Submitted by: Clerk of Court

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP: ☐ Rule 41(a), SCRCP (Vol. Dismissal):

☐ Rule 43(k), SCRCP (Settled);

☐ Other: _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP: ☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award: ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Plaintiff's Motion to Reconsider Ruling to Set Aside Publication is Denied. Formal Order Forthcoming.

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

For Clerk of Court Office Use Only

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

Samuel R. Flynn 2375 Sir Barton Way Apt. 2320 Lexington,
KY 40509

Eric Marc Poulin 62 Columbus Street Charleston, SC 29403

Matthew L. Nall 62 Columbus St. Charleston, SC 29403

Linda Weeks Gangi Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter – Natalie Dahl

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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

Copy of Order/_____
filed 3/2/17 mailed to all
parties not in default on 3/2/17
Initials JS

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605633

Bobby Foster
Matthew L. Nall

Julian Neil Armstrong

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: ☐ Plaintiff ☐ Defendant

Submitted by:

☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);

☐ Rule 43(k), SCRPC (Settled);

☐ Other: _____

☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;

☐ Other: _____

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Summary Judgment was granted. Formal Order to follow by attorney Linda Gangi.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge Larry B. Hyman	2152	4/19/2017
	Judge Code	Date

For Clerk of Court Office Use Only

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

Samuel R. Flynn 2375 Sir Barton Way Apt. 2320 Lexington,
KY 40509
Eric Marc Poulin 62 Columbus Street Charleston, SC 29403
Matthew L. Nall 62 Columbus St. Charleston, SC 29403

Linda Weeks Gangi Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

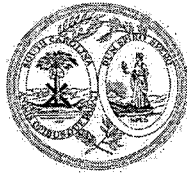
Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong

Case Number: 2015CP2605633

Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2017-04-24 09:44:36 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2015-CP-26-05633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR
 RECONSIDERATION OF THIS COURT'S
 ORDER GRANTING SUMMARY JUDGMENT
 AND DISMISSING THE ACTION WITH
 PREJUDICE**

PLAINTIFF'S ATTORNEY: BENJAMIN W. LEE, ESQUIRE
 DEFENDANT'S ATTORNEY: LINDA WEEKS GANGI, ESQUIRE
 HEARING DATE: MARCH 26, 2018
 PRESIDING JUDGE: LARRY B. HYMAN, JR.

The Plaintiff represented by Benjamin W. Lee and the Defendant represented by Linda Weeks Gangi came before this Court on the Plaintiff's Motion to Reconsider this Court's Order Granting the Defendant's Motion for Summary Judgment. The Defendant asserts that this action is precluded by the Statute of Limitations. This Court heard the arguments of counsel as it deemed appropriate.

The automobile accident which is the subject matter of this action, occurred on April 8, 2013 in Horry County (See Complaint paragraphs 3, 5 and 6). Thereafter, the Plaintiff attempted to serve the Defendant by personal service through the Sheriff's Department but was unable to do so as more clearly reflected on the Affidavit of Service filed with the Court on November 23, 2015. Thereafter, Plaintiff's counsel obtained an Order for Publication which was filed on November 23, 2015. The Order states in pertinent part "the court finds that it is appropriate and necessary to serve the defendant via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Order of Publication goes on to state "service upon the defendant shall be effectuated by publishing the Summons, and a Notice of

Filing the Complaint in the above-referenced case in a local newspaper, once weekly for three consecutive weeks, and by forwarding a copy of the pleading to the defendant at the defendant's last known address." The Plaintiff then filed an Affidavit of Default and obtained an Order for Entry of Default and Referral for Hearing on Damages which was filed on March 8, 2016. Defense counsel filed a Notice of Appearance after having received notice that a damages hearing was scheduled. The Notice of Appearance filed on July 19, 2016 simply gives the Court and Counsel notice that she is representing the defendant and asks that all notices concerning this matter be sent to her. Thereafter, on September 16, 2016 the defendant filed a Motion to Set Aside the Order for Entry of Default and Order for Publication. After hearing the matter, Judge Culbertson issued an Order setting aside the Order for Publication and setting aside the Order for Entry of Default and Referral for Hearing on Damages and the Order was filed with the Court on October 26, 2016. Judge Culbertson found that 1) the Summons failed to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, 2) the Publication failed to include the date of the filing of the Summons and Complaint as required by the Order of Publication and S.C. Code Ann. §15-9-740, 3) the Plaintiff failed to properly publish the Summons in accordance with the Order for Publication which required that it be published in a daily newspaper of the defendant's last known address, and 4) the Plaintiff failed to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740. See Court Order dated October 21, 2016 and filed October 26, 2016. Judge Culbertson further found that this Court had no personal jurisdiction over the Defendant. The Plaintiff filed a Motion to Reconsider which specifically states "Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the Statute of Limitations." The Motion for Reconsideration was denied.

The Order setting aside the Order for Publication and setting aside the Order for Entry of Default specifically required that the Plaintiff amend the Summons to comply with Rule 4(b). The Summons has never been amended. After the October 21, 2016 Order was issued by the Court, an Answer was filed on behalf of the Defendant raising the issue of the Statute of Limitations.

As stated previously, Judge Culbertson specifically found that this Court had no jurisdiction over the Defendant as of October 21, 2016, the date he issued the Order declaring the Order for Publication and the Order for Entry of Default null and void and of no force and effect. The Statute of Limitations ran on April 8, 2016, more than six months before Judge Culbertson's Order finding that the Court still had no personal jurisdiction over the Defendant as of October 21, 2016. Thus, there are no issues of facts in controversy and the Defendant is entitled to Summary Judgment on the basis that the Statute of Limitations expired prior to proper service of the Summons and Complaint on the Defendant. The Court hereby denies the Plaintiff's Motion for Reconsideration of its Order Granting Summary Judgment. This case is hereby dismissed with prejudice.

AND IT IS SO ORDERED this the _____ day of _____, 2018.

In Chambers

The Honorable Larry B. Hyman, Jr.
Presiding Judge of the Fifteenth Judicial
Circuit



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong

Case Number: 2015CP2605633

Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-04-09 11:58:40, page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605633

Bobby Foster		Julian Neil Armstrong	
PLAINTIFF(S)		DEFENDANT(S)	
Submitted by: Clerk Of Court		Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant	

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Plaintiff's Motion/Reconsideration Judge Hyman is bound by the Court's unappealed finding, the Motion is DENIED.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

2152

Judge Code

3/26/2018

Date

For Clerk of Court Office Use Only

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

Samuel R. Flynn 2375 Sir Barton Way Apt. 2320 Lexington,
KY 40509

Eric Marc Poulin 32 Ann Street Charleston, SC 29403

Matthew L. Nall 32 Ann Street Charleston, SC 29403

Linda Weeks Gangi Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Teresa Bautz

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

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

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

ELECTRONICALLY FILED - 2018 Mar 27 2:20 PM - HORRY - COMMON PLEAS - CASE#2015CP2605633



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong

Case Number: 2015CP2605633

Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-03-27 09:39:02 page 3 of 3

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2015-CP-26-05633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR
 RECONSIDERATION OF THIS COURT'S
 ORDER GRANTING SUMMARY JUDGMENT
 AND DISMISSING THE ACTION WITH
 PREJUDICE**

PLAINTIFF'S ATTORNEY:
 DEFENDANT'S ATTORNEY:
 HEARING DATE:
 PRESIDING JUDGE:

BENJAMIN W. LEE, ESQUIRE
 LINDA WEEKS GANGI, ESQUIRE
 MARCH 26, 2018
 LARRY B. HYMAN, JR.

The Plaintiff represented by Benjamin W. Lee and the Defendant represented by Linda Weeks Gangi came before this Court on the Plaintiff's Motion to Reconsider this Court's Order Granting the Defendant's Motion for Summary Judgment. The Defendant asserts that this action is precluded by the Statute of Limitations. This Court heard the arguments of counsel as it deemed appropriate.

The automobile accident which is the subject matter of this action, occurred on April 8, 2013 in Horry County (See Complaint paragraphs 3, 5 and 6). Thereafter, the Plaintiff attempted to serve the Defendant by personal service through the Sheriff's Department but was unable to do so as more clearly reflected on the Affidavit of Service filed with the Court on November 23, 2015. Thereafter, Plaintiff's counsel obtained an Order for Publication which was filed on November 23, 2015. The Order states in pertinent part "the court finds that it is appropriate and necessary to serve the defendant via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Order of Publication goes on to state "service upon the defendant shall be effectuated by publishing the Summons, and a Notice of

Filing the Complaint in the above-referenced case in a local newspaper, once weekly for three consecutive weeks, and by forwarding a copy of the pleading to the defendant at the defendant's last known address." The Plaintiff then filed an Affidavit of Default and obtained an Order for Entry of Default and Referral for Hearing on Damages which was filed on March 8, 2016. Defense counsel filed a Notice of Appearance after having received notice that a damages hearing was scheduled. The Notice of Appearance filed on July 19, 2016 simply gives the Court and Counsel notice that she is representing the defendant and asks that all notices concerning this matter be sent to her. Thereafter, on September 16, 2016 the defendant filed a Motion to Set Aside the Order for Entry of Default and Order for Publication. After hearing the matter, Judge Culbertson issued an Order setting aside the Order for Publication and setting aside the Order for Entry of Default and Referral for Hearing on Damages and the Order was filed with the Court on October 26, 2016. Judge Culbertson found that 1) the Summons failed to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, 2) the Publication failed to include the date of the filing of the Summons and Complaint as required by the Order of Publication and S.C. Code Ann. §15-9-740, 3) the Plaintiff failed to properly publish the Summons in accordance with the Order for Publication which required that it be published in a daily newspaper of the defendant's last known address, and 4) the Plaintiff failed to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740. See Court Order dated October 21, 2016 and filed October 26, 2016. Judge Culbertson further found that this Court had no personal jurisdiction over the Defendant. The Plaintiff filed a Motion to Reconsider which specifically states "Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the Statute of Limitations." The Motion for Reconsideration was denied.

The Order setting aside the Order for Publication and setting aside the Order for Entry of Default specifically required that the Plaintiff amend the Summons to comply with Rule 4(b). The Summons has never been amended. After the October 21, 2016 Order was issued by the Court, an Answer was filed on behalf of the Defendant raising the issue of the Statute of Limitations.

As stated previously, Judge Culbertson specifically found that this Court had no jurisdiction over the Defendant as of October 21, 2016, the date he issued the Order declaring the Order for Publication and the Order for Entry of Default null and void and of no force and effect. The Statute of Limitations ran on April 8, 2016, more than six months before Judge Culbertson's Order finding that the Court still had no personal jurisdiction over the Defendant as of October 21, 2016. Thus, there are no issues of facts in controversy and the Defendant is entitled to Summary Judgment on the basis that the Statute of Limitations expired prior to proper service of the Summons and Complaint on the Defendant. The Court hereby denies the Plaintiff's Motion for Reconsideration of its Order Granting Summary Judgment. This case is hereby dismissed with prejudice.

AND IT IS SO ORDERED this the _____ day of _____, 2018.

In Chambers

The Honorable Larry B. Hyman, Jr.
Presiding Judge of the Fifteenth Judicial
Circuit



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong

Case Number: 2015CP2605633

Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-04-09 11:58:40 page 4 of 4

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2015-CP-26-5633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**ORDER GRANTING SUMMARY JUDGMENT
 AND DISMISSING ACTION
 WITH PREJUDICE**

PLAINTIFF'S ATTORNEY:
 DEFENDANT'S ATTORNEY:
 HEARING DATE:
 PRESIDING JUDGE:

STEFAN FEIDLER, ESQUIRE
 LINDA WEEKS GANGI, ESQUIRE
 APRIL 17, 2017
 LARRY B. HYMAN, JR.

The Plaintiff represented by Stefan Feidler and the Defendant represented by Linda Weeks Gangi came before this Court on the Defendant's Motion for Summary Judgment. The Defendant asserts that this action is precluded by the Statute of Limitations. This Court heard the arguments of counsel as it deemed appropriate.

The automobile accident which is the subject matter of this action, occurred on April 8, 2013 in Horry County (See Complaint paragraphs 3, 5 and 6). Thereafter, the Plaintiff attempted to serve the Defendant by personal service through the Sheriff's Department but was unable to do so as more clearly reflected on the Affidavit of Service filed with the Court on November 23, 2015. Thereafter, Plaintiff's counsel obtained an Order for Publication which was filed on November 23, 2015. The Order states in pertinent part "the court finds that it is appropriate and necessary to serve the defendant via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Order of Publication goes on to state "service upon the defendant shall be effectuated by publishing the Summons, and a Notice of Filing the Complaint in the above-referenced case in a local newspaper, once weekly for three

consecutive weeks, and by forwarding a copy of the pleading to the defendant at the defendant's last known address." The Plaintiff then filed an Affidavit of Default and obtained an Order for Entry of Default and Referral for Hearing on Damages which was filed on March 8, 2016. Defense counsel filed a Notice of Appearance after having received notice that a damages hearing was scheduled. The Notice of Appearance filed on July 19, 2016 simply gives the Court and Counsel notice that she is representing the defendant and asks that all notices concerning this matter be sent to her. Thereafter, on September 16, 2016 the defendant filed a Motion to Set Aside the Order for Entry of Default and Order for Publication. After hearing the matter, Judge Culbertson issued an Order setting aside the Order for Publication and setting aside the Order for Entry of Default and Referral for Hearing on Damages and the Order was filed with the Court on October 26, 2016. Judge Culbertson found that 1) the Summons failed to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, 2) the Publication failed to include the date of the filing of the Summons and Complaint as required by the Order of Publication and S.C. Code Ann. §15-9-740, 3) the Plaintiff failed to properly publish the Summons in accordance with the Order for Publication which required that it be published in a daily newspaper of the defendant's last known address, and 4) the Plaintiff failed to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740. See Court Order dated October 21, 2016 and filed October 26, 2016. Judge Culbertson further found that this Court had no personal jurisdiction over the Defendant. The Plaintiff filed a Motion to Reconsider which specifically states "Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the Statute of Limitations." The Motion for Reconsideration was denied.

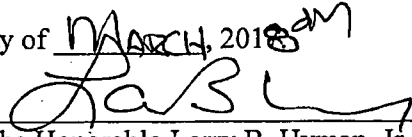
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As stated previously, Judge Culbertson specifically found that this Court had no jurisdiction over the Defendant as of October 21, 2016, the date he issued the Order declaring the Order for Publication and the Order for Entry of Default null and void and of no force and effect. The Statute of Limitations ran on April 8, 2016, more than six months before Judge Culbertson's Order finding that the Court still had no personal jurisdiction over the Defendant as of October 21, 2016. Thus, there are no issues of facts in controversy and the Defendant is entitled to Summary Judgment on the basis that the Statute of Limitations expired prior to proper service of the Summons and Complaint on the Defendant. This case is hereby dismissed with prejudice.

AND IT IS SO ORDERED this the 26 day of MARCH, 2018

In Chambers


The Honorable Larry B. Hyman, Jr.
Presiding Judge of the Fifteenth Judicial
Circuit

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BOBBY FOSTER

Plaintiff(s)

vs.

JULIAN NEIL ARMSTRONG

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

20 15 CP 26 5033

(Please Print)

Submitted By: Eric Poulin/Roy Willey/Sam Flynn

Address: 62 Columbus Street, Charleston, SC 29403

SC Bar #: 100209/101010/101729

Telephone #: (843)614-8888

Fax #: (843)853-2291

Other:

E-mail: eric@akimlawfirm.com

roy@akimlawfirm.com

sam@akimlawfirm.com

NOTE: The cover sheet 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 cover sheet 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) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 -CP- - ☐ Notice/ File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☒ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Wrongful Death (360) ☐ 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 ☐ PC'R (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	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) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture-Consent Order (850) ☐ Other (899)	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 Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Motion to Quash Subpoena in an Out-of-County Action (660) ☐ Sexual Predator (510)		

Submitting Party Signature:

Date:

7/22/2015

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.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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. (Medical malpractice mediation is mandatory statewide.)
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.**

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s).

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

HORRY COUNTY
2015 JUL 27 PM 2:11
CLERK OF COURT

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

ANASTOPOULO LAW FIRM, LLC


Sam Flynn, Esquire
S.C. Bar No.: 101729
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-*2e33*

COMPLAINT
(Jury Trial Demanded)

HORRY COUNTY
2015 JUL 27 PM 2:11
CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges and says as follows:

1. That the Plaintiff, Bobby Foster, (herein referred to as "Plaintiff") is a citizen and resident of the city of Ash, State of North Carolina.
2. That upon information and belief, Defendant Julian Neil Armstrong, (herein referred to as "Defendant") is a citizen and resident of Horry County, State of South Carolina.
3. That the motor vehicle collision that is the subject of this action occurred in Horry County, State of South Carolina.
4. That this Court has jurisdiction over the parties and the subject matter of this action.
5. That on or about April 8, 2013, Plaintiff was lawfully traveling east on SC 90 in a 2000 Dodge Van license plate YPM6186, VIN number 2B4GP44G0YR523493.
6. That on or about April 8, 2013, Defendant was traveling east on SC 90 in a 1995 Lexus license plate DWP624, VIN number JT8GK13T5S0090073.
7. That on or about April 8, 2013, Plaintiff came to a lawful stop for traffic.
8. That on or about April 8, 2013 Defendant was following too closely, travelling too fast for conditions, failed to stop, and violently struck Plaintiff's vehicle from behind.
9. That at all times material hereto, Defendant had a duty to operate his vehicle in a safe and prudent manner and to avoid injuring other motorists.

10. That the collision and the resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendant in any one or more of the following respects:

- a. In failing to keep a proper lookout while operating the vehicle;
- b. In failing to maintain control of the vehicle;
- c. In failing to stay in his lane of traffic;
- d. In failing to slow down to a controllable speed to stay in his lane of traffic;
- e. In failing to keep a safe distance from Plaintiff;
- f. In failing to use due care;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or use his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating the vehicle in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating the vehicle at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating the vehicle without using due care and without regard for safety and rights of Plaintiff;
- q. In operating the vehicle in a negligent, grossly negligent, careless, reckless,

willful, wanton and unlawful manner so as to create a dangerous situation;

- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- s. In negligently and carelessly operating the vehicle in such a manner to cause the vehicle to strike Plaintiff and cause personal injuries;
- t. In driving while distracted;
- u. In failing to immediately report an accident involving personal injury;
- v. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- w. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

11. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.

12. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff was jerked, thrown and slammed within the interior of his vehicle by the force of the Defendant's vehicle, causing him to sustain serious and painful personal injuries including, but not limited to, pain and suffering, and injuries to his back and shoulder.

13. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for his medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require him to expend a significant amount of money for his medical care, treatment and attendant services in the future;
- c) Plaintiff has been unable to work and has been deprived of his income;
- d) Upon information and belief, the nature of Plaintiff's injuries will deprive him of employment opportunity and income in the future;
- e) The pain of his injuries has resulted in his loss of enjoyment of life and change in his personality, all to permanent detriment to his health and physical well-being; and
- f) Upon information and belief, the Plaintiff was required to expend significant amounts of money to replace and repair property damage caused in the accident.

14. That Defendant's acts and omissions, as is set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendant's conscious indifference to the consequences of such acts and omissions.

15. That because of the Defendant's acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

16. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory and exemplary or punitive damages for his personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC



Sam Flynn, Esquire
S.C. Bar No.: 101729
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Dated at Charleston, SC
This 22nd day of July, 2015.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

ORDER FOR PUBLICATION

FILED
Horry County
15 NOV 23 PM 11:13
CLERK OF COURT
MELANIE HIGGINS-WARD

THIS MATTER comes before the Court pursuant to the Plaintiff's petition requesting an Order of Publication authorizing the service of the Defendant via publication.

Having reviewed the Plaintiff's Petition, and Affidavit, the Court finds that after due diligence, the Defendant cannot be found in this state, or at Defendant's last known residence. The Court finds that it is appropriate and necessary to serve the Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, that service upon the Defendant shall be effectuated by publishing the Summons, and notice of filing of the Complaint in the above referenced case in local newspaper, once weekly for three (3) consecutive weeks, and by forwarding a copy of the pleadings to the Defendant at Defendant's last known address.

IT IS SO ORDERED.

Melanie Higgins-Ward
Clerk of Court PRESIDENT JUDGE COURT OF COMMON PLEAS
HORRY JUDICIAL CIRCUIT

DATED: 11/24/15

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

PETITION FOR PUBLICATION

FILED
HORRY COUNTY
15 JUL 23 PM 11:13
CLERK OF COURT

The Plaintiff herein would respectfully show unto this Honorable court as follows:

1. That this is an action of Common Pleas, based upon automobile accident case against the Defendant, Julian Neil Armstrong, whose last known address was 186 Williamsburg Road, Little River, South Carolina.
2. That, although due and diligent search has been made for the Defendant, the Plaintiff has been unable to locate the Defendant in the County of Horry, State of South Carolina (see attached affidavit of non-service).
3. The Plaintiff is informed and believes that it is necessary that the Defendant be served by publication, and it requests that this Court issue an Order allowing such service, and that this Court issue an Order authorizing service of the Summons, and Notice of filing the Complaint in a daily newspaper of the city of the Defendant's last known address.

WHEREFORE, the Plaintiff must request this Court enter an Order authorizing service by publication of this matter.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC


Sam Flynn, Esquire
SC Bar Number: 101729
Anastopoulos Law Firm, LLC
2557 Ashley Phosphate Rd.
North Charleston, SC 29418
(843) 614-8888

Charleston, South Carolina
Nov. 19, 2015

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

AFFIDAVIT FOR PUBLICATION

RECORDED
15 NOV 23 PM 11:13
CLERK OF COURT
HORRY COUNTY

Personally appeared before me, Sam Flynn, who being duly sworn, states that:

1. I am an attorney for the Plaintiff, BOBBY FOSTER, in the above referenced action. The Plaintiff and Defendant have an action of Common Pleas for an automobile accident.
2. My office has attempted to serve the Defendant, Julien Neil Armstrong, through the Horry County Sheriff's Office. An Affidavit of Non-Service was issued by the Sheriff's Office and stated that the Defendant moved and left no forwarding address.
4. The last known address for the Defendant, Julian Neil Armstrong, was 186 Williamsburg Road, Little River, South Carolina; however the Sheriff confirmed that Defendant is not at this address, and his whereabouts are unknown. (Exhibit A)
5. I believe that although the Plaintiff has tried to contact the Defendant with due diligence, the Defendant cannot be located at this time.

ANASTOPOULOU LAW FIRM, LLC

Sam Flynn, Esquire
SC Bar Number: 101729
Anastopoulo Law Firm, LLC
2557 Ashley Phosphate Rd.
North Charleston, SC 29418

Sworn to and subscribed before me
this 19th day of November, 2015
Margaret C. Gaskin
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 12-4-2017

STATE OF SOUTH CAROLINA,)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG

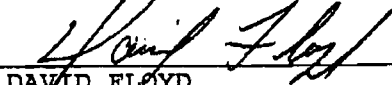
Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.


Phillip B. Thompson
Sheriff of Horry County


NOTARY PUBLIC FOR SOUTH CAROLINA


DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
Horry County
15 OCT 23 PM 11:13
CLERK OF COURT

STATE OF SOUTH CAROLINA,)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

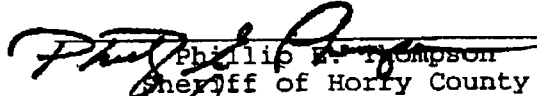
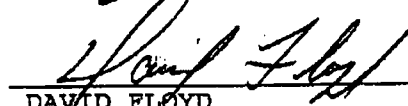
AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG
Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.


NOTARY PUBLIC FOR SOUTH CAROLINA


Phillip E. Thompson
Sheriff of Horry County

DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
HORRY COUNTY
15 OCT 23 PM 10:13
HELEN PROCTOR-WARD
CLERK OF COURT

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

AFFIDAVIT FOR PUBLICATION

RECORDED
15 NOV 23 PM 11:13
CLERK OF COURT
HORRY COUNTY

Personally appeared before me, Sam Flynn, who being duly sworn, states that:

1. I am an attorney for the Plaintiff, BOBBY FOSTER, in the above referenced action. The Plaintiff and Defendant have an action of Common Pleas for an automobile accident.
2. My office has attempted to serve the Defendant, Julien Neil Armstrong, through the Horry County Sheriff's Office. An Affidavit of Non-Service was issued by the Sheriff's Office and stated that the Defendant moved and left no forwarding address.
4. The last known address for the Defendant, Julian Neil Armstrong, was 186 Williamsburg Road, Little River, South Carolina; however the Sheriff confirmed that Defendant is not at this address, and his whereabouts are unknown. (Exhibit A)
5. I believe that although the Plaintiff has tried to contact the Defendant with due diligence, the Defendant cannot be located at this time.

ANASTOPOULOU LAW FIRM, LLC

Sam Flynn, Esquire
SC Bar Number: 101729
Anastopoulo Law Firm, LLC
2557 Ashley Phosphate Rd.
North Charleston, SC 29418

Sworn to and subscribed before me
this 19th day of November, 2015
Margaret C. Gaskin
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 12-4-2017

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**PLAINTIFF'S MOTION FOR ENTRY
OF DEFAULT AND REQUEST FOR
HEARING ON DAMAGES**

FILED
HORRY COUNTY
2016 MAR 8 PM 3:25
CLERK OF COURT
MELANIE J. JONES-WARD

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Julien Neil Armstrong and schedule a hearing to determine damages.

INTRODUCTION

1. Plaintiff brought this action against Defendant Julian Neil Armstrong as a result of injuries suffered in an automobile accident that occurred on April 8, 2013. After an unsuccessful attempt to serve the Defendant personally through certified mail and the Horry County Sheriff, Plaintiff published Notice of the Summons and Complaint in The North Myrtle Beach Times. Defendant Julien Neil Armstrong did not file a responsive pleading or otherwise defend the suit.

2. Plaintiff is, therefore, entitled to entry of default and a hearing on damages.

ARGUMENT AND AUTHORITIES

3. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

4. Rule 55(b) permits the court to enter default judgment against a party against whom

default has been entered. SCRCP 55(b)(1).

5. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney Matthew Nall's sworn affidavit, attached as Exhibit A.

6. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

Upon information and belief, Defendant Julien Neil Armstrong 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. [Exhibit B].

7. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. [Exhibit C].

8. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015. [Exhibit D].

9. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. [Exhibit E].

10. Under SCRCP 12(a), the time for Defendant to respond is thirty (30) days after being served with process.

11. Because Defendant Julien Neil Armstrong did not file a responsive pleading or otherwise defend, Plaintiff is entitled to Entry of Default.

12. Plaintiff's damages are unliquidated and a hearing is requested to receive evidence of Plaintiff's damages.

PRAYER

13. For these reasons, Plaintiff asks the Court to enter a Default against Defendant Julien Neil Armstrong and to schedule an evidentiary hearing to determine Plaintiff's damages.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Matthew L. Nall, Esquire
SC Bar Number: 102329
Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Charleston, South Carolina

MARCH 2, 2016

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

AFFIDAVIT OF MATTHEW NALL

FILED
HORRY COUNTY
2016 MAR -8 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW, the affiant, Matthew Nall, and first being duly sworn upon his oath
under the pains and penalties of perjury now states the following:

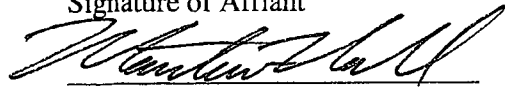
1. I am the above named affiant, Matthew Nall.
2. I, Matthew Nall, am an attorney with Anastopoulo Law Firm, LLC.
3. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. The package was sent to Defendant's last known address:

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

4. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015.
5. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7.
6. Upon information and belief, Defendant Julian Neil Armstrong is neither an infant nor incompetent adult.
7. As of today's date, March 2, 2016, Defendant Julian Neil Armstrong has failed to file a responsive pleading.

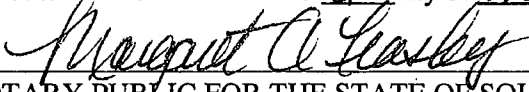
SIGNATURE ON FOLLOWING PAGE

Signature of Affiant



Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016.



NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

My commission expires: 12-4-2017

EXHIBIT B
(Affidavit of Non-Military Service)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

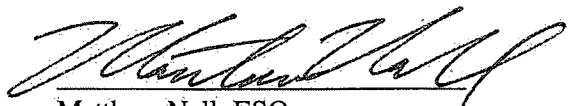
**AFFIDAVIT OF NON-MILITARY
SERVICE**

FILED
HORRY COUNTY
2016 MAR -8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT

Personally appeared before me the undersigned attorney, who first being duly sworn,
deposes and says:

That he is familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940,
and to induce the Court to enter a default judgment against Defendant Julian Neil Armstrong,
represents to the Court that from his file in this matter, and on information and belief based on
the hereinafter enumerated facts, Defendant Julian Neil Armstrong is/are not in the Military
Service of the United States and is/are not entitled to the protection of the Civil Relief Act of
1940 and Amendments thereto. The source of information on which he bases his belief is as
follows: Research made by the Anastopoulo Law Firm, LLC and Bobby Foster, Plaintiff herein.

Signature of Affiant:


Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016.

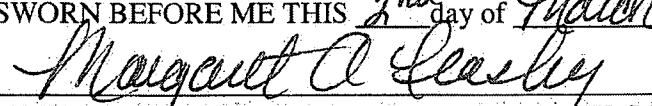

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 12-4-2017

EXHIBIT C
(Proof of Service)

ANASTOPOULO LAW FIRM

Akim A. Anastopoulos (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AkimLawFirm.com

Thursday, August 13, 2015

Sent Via Certified Mail, Restricted Delivery
7015 0640 0005 7946 3544

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

RE: *Bobby Foster v. Julian Neil Armstrong*
Case No.: 2015-CP-26-5633

Dear Mr. Armstrong:

Enclosed for service upon you, and pursuant to Rule 5 of the S.C.R.C.P., please find a copy of the Summons & Complaint that has been filed in the above referenced action.

Upon receipt, please forward this letter and these important legal papers to your insurance company **immediately**. **These documents are time sensitive.**

Sincerely,


Peggy Teasley
Litigation Manager

Enclosure

Cc: Bobby Foster

Mailing: 62 Columbus Street, Charleston, South Carolina 29403
North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201
Appointment Only: Myrtle Beach * Wilmington, North Carolina

FILED
Horry County
2016 MAR - 8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT





USPS Tracking®



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.

Tracking Number: 70150640000579463544

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail Restricted Delivery Return Receipt

See tracking for related item: 9590952106150123692623

DATE & TIME	STATUS OF ITEM	LOCATION
September 4, 2015 , 12:52 am	Departed USPS Facility	CHARLESTON, SC 29423
Your item departed our USPS facility in CHARLESTON, SC 29423 on September 4, 2015 at 12:52 am. The item is currently in transit to the destination.		
September 3, 2015 , 1:37 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
September 2, 2015 , 3:42 pm	Departed USPS Facility	COLUMBIA, SC 29201
August 31, 2015 , 9:05 am	Unclaimed/Max Hold Time Expired	LITTLE RIVER, SC 29566
August 15, 2015 , 1:13 pm	Notice Left	LITTLE RIVER, SC 29566
August 14, 2015 , 8:55 am	Arrived at USPS Facility	COLUMBIA, SC 29201
August 14, 2015 , 6:26 am	Departed USPS Facility	CHARLESTON, SC 29423
August 13, 2015 , 10:45 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
August 13, 2015 , 4:30 pm	Acceptance	CHARLESTON, SC 29403

FILED
HORRY COUNTY
2015 MAR - 8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

Sign up for My USPS ›



STATE OF SOUTH CAROLINA,)
)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG

Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.

Phillip E. Thompson
Phillip E. Thompson
Sheriff of Horry County

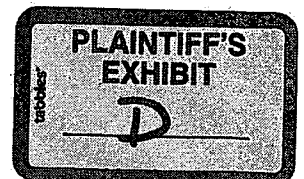
Joyce B. Jenkins
JOYCE B. JENKINS
NOTARY PUBLIC FOR SOUTH CAROLINA

David Floyd
DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
HORRY COUNTY
2016 MAR -8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT



AFFIDAVIT OF PUBLICATION FILED
HORRY COUNTY

State of South Carolina

2016 JAN 20 AM 10:46

County of Horry

MELANIE HUGGINS WARD
CLERK OF COURT

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the

Legal Notice

was printed and published in said newspaper

for and during the weekly publication,

and appeared in the issues of the

North Myrtle Beach Times December 24th, 31st

and January 7th A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

this

7th

day of

January

A.D. 2016

Henry C. Hester, Sr.

Notary Public for South Carolina

Commission Expires May 26, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-28-5633
BOBBY FOSTER
PLAINTIFF
VS
JULIAN NEIL ARMSTRONG
DEFENDANT

SUMMONS

TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Ana-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

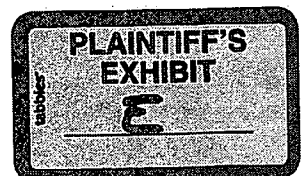
NOTICE

TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
County of Common Pleas, on the
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina

N 12/24/15 1:17-3TC

FILED
HORRY COUNTY
2016 MAR - 8 PM 3:26
MELANIE HUGGINS WARD
CLERK OF COURT



IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**ORDER FOR ENTRY OF DEFAULT
AND REFERRAL FOR HEARING ON
DAMAGES**

FILED
HORRY COUNTY
2016 MAR -8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT

The Notice of Summons and Complaint in this matter was published in The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. Defendant Julien Neil Armstrong failed to submit a responsive pleading or defend the suit and on March 2, 2016, Plaintiff filed a Motion for Entry of Default and Request for a Hearing on Damages.

THE COURT HEREBY FINDS Defendant Julien Neil Armstrong was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the last day of publication and Plaintiff properly moved for entry of default on March 2, 2016.

IT ORDERED that Defendant Julien Neil Armstrong, is in Default and this Entry of Default is considered effective as of March 2, 2016, the date the Court was first notified of Defendant Julien Neil Armstrong's default through Plaintiff's Motion For Entry of Default.

IT SO FURTHER ORDERED that this matter is to be set on the Court's docket for a hearing on damages pursuant to Plaintiff's request.

Dated: 3/8/16

Melanie Huggins-Ward

Clerk of Court
Horry County Court of Common Pleas

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

FILED
HORRY COUNTY
2016 MAR - 8 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff's Attorney: Matthew Nall, Eric Poulin, Roy Willey
Bar Number: 102329, 100209, 101010
Address: 62 Columbus St., Charleston SC 29403
Phone: 843-614-8888 Fax: 843-853-2291
E-Mail: matt@akimlawfirm.com, eric@akimlawfirm.com, roy@akimlawfirm.com

Defendant's Attorney:
Bar Number:
Address:
Phone:
E-Mail:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS III and III)
☐ **PROPOSED ORDER / CONSENT ORDER** (complete SECTIONS II and III)

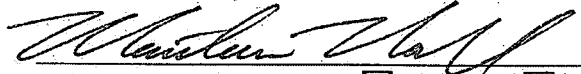
SECTION I: Hearing Information

Nature of Motion: Motion for Entry of Default – Request for Damages Hearing
Estimated Time Needed: 15 Min. Court Reporter Need: ☒ YES / ☐ NO

SECTION II: Motion / Order Type

- ☐ Written motion attached
☒ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Wednesday, February 10, 2016

Signature of Attorney for ☒ Plaintiff / ☐ Defendants Date Submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE _____
CODE: _____ DATE: _____

copy

CLERK'S SECTION

Date Filed: _____

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

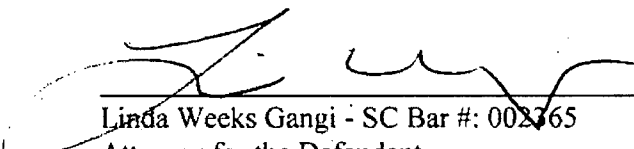
NOTICE OF APPEARANCE
(Jury Trial Requested)

The undersigned hereby provides the Court and counsel of notice that she is representing the Defendant in the above-captioned action. All notices concerning this matter including, but not limited to, notice of a damages hearing should be sent to the undersigned.

Conway, South Carolina

July 18, 2016.

THOMPSON & HENRY, P.A.


Linda Weeks Gangi - SC Bar #: 002365
Attorney for the Defendant
Post Office Box 1740
Conway, South Carolina 29528
Telephone: (843) 248-5741
Fax: (843) 248-5112
lgangi@thompsonlaw.com

CLERK OF COURT
2016 JUL 19 PM 3:09
HORRY COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

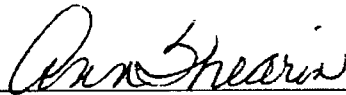
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF MAILING

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 17th day of July 2016 mailed a copy of the **Notice of Appearance and Certificate of Mailing** to the undersigned counsel for Plaintiff at his/her/their address of record, with sufficient postage attached thereto, as follows:

eric@anastapoulolawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403



Ann Shearin

2016 JUL 19 PM 3:10
CLERK J. COURT
Horry County

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bobby Foster,
☐ Plaintiff

v.

Julian Neil Armstrong,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015--CP-26-5633

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Eric Poulin, Bar No. 100209 Address: 62 Columbus St, Charleston, SC 29403 phone: 843-614-8888 fax: 843-853-229 e-mail: eric@akimlawfirm.com other:		Defendant's Attorney: Linda Weeks Gangi, Bar No. 002365 Address: POB 1740, Conway, SC 29528-1740 phone: 843-248-5741 fax: 843-248-5112 e-mail: lgangi@thompsonlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Set Aside Default Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for ☐ Plaintiff / ☒ Defendant			2016 SEP 21 PM 3:12 September 26, 2016 Date submitted
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCF) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>Jarb</u>		Date Filed: <u>9-21-16</u>	
☐ MOTION FEE COLLECTED: <u>25</u> ☐ CONTESTED - AMOUNT DUE: _____			

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

**MOTION TO SET ASIDE
ORDER FOR ENTRY OF
DEFAULT AND ORDER
FOR PUBLICATION**

2016 SEP 21 PM 3:12
CLERK OF COURT
JULIAN NEIL ARMSTRONG

TO: THE PLAINTIFF AND ERIC POULIN, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant through his undersigned attorney will move before the Presiding Judge of the Court of Common Pleas at the Horry County Courthouse in Conway, South Carolina on the tenth (10th) day after service hereof or as soon as counsel might be heard for an Order setting aside the Order for Entry of Default and Referral for Hearing on Damages as well as the Order for Publication.

The basis for this Motion is that the Plaintiff's Summons is insufficient. Rule 4(b) of the *South Carolina Rules of Civil Procedure* specifically requires the following:

"The Summons shall . . . contain . . . the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

The Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him. The failure of the Summons to comply with the provisions of Rule 4(b) of the *South Carolina Rules of Civil Procedure* results in the court having no personal jurisdiction over the defendant and the judgment is void. Ex parte *South Carolina Dept.*

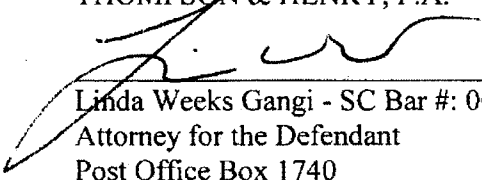
of Revenue, 350 S.C. 404, 566 S.E.2d 196 (S.C. App. 2001) and *State Board of Medical Examiners vs. Finwick Hall, Inc.*, 387 S.E.2d 458 (1990). Furthermore, the Summons published in the newspaper does not comply with S.C. Code Ann. §15-9-740 which requires that the information which is published must state the time and place of filing the Summons and Complaint. The publication of the Summons in this case does not state the date of the filing of the Summons in the Court of Common Pleas for Horry County, South Carolina. Furthermore, the Order for Publication signed by the Clerk of Court and dated November 24, 2015 required that the Defendant be served "via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Summons was published in the North Myrtle Beach Times. The Defendant did not live in North Myrtle Beach at the time of the accident or at any time subsequent thereto. The Defendant never received notice of this lawsuit until August of 2016. The Defendant moved from 186 Williamsburg Road, Little River, South Carolina to 4153 Horseshoe Road, Little River, South Carolina in August of 2015. The Defendant's cellphone number is reflected on the Accident Report. That cellphone number is still the Defendant's cellphone number so his location could have easily been determined had Plaintiff's counsel called Defendant's cellphone number. If the Plaintiff had used reasonable diligence as required by S. C. Code Ann. §15-9-740, the Defendant's whereabouts could easily have been obtained. Therefore, the Defendant requests that this Court set aside the Order for Entry of Default and Referral for Hearing on Damages, allow the Defendant to answer and allow the Defendant to fully defend this action before a jury. The Defendant has a meritorious defense.

**The undersigned asserts that this Motion completely sets forth the Defendant's position
and the filing of a Memorandum would serve no purpose.**

Conway, South Carolina

September 20, 2016.

THOMPSON & HENRY, P.A.



Linda Weeks Gangi - SC Bar #: 002365

Attorney for the Defendant

Post Office Box 1740

Conway, SC 29528-1740

(843) 248-5741 (p)

(843) 248-5112 (f)

lgangi@thompsonlaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

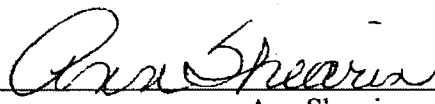
BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF MAILING

2016 SEP 21 PM 3:12
CLERK OF COURT
HORRY COUNTY

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 21st day of September 2016 mailed a copy of the **Motion to Set Aside Order for Entry of Default and Order for Publication and Certificate of Mailing** to the undersigned counsel for Plaintiff at his address of record, with sufficient postage attached thereto, as follows:

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403


Ann Shearin

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

AFFIDAVIT OF JULIAN NEIL ARMSTRONG

I, Julian Neil Armstrong, first being duly sworn depose and state as follows:

1. I am the Defendant in the above-captioned action.
2. My date of birth is August 5, 1995.
3. I never received notice of this lawsuit until I was contacted by my attorney, Linda Weeks Gangi, in August of 2016.
4. In August of 2015, my family and I moved from 186 Williamsburg Road, Little River, South Carolina to 4153 Horseshoe Road, Little River, South Carolina. I have never lived in North Myrtle Beach, South Carolina. I never received any correspondence from Plaintiff's counsel forwarding to me the Summons and Complaint. I never received notice through publication that this lawsuit was pending against me and being served on me.
5. My cellphone number, 843-504-0638, appears on the Accident Report. That cellphone number has been my cellphone number since prior to the automobile accident which is the subject matter of this action and continues to be my correct cellphone number as of the signing of this Affidavit. I could have been readily contacted by calling my cellphone.

Julian Neil Armstrong
Julian Neil Armstrong

SWORN to before me this

30th day of September, 2016.

Debra Arthelia Ward (L.S.)

Notary Public for

My Commission Expires: 12/02/2018

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)

vs.)

JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF SERVICE

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 11th day of October 2016 emailed and mailed a copies of the **Affidavit of Julian Neil Armstrong** to be used in support of the **Motion to Set Aside Order for Entry of Default and Order for Publication; and a Certificate of Service** to the undersigned counsel for Plaintiff at his address of record, with sufficient postage attached thereto, as follows:

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403


Ann Shearin

FILED
CLERK OF COURT

2016 OCT 11 PM 3:05

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANT'S
MOTION TO SET ASIDE DEFAULT
AND ORDER FOR PUBLICATION**

HORRY COUNTY
2016 OCT 14 PM 1:43
CLERK OF COURT

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

Pursuant to Rules 4, 8, and 55 of the South Carolina Rules of Civil Procedure, Plaintiff Bobby Foster ("Foster") submits this memorandum of law in opposition to Defendant Julian Neil Armstrong's ("Armstrong") Motion to Set Aside Default and Order for Publication. The grounds for Foster's opposition are as follows:

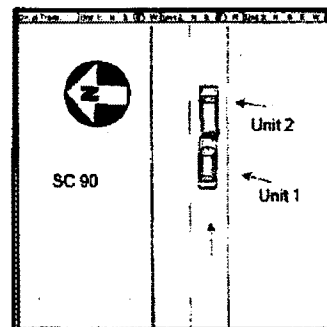
- Foster's Summons is in accord with Rule 4 because it informs Armstrong that he has thirty days to answer the Complaint and failing to do so will result in Foster asking the Court for the relief demanded.
- Foster's published Summons sufficiently informed Armstrong about the place and filing of the suit and was published in a newspaper that is circulated near his last known address.
- Armstrong does not state "good cause" under Rule 55 to warrant the set aside of default.

Additionally, Foster relies on all applicable statutes, rules, decisions of the court, and any arguments made by Counsel at a hearing on this matter.

INTRODUCTION

This case arose from a rear-end collision that happened in Horry County in April 2013. Both Foster and Armstrong were travelling East on SC-90. Exhibit 1: Police Report. Armstrong

("Unit 1") struck Foster ("Unit 2") from behind as Foster was stopped for traffic. Foster was injured as a result.



Foster filed suit against Armstrong in July 2015. Exhibit 2: Compl. Foster employed the Horry County Sheriff's Department to effectuate service upon Armstrong. Exhibit 3: Cert. of Service. Despite a diligent search, the Sheriff's Deputies were unable to locate Armstrong. Id. Thereafter, this Court approved service via publication. Exhibit 4: Order Approving Pub. Because all information indicated that Armstrong lived in the small community of Little River, South Carolina, Foster published notice in the North Myrtle Beach Times. Exhibit 5: Aff. of Pub. The Notice ran during the weeks of December 24 and 31, 2015, and January 7, 2016. Id. Following three consecutive weeks of publication, Foster moved this Court for an Order of Default on March 2, 2016. Exhibit 6: Mot. for Default. Default was entered on March 8, 2016.

In July 2016, Armstrong's Counsel appeared and notified Foster's Counsel that she was representing Armstrong. In August 2016, Foster's damages hearing was scheduled. Shortly after, Armstrong's Counsel requested a continuance, which was ultimately granted. In September 2016, Armstrong filed his Motion to Set Aside Default, nine months after the publication had run and more than a month after Counsel had appeared.

LEGAL STANDARD

"When the issuing officer is satisfied by the affidavit, his decision to order service by publication is final absent fraud or collusion." Yarbrough v. Collins, 293 S.C. 290, 360 S.E.2d 300 (1987); Ingle v. Whitlock, 282 S.C. 391, 318 S.E.2d 367 (1984); Gibson v. Everett, 41 S.C. 22, 19 S.E. 286 (1894); Yates v. Gridley, 16 S.C. 496 (1882). Furthermore, the trial court has no "authority to overrule the finding of the clerk of court that . . . 'after due diligence, [the defendant

cannot] be found in the County and State of their last known residence.’” Yarbrough, 293 S.C. at 292–293, 360 S.E.2d at 301.

“Exacting compliance with the rules is not required to effect service of process. Rather, [the court must] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (internal citations omitted).

When a party fails to respond to a Complaint, Rule 55(a) requires the clerk to record an Entry of Default. SCRCP 55(a). A party placed in default may move the Court to set aside the Entry of Default, if that party demonstrates “good cause.” SCRCP 55(c). That standard requires that the party seeking the set aside from the Entry of Default provide an explanation for the default and give reasons why vacation of the entry would serve the interests of justice. Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607 (2009).

ARGUMENT

Armstrong’s Motion to Set Aside Order for Entry of Default and Order of Publication must be denied. Armstrong’s Motion only makes collateral attacks Foster’s Summons and Notice inconsequential to the Order of Default and not within the standard applied to set aside the same. Armstrong’s arguments must be rejected because a “decision to order service by publication is final absent fraud or collusion. Yarbrough v. Collins, 293 S.C. 290, 360 S.E.2d 300 (1987). Like in Mull, supra, Foster substantially complied with the service of process statutes. Moreover, Armstrong neither states “good cause” under Rule 55 to warrant the Default Order to be set aside. Each of these issues is addressed, below.

I. FOSTER'S SUMMONS IS IN ACCORD WITH RULE 4 BECAUSE IT INFORMS ARMSTRONG THAT HE HAS THIRTY DAYS TO ANSWER THE COMPLAINT AND FAILING TO DO SO WILL RESULT IN FOSTER ASKING THE COURT FOR THE RELIEF DEMANDED.

Rule 4(b) of the South Carolina Rules of Civil Procedure requires that the summons in a civil matter contain a statement detailing the "time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint." SCRPC 4(b). Armstrong claims that "[T]he Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." Def. Mot. to Set Aside Order for Default at 1.

However, Foster's filed Summons (excerpted, below) clearly states that Armstrong is "required to Answer the Complaint . . . within 30 days . . . and if you fail to Answer the

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

Complaint . . . Plaintiff will apply to the court for the relief demanded" Exhibit 2.

Id. Foster's Summons clearly states that Armstrong has thirty days to Answer the Complaint and that failure to do so will result in Foster asking the Court for the relief demanded. Accordingly, Foster's Summons is not ambiguous and complies with the dictates of Rule 4(b).

Likewise, Foster's published Summons (excerpted, right) states that the Complaint was filed in Horry County and that Armstrong must respond within thirty days, or Foster will "apply to the Court for judgment by default for the relief demanded in the Complaint." Ex. 5. In both the filed Summons and the published Summons, Foster fully complied with Rule 4(b)'s requirements.

Accordingly, Armstrong's argument that Foster's Summons fails to notify Armstrong that his failure to appear will result in a default judgment against him must be denied. Both the filed and published Summons warn Armstrong about the consequences of his failure to appear.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CF-66-6888
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT

SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Aras-
topoulos Law Firm, LLC, Sam Pynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the date hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.
s/ Sam Pynn, Esquire
62 Columbus Street
Charleston, South Carolina 29405
(843) 614-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

II. FOSTER'S PUBLISHED SUMMONS SUFFICIENTLY INFORMED ARMSTRONG ABOUT THE PLACE OF FILING OF THE SUIT AND WAS PUBLISHED IN A NEWSPAPER THAT IS CIRCULATED NEAR HIS LAST KNOWN ADDRESS.

Armstrong's Motion cites S.C. Code Ann. § 15-9-740 for the propositions that notice by publication must be made in "the one newspaper . . . most likely to give notice to the person to be served" and that "the summons, as published, must state the time and place of such filing." S.C. Code Ann. § 15-9-740. Armstrong claims error in Foster's use of the North Myrtle Beach Times as the newspaper of publication, as well as the published Summons' missing the date of filing. Here, the North Myrtle Beach Times is the closest general circulation paper to Armstrong's last known address, and the Summons' missing date is not fatal to the publication.

A. Publication in The North Myrtle Beach Times was proper because it is the closest general circulation newspaper to Armstrong's residence in Little River, South Carolina.

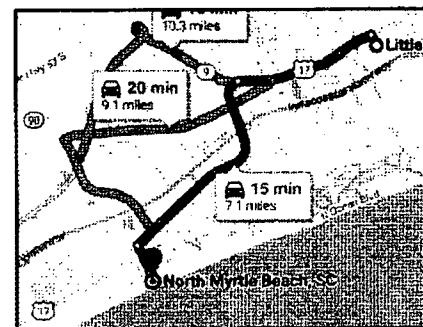
South Carolina requires that notice via publication be accomplished by a newspaper "most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks." S.C. Code Ann. § 15-9-740. The South Carolina Attorney General consistently states that "whether a periodical is sufficient as an instrument of service by publication can only be determined by the particular facts and circumstances, on a case-by-case basis. Ops. S.C. Atty. Gen., July 19, 1990; August 19, 1977. The Attorney General's office has laid out a list of criteria for determining whether a "newspaper" sufficiently meets the requirements of S.C. Code Ann. § 15-9-740. Those criteria include:

- a) The paper must be published regularly at short intervals;
- b) The paper must contain intelligence of current events and news of general interest;
- c) The paper must be intended for general circulation; however circulation may be limited to a specific geographic area;
- d) The paper must be either sold or distributed gratis.

Ops. S.C. Atty. Gen., June 30, 2005. In this case, Armstrong's last known address was in Little River, South Carolina. Foster published his Notice in the North Myrtle Beach Times.

Little River is a community in Horry County, South Carolina with a population of nearly 9,000. According to Google Maps, Little River is approximately seven miles from North Myrtle Beach. The North Myrtle Beach Times is a weekly news publication that is distributed to both Little River and Loris, South Carolina.

Exhibit 7: North Myrtle Beach Times Website.



Foster is unaware of a timely publication solely intended for the Little River community. Therefore, the North Myrtle Beach is the only realistic option for publication given its proximity to Little River, the weekly nature of publication, and the nature of intelligent information provided within the paper, itself. In light of these facts, Armstrong's argument that the North Myrtle Beach Times was the inappropriate newspaper to publish Notice must fail.

- B. The lack of date contained in Foster's Notice is not fatal to his publication because the date of filing has no bearing on a civil motor vehicle collision case.

Precise compliance "with the rules is not required to effect service of process." Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010). Instead, a court reviewing Notice compliance must analyze "whether the plaintiff has **sufficiently complied with the rules** such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Id. (internal citations omitted)(emphasis added). Armstrong claims fault with Foster's Notice because it does not contain the Complaint's date of filing.

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE, that the Summons in the above mentioned action of which the foregoing is a copy, together with the Complaint therein was filed in the office of the Clerk of Court, HORRY Court of Common Pleas, on the a/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina
N 12/24, 31, 1/7-ETC

The Code does state, "In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of such filing." S.C. Code Ann. § 15-9-740. However, the Supreme Court has routinely held "notice [must be] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950).

Foster's Notice stated that the Complaint was "filed in the office of the Clerk of Court, HORRY Court of Common Pleas, on the [sic]". Ex. 5. Clearly, this is a scrivener's error in the

Notice, as it did not include the date of filing. Yet, this error is not fatal to the information conveyed by the Notice. The Notice informed readers that:

- 1) A Summons & Complaint were filed against Armstrong;
- 2) In the Horry County Court of Common Pleas;
- 3) The name, address, and telephone number of the filing attorney.

Ex. 5. The Notice provided information to Armstrong that there was a suit filed against him, where it could be obtained, and who he could contact if he had any questions. The date of filing, or lack thereof is inconsequential to this matter. To be sure, there are circumstances where a suit's filing date is relevant to due process notice requirements. Dates of filing are relevant in divorce proceedings, mortgage foreclosures, or even probate actions. With all three of these examples, the date of filing is relevant to the matter because statutes provide specific timelines for interested parties to appear and take part in the litigation through hearings or public filings.

This case is different. In a personal injury civil suit, based on a motor vehicle accident, the date of filing is irrelevant to a defendant being served via publication. The defendant, who was unable to be located, does not lose any constitutional right to object by being unaware of the suit's filing date. In this circumstance, the only dates that are germane to this analysis are the dates in which the publication ran in the local newspaper. Here, the Notice ran December 24 and 31, 2015, and January 7, 2016. Ex. 5. Therefore, the thirty days for Armstrong to respond to the Complaint began running on January 7, 2016, the last day of publication.

C. Foster used reasonable diligence to locate Armstrong because he hired the Horry County Sheriff's Department to serve process upon Armstrong.

Armstrong's Motion takes issue with Foster's "reasonable diligence" to locate Armstrong. As stated above, "in the absence of fraud or collusion, the decision of the officer ordering service by publication is final." Montgomery v. Mullins, 325 S.C. 500, 506, 480 S.E.2d

467, 470 (Ct. App. 1997). To effectuate service upon Armstrong, Foster utilized the Horry County Sheriff's Department to locate and serve him. Ultimately, the Sheriff's Department – the law enforcement authority for Horry County – returned an affidavit of non-service despite their due diligence. Ex. 3. The use of the Sheriff's Department was sufficient for the Court to Order service by publication for Armstrong.

Still, Armstrong argues that Foster could have obtained his address by simply calling his cell phone. First, it is unlikely that an individual would be forthcoming with their current address when faced with the knowledge that a law firm was attempting to track them down to sue them. Second, the Horry County Sheriff's Department had equal access to the cell phone number and presumably used any and all resources available to locate Armstrong. Accordingly, Armstrong's argument must fail because he has not shown any fraud or collusion on the part of Foster and the decision of the Court issuing a publication order is final.

III. ARMSTRONG DOES NOT STATE "GOOD CAUSE" UNDER RULE 55 TO WARRANT THE SET ASIDE OF DEFAULT.

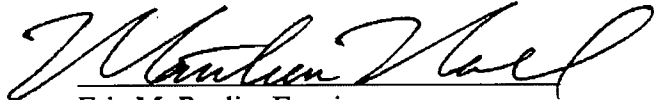
Armstrong's Motion neither provides an explanation for the default, nor give reasons why vacation of the entry would serve the interests of justice. Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 607 (2009). Armstrong merely provides collateral attacks on Foster's Summons, Notice, and Order of Publication. None of these complaints warrant the Default be set aside. Armstrong does not state any reason explaining why he has a meritorious defense for rear-ending Foster. Armstrong does not state how he became aware of his Default or why he allowed the Complaint to go unanswered for nearly eight months. Armstrong has not met his burden to be relieved of the Default Order against him.

CONCLUSION

Armstrong ran into the rear end of Foster's vehicle in April 2013. Armstrong has been in Default since March 2016. Foster used reasonable diligence to locate Armstrong by the standard practice of using the Horry County Sheriff's Department. Foster obtained his Order of Publication under valid circumstances. Foster published his Notice in the newspaper closest to Armstrong's residence. Foster's Notice further contained sufficient information that should it be seen by Armstrong, he could locate the Summons and Complaint with relative ease. For all the foregoing reasons, Armstrong's Motion to Set Aside Default and Vacate the Order of Publication must be denied. Foster substantially complied with all publication and notice rules and Armstrong was served via publication properly.

Respectfully Submitted,

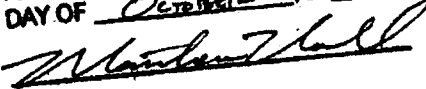
ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Matthew L. Nall, Esquire
SC Bar Number: 102329
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 13th
DAY OF October, 2016



Charleston, South Carolina

October 13, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

ANSWER ON BEHALF OF
THE DEFENDANT
(Jury Trial Requested)

FILED
HORRY COUNTY
2016 OCT 28 PM 2:05
MELANIE HUGGINS-WARD
CLERK OF COURT

The Defendant answering the Plaintiff's Complaint would respectfully show unto this Court:

1. Each and every allegation of the Plaintiff's Complaint which is not hereafter specifically admitted, modified or explained is denied and strict proof demanded thereof.

FOR A FIRST DEFENSE:

2. The Defendant does not have sufficient information to form a belief as to the allegations contained in paragraph 1 and therefore denies same and demands strict proof thereof.

3. The Defendant admits the allegations contained in paragraphs 2, 3 and 4.

4. The Defendant admits so much of the allegations of paragraphs 5, 6, 7 and 8 as they state that on or about April 8, 2013 a collision occurred between a vehicle driven by the Plaintiff and a vehicle driven by the Defendant. The Defendant denies the remaining allegations contained in paragraphs 5, 6, 7 and 8 and demands strict proof thereof.

5. The Defendant admits so much of the allegations of paragraph 9 as they are consistent with Title 56 of the South Carolina Code and the Rules of the Road as set forth in South Carolina

case law. The Defendant denies any allegations contained in paragraph 9 that are inconsistent therewith.

6. The Defendant denies the allegations contained in paragraphs 10, 11, 12, 13, 14, 15 and 16 and demands strict proof thereof.

FOR A SECOND DEFENSE:

7. Each and every allegation of the first defense is incorporated herein when not inconsistent herewith.

8. The accident referred to in the Plaintiff's Complaint and the Plaintiff's alleged injuries and damages, if any, were due to and caused by the negligence, gross negligence, recklessness, willfulness and wantonness of the Plaintiff combining and concurring with any and all acts of the Defendant as a direct and proximate cause thereof, and without which the same would not have occurred.

9. Therefore, the Plaintiff's alleged injuries and damages were caused in whole or in part, or were contributed to by the Plaintiff's own negligence and recklessness, and not by any negligence on the part of the Defendant.

10. Therefore, the Defendant pleads the Plaintiff's sole negligence or negligence equal to or greater than that of the Defendant, and contributory recklessness of the Plaintiff as a complete defense to this action; and pleads overall the South Carolina doctrine of comparative negligence as a defense to this action and any amount of recovery available to the Plaintiff herein.

FOR A THIRD DEFENSE:

11. Each and every allegation of the first and second defenses is incorporated herein when not inconsistent herewith.

12. Plaintiff's seeking punitive damages violates Defendant's rights under Article I, §10 of the United States Constitution, as well as the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the similar provisions of the Constitution of South Carolina including but not limited to Article I, §3 and Article I, §15 of the Constitution of South Carolina for the following reasons:

- (a) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because the jury or fact finder has total discretionary power to award punitive damages, and adequate objective legal standards do not exist to guide and limit the jury's or fact finder's discretion, thus allowing an award of punitive damages to be irrational, arbitrary and capricious and based upon vague, unpredictable, conflicting and purely subjective standards;
- (b) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because the vague and inconsistent legal standards for the imposition of punitive damages deprive these defendants of sufficient notice of the type of conduct and mental state upon which a punitive damage award could result from alleged misconduct;
- (c) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because the guidelines, standards, procedures and instructions for the imposition of punitive damages are ambiguous, indefinite, vague, uncertain, conflicting, purely subjective, and fundamentally unfair;
- (d) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because no objective limitations are established concerning the amount or severity of punitive damages awards;
- (e) The Eighth Amendment of the United States Constitution and the same or similar provisions of the South Carolina Constitution

including, but not limited to, Article I, §15 of the South Carolina Constitution are violated because punitive damages constitute penal damages and amount to an unconstitutional criminal and excessive fine or punishment in a civil proceeding;

- (f) The Fifth and Sixth Amendments of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §12, Article I, §14 and Article I, §23 of the South Carolina Constitution are violated because Defendant is not allowed to exercise in this case all the constitutional and statutory rights which must be accorded to a party which is subject to the imposition of a criminal penalty in the form of punitive damages;
- (g) The equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §3 of the South Carolina Constitution are violated because the imposition of punitive damages discriminates against Defendants on the basis of wealth and greater amounts of punitive damages for the identical claims may be awarded against some Defendants who have more economic wealth than other Defendants;
- (h) The First Amendment of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §2 of the South Carolina Constitution are violated because the imposition of punitive damages is based upon vague, conflicting, uncertain, and purely subjective standards, without adequate notice to Defendant, and thereby create a chilling effect on speech and expression;
- (i) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §3 of the South Carolina Constitution are violated because the imposition of punitive damages impairs Defendant's right of access to the courts to adjudicate civil disputes;
- (j) Article I, §10 of the United States Constitution and the same or similar provision of the South Carolina Constitution including, but not limited to, Article I, §4 are violated because the imposition of punitive damages impairs Defendant's right to contract.

- (k) Further, this answering Defendant asserts that should the jury award punitive damages, the Court determine that the punitive damages do not violate procedural due process or substantive due process, then this answering Defendant would assert that punitive damages should be limited as provided by S. C. Code Ann. §15-32-530(A).

FOR A FOURTH DEFENSE:

13. Each and every allegation of the first, second and third defenses is incorporated herein when not inconsistent herewith.

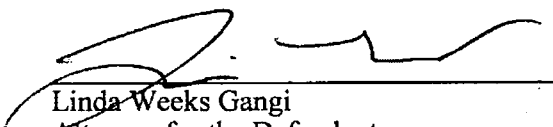
14. The Defendant would assert that the Plaintiff failed to timely serve the Defendant within the statute of limitations and thus, pleads the statute of limitations as a complete defense.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays that same be dismissed, for the cost of this action and for such other and further relief as this Court may deem just and proper

Conway, South Carolina

THOMPSON & HENRY, P.A.

October 26, 2016.



Linda Weeks Gangi
Attorney for the Defendant
Post Office Box 1740
Conway, South Carolina 29528
Telephone: (843) 248-5741
Fax: (843) 248-5112
lgangi@thompsonlaw.com
SC Bar #: 002365

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF MAILING

FILED
HORRY COUNTY
2016 OCT 28 PM 2:05
JILL NIE HUGGINS-WARD
CLERK OF COURT

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 26th day of October 2016 mailed copies of the following documents:

- a. Answer on Behalf of the Defendant;
- b. Defendant's Interrogatories to the Plaintiff;
- c. Defendant's First Request for Production of Documents to the Plaintiff;
- d. Notice of Taking Deposition of the Plaintiff; and
- e. Certificate of Mailing

to the undersigned counsel for Plaintiff at his address of record, with sufficient postage attached thereto, as follows:

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
Attorney for the Plaintiff

Ann Shearin
Ann Shearin
ann@thompsonlaw.com

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

Plaintiff's Attorney: Eric Poulin, Roy Willey
Matthew Nail
Bar Number: 100209, 101010, 102329
Address: 62 Columbus Street, Charleston, SC
29403
Phone: 843-614-8888 Fax: 843-494-5536
E-Mail: eric@akimlawfirm.com,
roy@akimlawfirm.com, matt@akimlawfirm.com

Defendant's Attorney: Linda Weeks Gangi
Bar Number:
Address: Post Office Box 1740
Conway, SC 29528
Phone: (843) 248-5741
E-Mail: lgangi@thompsonlaw.com

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS III and III)
☐ **PROPOSED ORDER / CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

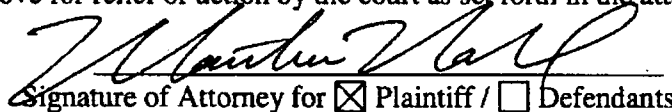
Nature of Motion: Motion to Reconsider

Estimated Time Needed: 15 minutes Court Reporter Need: ☒ YES / ☐ NO

SECTION II: Motion / Order Type

- ☒ Written motion attached
☐ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☒ Plaintiff / ☐ Defendants

November 02, 2016

Date Submitted

SECTION III: Motion Fee

- ☒ **PAID - AMOUNT: \$25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposal order submitted at request of the court; or, reduced to writing from
motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

2016 NOV 10 AM 11:40

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE _____
☐ Other: _____	CODE: _____ DATE: _____

CLERK'S SECTION	
Collected by: <u>(H) 25.00</u>	Date Filed: <u>11/10/16</u>
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED - AMOUNT DUE: _____	

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**PLAINTIFF'S MOTION TO
RECONSIDER**

2016 NOV 10 AM 11:40

TO: THE HONORABLE JUDGE CULBERTSON AND ALL COUNSEL OF RECORD

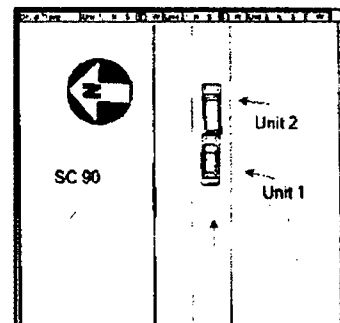
Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Plaintiff Bobby Foster ("Plaintiff") submits this Motion to Reconsider this Court's Judgment on Defendant Julian Armstrong's ("Defendant") Motion to Set Aside Order for Publication and to Set Aside Order for Entry of Default and Referral for Hearing on Damages. The grounds for Plaintiff's Motion are as follows:

- The Court removed Defendant's default in order for the case to move forward on its merits. Therefore the Court should reconsider its Order to clarify that it has personal jurisdiction over the Defendant and the suit is not barred by the statute of limitations.

Therefore, Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the statute of limitations. This Motion is supported by the applicable statutes, rules of court, pleadings, memoranda, and any oral arguments presented by counsel at a hearing on this matter.

STATEMENT OF FACTS

This case arose from an April 2013 rear-end collision in Horry County in. Plaintiff and Defendant were eastbound on SC-90. Exhibit 1: Police Report. Defendant ("Unit 1") struck Plaintiff ("Unit 2") from



behind as Plaintiff was stopped for traffic. Plaintiff was injured as a result.

Plaintiff filed suit against Defendant in July 2015. Exhibit 2: Compl. Plaintiff employed the Horry County Sheriff's Department to serve Defendant. Exhibit 3: Cert. of Service. Despite a diligent search, the Sheriff's Deputies were unable to serve Defendant. Id. Thereafter, this Court approved service via publication. Exhibit 4: Order Approving Pub. All information indicated that Defendant lived in the small community of Little River, South Carolina, so Plaintiff published notice in the North Myrtle Beach Times. Exhibit 5: Aff. of Pub. The Notice ran during the weeks of December 24 and 31, 2015, and January 7, 2016. Id. After three consecutive weeks of publication, Plaintiff moved this Court for an Order of Default on March 2, 2016. Exhibit 6: Mot. for Default. Default was entered on March 8, 2016.

In July 2016, Defendant's Counsel appeared. In August 2016, Plaintiff's damages hearing was scheduled for the second time. Shortly after, Defendant's Counsel requested a continuance, which was granted. In September 2016, Defendant filed a Motion to Set Aside Default, nine months after the publication had run and more than a month after Counsel had appeared.

Defendant's Motion claimed that Plaintiff's Summons, attached to his Complaint, was insufficient because it did not "notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." Def. Mot. to Set Aside Default 2. Defendant's Motion further argued that the Summons, which was published in the newspaper, was statutorily noncompliant because it lacked the Complaint's filing location and date. Id. Defendant also took issue with publication in the North Myrtle Beach Times, despite Defendant's residence in Little River. Id. Defendant claimed that Plaintiff did not use reasonable diligence because he did not call Defendant's cell phone number to ascertain his whereabouts. Id.

On Monday, October 17, 2016, the Court heard arguments on Defendant's Motion to Set Aside Order of Publication and to Set Aside the Entry of Default and Referral for Damages Hearing. Both parties argued the issues as laid out in their respective memoranda. Ultimately, the Court stated it would not address issues of personal jurisdiction, but stated that because the published summons lacked a filing date, it would remove the default. Correspondingly, the Court asked Defense Counsel to accept service on behalf of the Defendant and provide a written order.

Later, Defendant circulated his Proposed Order which substantially repeated the same issues in his Motion to Set Aside Order of Publication and to Set Aside the Entry of Default and Referral for Damages. The Proposed Order stated that the Court is without personal jurisdiction over Defendant and the Orders of Publication and Default were void. Plaintiff emailed the Court and Defense Counsel stating his objection to the findings of no jurisdiction and voiding the order of publication. Exhibit 7. Plaintiff stated his concern that should Defendant's Proposed Order be signed by the Court, Defendant would be able to allege noncompliance with the statute of limitations, since the wreck occurred in April 2013. Id. The Court signed Defendant's Proposed Order.

As a result, Defendant filed his Answer with the Court and raised the statute of limitations as an affirmative defense. Def. Answer ¶ 13. Concurrent with Defendant's Answer, he also served initial discovery requests and noticed Plaintiff's deposition. Exhibit 8.

LEGAL STANDARD

Rule 59(e) allows a party to file a motion to reconsider a judgment for two specific reasons. SCRCP 59; Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). First, a motion to reconsider is appropriate when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes

for the court to reconsider or rule on it.” Elam, 361 S.C. at 24, 602 S.E.2d at 780. Second, “a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Id.

ARGUMENT

This Court should reconsider its Order on Defendant’s Motion to Set Aside Order of Publication and Order of Default and Request for Damages Hearing because the current Order does not accurately reflect the outcome of the hearing. The Court granted Defendant’s Motion to Set Aside Default due to a typographical error in the published Summons and requested Defense Counsel accept service of the Complaint. However, the Order states that the Court has no jurisdiction over the Defendant. Defendant’s Default was vacated by a technicality; likewise, Plaintiff should not be prohibited from litigating his claim due to a technicality.

I. THE COURT REMOVED DEFENDANT’S DEFAULT IN ORDER FOR THE CASE TO MOVE FORWARD ON ITS MERITS. THEREFORE, THE COURT SHOULD RECONSIDER ITS OPINION TO CLARIFY THAT IT HAS PERSONAL JURISDICTION OVER THE DEFENDANT AND THE SUIT IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

At the hearing on this matter, the Court decided to allow the Defendant out of Default because Plaintiff’s published Notice did not contain the Complaint filing date. However, the signed Order is overly broad and does not accurately reflect the results of the hearing. The Order states that “The Court has no personal jurisdiction over the Defendant and that service of the Summons and Complaint was not properly perfected on the Defendant.” This statement seems to contradict the Court’s request that Defense Counsel accept service on behalf of Defendant and allow the case to move forward. Based on this Order, Defendant is out of default and has filed his Answer stating that this case is barred by the statute of limitations. However, this suit has been filed since July 2015 and Plaintiff used reasonable diligence to prosecute his case. In the

interest of justice, the Court should reconsider its Motion to bar Defendant from claiming the statute of limitations as an affirmative defense.

A. Plaintiff's filed and published Summons complied with Rule 4 because both stated Defendant must respond within thirty days.

Rule 4(b) of the South Carolina Rules of Civil Procedure requires that the summons in a civil matter contain a statement detailing the "time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint." SCRCP 4(b). The signed Order states, "The Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." This statement is incorrect because Plaintiff's filed Summons states that the Defendant must answer within thirty days or Plaintiff will apply for the relief demanded in the Complaint.

Specifically, Plaintiff's Summons (filed with the Complaint and excerpted, below) clearly states that Defendant is "required to Answer the Complaint . . . within 30 days . . . and if you fail to Answer the Complaint . . . Plaintiff will apply to the court for the relief demanded"

Exhibit 2.

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

Clearly, the filed Summons complies with Rule 4(b) because it notifies the Defendant that he must respond within thirty days and that failure to do so will have consequences. The filed Summons is not ambiguous and conforms with Rule 4(b).

Likewise, Plaintiff's published Summons (excerpted, right) states that Defendant must respond within thirty days, or Plaintiff will "apply to the Court for judgment by default for the relief demanded in the Complaint." Ex. 5.

In both the filed Summons and the published Summons, Plaintiff fully complied with Rule 4(b) because he notified Defendant that he will apply for relief in thirty days absent Defendant's Answer. Both the filed and published Summons warn Defendant about the consequences of his failure to appear.

However, the signed Order on this issue states that the Summons, presumably the filed Summons, does not comply with Rule 4(b). On this basis, the Order states that there is no personal jurisdiction over the Defendant. This portion contradicts the Court's statement that it would not address issues of personal jurisdiction. The Court should reconsider this issue because both Summons satisfy Rule 4's requirements. Furthermore, this issue is deserving of reconsideration because the signed Order voids the Court's jurisdiction over Defendant and creates a statute of limitations issue.

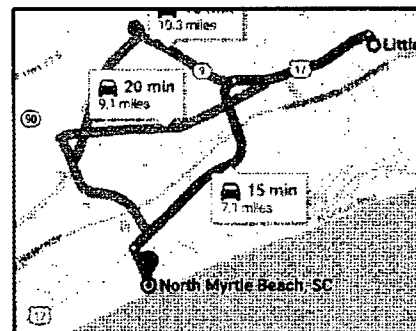
B. Publication in the North Myrtle Beach Times was proper.

The signed Order on Defendant's Motion cites S.C. Code Ann. § 15-9-740 for the proposition that notice by publication must be made in "the one newspaper . . . most likely to give notice to the person to be served" and that "the summons, as published, must state the time

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-28-5893
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT
SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Ana-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8088
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

and place of such filing.” S.C. Code Ann. § 15-9-740. The Order states Plaintiff’s publication in the North Myrtle Beach Times was improper because it is not a paper of “general circulation in Horry County” and because Defendant lived in Little River, not North Myrtle Beach.

Little River is a community in Horry County, South Carolina with a population of nearly 9,000. Little River is approximately seven miles from North Myrtle Beach. The North Myrtle Beach Times is a weekly news publication that is distributed to Little River and Loris, South Carolina. Exhibit 9: North Myrtle Beach Times Website. The North Myrtle Beach Times is the newspaper published closest to Little River. Therefore, the North Myrtle Beach is the only realistic option for publication given its proximity to Little River. Furthermore, the weekly nature of publication, and the information provided within the paper make it the most likely newspaper to provide notice to Defendant.



Accordingly, the Court should reconsider this issue to the extent that the Order states service was not proper because notice was not published in a paper of general circulation in Horry County. The North Myrtle Beach Times is the closest publication to Defendant’s last known address and most reasonably targeted to give him notice of suit.

C. Defendant neither alleged nor proved fraud or collusion, therefore the Order of Publication is final.

The signed Order on Defendant’s Motion states Defendant did not use “reasonable diligence” to locate Defendant because he did not call Defendant’s cell phone. However, the law on this issue is clear: “in the absence of fraud or collusion, the decision of the officer ordering service by publication is final.” Montgomery v. Mullins, 325 S.C. 500, 506, 480 S.E.2d 467, 470

(Ct. App. 1997). Plaintiff used the Horry County Sheriff's Department to locate and serve Defendant. Ultimately, the Sheriff's Department – the law enforcement authority for Horry County – returned an affidavit of non-service despite their due diligence. Ex. 3. The use of the Sheriff's Department was sufficient for the Court to order service by publication.

Still, the Order states Plaintiff could have obtained his address by simply calling Defendant's cell phone. But, it is unlikely that an individual would be forthcoming with their current address knowing that a law firm is attempting to track them down to sue them. The Court should reconsider this portion of the Order insofar as an Order of Publication is final absent fraud or collusion and Plaintiff did use reasonable diligence. Defendant did not present any evidence of fraud or collusion. Defendant's only argument is that Plaintiff did not call Defendant on his cell phone.

D. Plaintiff's Notice substantially complied with the statutes on service and the lack of filing date is not fatal to proper service.

Precise compliance "with the rules is not required to effect service of process." Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010). Instead, a court reviewing Notice compliance must analyze "whether the plaintiff has **sufficiently complied with the rules** such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Id. (internal citations omitted)(emphasis added). "In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of such filing." S.C. Code Ann. § 15-9-740. However, the Supreme Court has routinely held "notice [must be] reasonably calculated, under all the circumstances, to apprise interested

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE, that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
Court of Common Pleas, on the
8/28/24, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888
ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina
N 12/24, 51, 1/7-STC

parties of the pendency of the action and afford them an opportunity to present their objections.”
Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950).

Plaintiff’s Notice stated that the Complaint was “filed in the office of the Clerk of Court, Horry Court of Common Pleas, on the [sic]”. Ex. 5. Clearly, this is a scrivener’s error in the Notice, as it did not include the date of filing. Yet, this error is not fatal to the information conveyed by the Notice. The Notice informed readers that:

- 1) A Summons & Complaint were filed against Defendant;
- 2) In the Horry County Court of Common Pleas;
- 3) The name, address, and telephone number of the filing attorney and law firm.

Ex. 5. The Notice provided information that there was a suit filed against Defendant, where it could be obtained, and who he could contact if he had any questions. The date of filing, or lack thereof is inconsequential to this matter. To be sure, there are circumstances where a suit’s filing date is relevant to due process notice requirements. Dates of filing are relevant in divorce proceedings, mortgage foreclosures, or even probate actions. With all three of these examples, the date of filing is relevant to the matter because statutes provide specific timelines for interested parties to appear and take part in the litigation through hearings or public filings.

This case is different. In a personal injury civil suit, based on a motor vehicle accident, the date of filing is irrelevant to a defendant being served via publication. The defendant, who was unable to be located, does not lose any constitutional right to object by being unaware of the suit’s filing date. In this circumstance, the only dates that are germane to this analysis are the dates on which the publication ran in the local newspaper. Here, the Notice ran December 24 and 31, 2015, and January 7, 2016. Ex. 5. Therefore, the thirty days for Armstrong to respond to the Complaint began running on January 7, 2016, the last day of publication.

Plaintiff sufficiently complied with the statute controlling notice via publication. Yet, the Court decided that after the appearance of Defense Counsel, the case would be best served by allowing the defendant to submit an Answer because the Notice did not contain the Complaint's filing date. Therefore, the Court should reconsider its Order on this issue to the extent that the Order states the Notice was not statutorily compliant. The notice must only *substantially* comply with the statute, and the lack of filing date does not deprive the court of jurisdiction over Defendant.

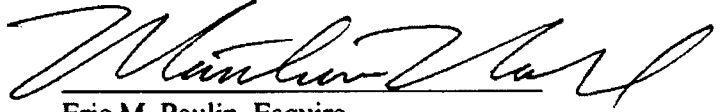
CONCLUSION

At the hearing Defendant's Motion, the Court decided that good cause was shown to remove the default and allow Defendant to answer because there was no date on the Notice. Tellingly, the Court asked Defense Counsel if she would be willing to accept service of the Complaint. Defense Counsel agreed to accept service. It is apparent that the Court thought this matter should move forward on its merits in the interest of justice. Unfortunately, this case arose from an April 2013 car wreck. The Court's Order states that it has no personal jurisdiction over the Defendant, the Notice of Publication was in error and now void, and vacated the entry of default. Based on the Order, Defendant filed an Answer claiming the statute of limitations as a total defense. Therefore, Plaintiff respectfully requests that the Court clarify its opinion on this matter to address the issue of the statute of limitations. Plaintiff has used reasonable diligence to move his case forward and should not be blocked out from justice on a technicality.

SIGNATURE ON FOLLOWING PAGE

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

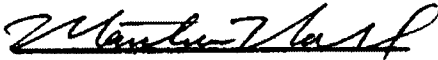


Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Matthew L. Nall, Esquire
SC Bar Number: 102329
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

Charleston, South Carolina
November 2, 2016

ATTORNEYS FOR THE PLAINTIFF

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 2nd
DAY OF November, 20 16



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bobby Foster,
☐ Plaintiff

v.

Julian Neil Armstrong,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015--CP-26-5633

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

PAID

Plaintiff's Attorney: Eric Poulin, Bar No. 100209 Address: 62 Columbus St, Charleston, SC 29403 phone: 843-614-8888 fax: 843-853-229 e-mail: eric@akimlawfirm.com other:		Defendant's Attorney: Linda Weeks Gangi, Bar No. 002365 Address: POB 1740, Conway, SC 29528-1740 phone: 843-248-5741 fax: 843-248-5112 e-mail: lgangi@thompsonlaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Compel Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$25 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION			
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE: _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: 		Date Filed: <u>1-17-2017</u>	
☒ MOTION FEE COLLECTED: <u>25.00</u> ☐ CONTESTED - AMOUNT DUE: _____			

FILED
Horry County
CLERK OF COURT
JAN 17 2017
3:04
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

MOTION TO COMPEL

FILED
HORRY COUNTY
2017 JAN 17 PM 3:04
CLERK OF COURT
HORRY COUNTY, SC

TO: THE PLAINTIFF AND ERIC POULIN, ATTORNEY FOR THE PLAINTIFF:

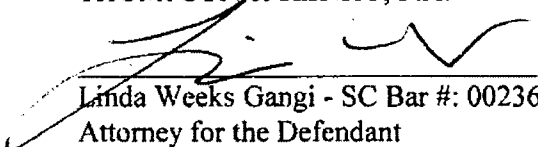
YOU WILL PLEASE TAKE NOTICE that the Defendant through his undersigned attorney will move before the Presiding Judge of the Court of Common Pleas at the Horry County Courthouse in Conway, South Carolina on the tenth (10th) day after service hereof or as soon as counsel might be heard for an Order compelling the Plaintiff to answer Interrogatories and the Request to Produce, as well as provide all documents received by the Anastopoulo Law Firm from AT&T.

The basis for this Motion is that the Defendant sent Plaintiff's Counsel Interrogatories and Request to Produce dated October 26, 2016. As of today's date, the Interrogatories and Request to Produce have not been answered. Furthermore, Plaintiff's counsel sent a subpoena to AT&T for records regarding the Defendant's cell phone. That subpoena is dated October 18, 2016. The Defendant requested copies of those documents on October 24, 2016 and on December 5, 2016. To date, AT&T records have not been provided to Defense counsel.

Conway, South Carolina

January 11, 2017.

THOMPSON & HENRY, P.A.


Linda Weeks Gangi - SC Bar #: 002365
Attorney for the Defendant
Post Office Box 1740
Conway, SC 29528-1740
(843) 248-5741 (p)
(843) 248-5112 (f)
lgangi@thompsonlaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)

vs.)

JULIAN NEIL ARMSTRONG,)
Defendant.)

RULE 11 CERTIFICATION

FILED
HORRY COUNTY, SC
2017 JAN 17 PM 3:04
BENJAMIN H. ELYS
CLERK OF COURT

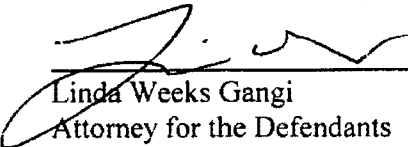
I HEREBY CERTIFY that prior to filing the attached Motion to Compel Answers to Interrogatories and Request for Production of Documents, I wrote to the Plaintiff's counsel, Eric Poulin of the Anastopoulo Law Firm, on December 5, 2016, asking that he provide responses in ten days from the date of the letter. No response has been made to that letter.

This Certification is made in satisfaction of Rule 11(a) of the *South Carolina Rules of Civil Procedure*.

Conway, South Carolina

January 11, 2017

THOMPSON & HENRY, P.A.


Linda Weeks Gangi
Attorney for the Defendants
Post Office Box 1740
Conway, SC 29528-1740
Telephone: (843) 248-5741
Fax: (843) 248-5112
lgangi@thompsonlaw.com
S.C. Bar No. 002365

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF MAILING

I, Neicey Smith, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 13th day of January, 2017 mailed copies of the following documents:

- a. Motion to Compel;
- b. Rule 11 Certification; and
- c. Certificate of Mailing

to the undersigned counsel for Plaintiff at his address of record, with sufficient postage attached thereto, as follows:

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
Attorney for the Plaintiff

FILED
HORRY COUNTY
2017 JAN 17 PM 3:04
WILLIAM ELYS
CLERK OF COURT
HORRY COUNTY, SC

Neicey Smith
Neicey Smith
neicey@thompsonlaw.com

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2015-CP-26-5633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
 AND MEMORANDUM**

TO: THE PLAINTIFF AND MATTHEW L. NALL, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant through his undersigned attorney will move before the Presiding Judge of the Court of Common Pleas at the Horry County Courthouse in Conway, South Carolina on the tenth day of service hereof or as soon thereafter as counsel might be heard for an Order Granting Summary Judgment. The basis for this motion is that the Statute of Limitations bars this action because the Plaintiff failed to timely serve the Summons and Complaint in the above-captioned action. The automobile accident which is the subject of this action occurred on April 8, 2013 (See paragraphs 5, 6, 7 and 8 of the Plaintiff's Complaint). The Plaintiff filed the Complaint on July 27, 2015. Thereafter, the Plaintiff attempted to serve the Defendant with the Summons and Complaint through the sheriff's department but the Defendant had moved. (See Affidavit of Non Service of the Sheriff). Thereafter, Plaintiff's counsel obtained an Order for Publication. The Plaintiff published the Summons in the North Myrtle Beach Times. No Answer was filed by the Defendant. An Order for Entry of Default was obtained by Plaintiff's counsel. Thereafter, Defendant's counsel moved to set aside the Order for Publication and the Order for Entry of Default. The Order for Entry of Default and the Order for Publication were set aside by Order dated October 21, 2016 and filed October 26, 2016 in the

Office of the Clerk of Court for Horry County. The basis for setting aside these Orders was fourfold; The Summons was insufficient. It did not comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*. The Summons did not notify the Defendant that if he fails to appear and defend, a judgment by default would be rendered against him. The failure of the Summons to comply with the provisions of Rule 4(b) of the *South Carolina Rules of Civil Procedure* results in the Court having no personal jurisdiction over the Defendant. Furthermore, the Summons published in the newspaper did not comply with S. C. Code Ann. §15-9-740 which requires that the information which is published must state the time and place of filing of the Summons and Complaint. The publication of the Summons in this case did not state the date of filing of the Summons in the Court of Common Pleas for Horry County. Furthermore, the Order of Publication signed by the Clerk of Court and dated November 24, 2015 required that the Defendant be served “via publication in a daily newspaper of the Defendant’s last known address, 186 Williamsburg Road, Little River, South Carolina.” The Summons was published in a North Myrtle Beach Times which is not a newspaper of general circulation in Horry County. It is not a daily newspaper and the Defendant never lived in North Myrtle Beach. The publication was not as ordered. Finally, the Court found that the Plaintiff did not use due diligence in locating the Defendant. The Defendant’s correct cell phone number was contained in the accident report so that his location could have easily been determined by calling the cell phone number. S.C. Code Ann. §15-9-740 requires that reasonable diligence be used to ascertain the residence of the Defendant. The Court found that the Plaintiff did not use reasonable diligence as required by S.C. Code Ann. §15-9-740. Based on the failure of the original Summons filed with the Court to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, the failure of the publication to include the date of the filing of the Summons and Complaint as required by S.C. Code Ann. §15-9-740, the failure to

publish the Summons in a daily newspaper of general circulation in Horry County, and the failure of the Plaintiff to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740, the Court found that it had no personal jurisdiction over the Defendant and that the service of the Summons and Complaint was not properly perfected on the Defendant. The Court ordered that the Order for Publication and the Order for Entry of Default and Referral for Hearing on Damages be set aside and declared null and void and of no force and effect. At the time of the hearing to set aside the Orders on October 21, 2016, the Court asked whether or not defense counsel would accept service of the Summons and Complaint and file an Answer within thirty days from the date of receipt of the Order. The Court also required the Plaintiff to amend the Summons to comply with Rule 4(b). The Summons to date has never been amended. No Acceptance of Service was ever provided to the Defendant's attorney. Defendant filed an Answer on October 26, 2016. That Answer raised the issue of the Statute of Limitations. Clearly the Statute of Limitations ran prior to service being perfected on the Defendant.

The Defendant certifies that his argument has been fully set forth above and a Memorandum would serve no purpose.

Conway, South Carolina

March 30, 2017

THOMPSON & HENRY, P.A.

s/Linda Weeks Gangi
Linda Weeks Gangi
Attorney for the Defendant
PO Box 1740
Conway, SC 29528-1740
(843) 248-5741 (p)
lgangi@thompsonlaw.com
SC Bar No. 2365

IN THE STATE OF SOUTH CAROLINA
COUNTY OF HORRY

BOBBY FOSTER,

Plaintiff,

v.

JULIAN NEIL ARMSTRONG,

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO. 2015-CP-26-5633

**PLAINTIFF'S MEMORANDUM OF
LAW IN OPPOSITION TO
DEFENDANT'S MOTION FOR
SUMMARY JUDGMENT**

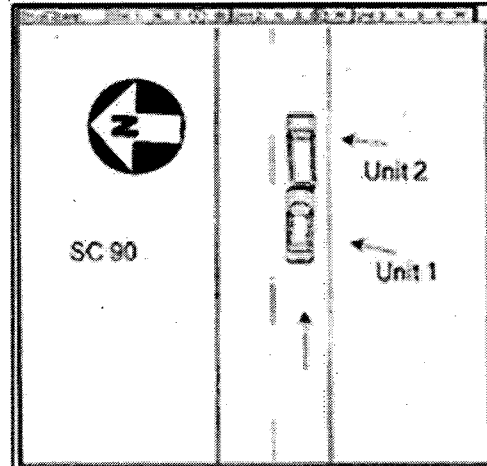
TO: THIS HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW Plaintiff, by and through his undersigned counsel, who submits this Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment in the above-referenced matter. Defendant's motion is based upon his belief that the statute of limitations bars this action due to Plaintiff's purported failure to timely serve his Summons and Complaint in this case. As is set forth more fully herein, Plaintiff did, in fact, timely serve his Summons and Complaint, and Defendant's motion should be denied. Plaintiff's Memorandum in Opposition is supported by the applicable statutes, rules of court, pleadings, any preceding and subsequent memoranda, and any oral arguments presented by counsel at a hearing on this matter.

STATEMENT OF FACTS

This case arises from an April 8, 2013, motor vehicle collision in Horry County wherein Plaintiff was lawfully traveling east on S.C. 90 when he came to a lawful stop for traffic. At that

same time, Defendant (Unit 1) was also traveling east on S.C. 90 and was following too closely, travelling too fast for conditions, failed to stop, and consequently struck Plaintiff's vehicle (Unit 2) from behind. (See Ex. 1; S.C. Traffic Collision Rpt.) The collision caused Plaintiff to suffer significant personal injuries and property damage.



On July 27, 2015, Plaintiff timely filed his Summons and Complaint with the Horry County Clerk of Court, and therein alleged that Defendant's negligence, gross negligence, negligence *per se*, careless, reckless, willful, wanton, and/or unlawful acts and/or omissions directly and proximately caused Plaintiff's injuries and damages. (See Ex. 2; Summons and Compl.) Upon receipt of the clocked copy of Plaintiff's Summons and Complaint from the Clerk of Court, Plaintiff attempted service of Defendant via certified mail, restricted delivery through the United States Postal Service ("USPS"). (See Ex. 3; Aug. 13, 2015, USPS Serv. Ltr.) Plaintiff's August 13, 2015, letter was sent to 186 Williamsburg Road, Little River, South Carolina, 29566, which is the address identified as Defendant's residence in the South Carolina Collision Report. (See Ex. 1.) Plaintiff's letter was assigned a tracking number of 70150640000579463544 by the USPS, and, on August 15, 2015, the USPS left notice at 186 Williamsburg Road that certified, restricted correspondence had been sent to Defendant at that address. (See Ex. 4; USPS Tracking Rpt.) Despite the notice left by the USPS, Plaintiff's service letter was unclaimed, and by August 31, 2015, the maximum hold time for Plaintiff's service letter had expired. (See Ex. 4.)

Upon learning of the expiration of the maximum USPS hold time, Plaintiff employed the Horry County Sheriff's Department to serve Defendant at his residence identified in the collision

report. The Summons and Complaint was received by the sheriff's department on September 24, 2015. (See Ex. 5; Oct. 26, 2015, Non-Service Aff.) Despite a diligent search, the sheriff's department was unable to locate Defendant. (See Ex. 5.) On November 19, 2015, Plaintiff petitioned the Horry County Clerk of Court for an order allowing Defendant to be served via publication. (See Ex. 6; Nov. 19, 2015, Pet. for Pub.) On November 23, 2015, Plaintiff's counsel's Affidavit for Publication was filed with the Clerk of Court advising that counsel had attempted to serve Defendant through the sheriff's department, that Defendant had moved and left no forwarding address, and that Defendant's whereabouts were unknown. (See Ex. 7; Nov. 23, 2015, Aff. for Pub.) Thereafter, the Clerk of Court granted Plaintiff's petition, thus finding it "appropriate and necessary to serve Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina. (See Ex. 8; Nov. 24, 2015, Order for Pub.)

All information then known indicated that Defendant lived in the small town of Little River, South Carolina. According to the town's website, "Little River, South Carolina is the oldest -- and one of the most unique -- towns along the greater Grand Strand." (See Ex. 9; Little River, South Carolina Website, <http://www.littleriversc.com>.) Plaintiff published his notice in the *North Myrtle Beach Times*, which was and continues to be a well-known newspaper serving the Grand Strand, including Little River South Carolina, for four decades. (See Ex. 10; *North Myrtle Beach*

Times Website, <http://www.nmbtimes.com>.) Plaintiff's notice, pictured below and attached hereto as Exhibit 11, ran during the weeks of December 24 and 31, 2015, and January 7, 2016. After three consecutive weeks of publication, on March 2, 2016, Plaintiff moved the Clerk of Court to enter default against Defendant (*see* Ex. 12), which the Clerk of Court ordered on March 8, 2016, finding that Defendant "was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the least date of publication and Plaintiff properly moved for entry of default on March 2, 2016." (*See* Ex. 13; Mar. 8, 2016, Order for Entry of Default.)

In July 2016, Defendant's counsel appeared in this matter. (*See* Ex. 14; Notice of Appearance.) In August 2016, Plaintiff's damages hearing, which had been previously set, was scheduled for the second time. Shortly thereafter, Defendant's counsel requested a continuance, which the Court granted. In September 2016, Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication, nine months after the publication had run and more than a month after counsel had appeared on Defendant's behalf. Defendant's motion claimed that Plaintiff's Summons, attached to his Complaint, was insufficient because it did not "notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." (*See* Ex. 15; Def. Mot. to Set Aside.) Defendant's motion further argued that the Summons, which was published in the newspaper and which had been deemed sufficient by the Clerk of Court, was statutorily noncompliant because it lacked the Complaint's filing location and

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-26-5633
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT

SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Anas-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina
NOTICE

date despite the Horry County Court of Common Pleas appearing on the notice along with the filed case number. (*See Ex. 15.*) Defendant also took issue with publication in the *North Myrtle Beach Times*, despite Defendant's residence in Little River. (*See Ex. 15.*) Defendant claimed that Plaintiff did not use "reasonable diligence" because he did not call Defendant's cell phone number to ascertain his whereabouts. (*See Ex. 15.*)

On Monday, October 17, 2016, the Court heard arguments on Defendant's Motion to Set Aside. Both parties argued the issues as laid out in their respective memoranda. Ultimately, the Court determined that it would not address issues of personal jurisdiction, but stated that, because the published Summons lacked a filing date, it would remove the default. Correspondingly, the Court asked Defendant's counsel to accept service on behalf of Defendant and provide a written order. Later, Defendant circulated his proposed order which substantially repeated the same issues in his Motion to Set Aside. The proposed order stated that the Court is without personal jurisdiction over Defendant and that the previous orders as to publication and default are void. Plaintiff's counsel promptly notified the Court and Defendant's counsel stating Plaintiff's objection to the findings of no jurisdiction and voiding the orders previously in force. (*See Ex. 16; Oct. 21, 2016, Pl.'s E-Mail to the Hon. Benjamin Culbertson.*) Notably, Plaintiff's counsel stated his concern that, should Defendant's proposed order be signed by the Court, Defendant would effectively be able to allege noncompliance with the statute of limitations, since the collision occurred in April 2013. (*See Ex. 16.*)

The Court signed Defendant's proposed order on October 21, 2016, stating that Defendant's counsel "has agreed to accept service of the Summons and Complaint ... and will file an Answer within thirty (30) days from the date of receipt of this Order." (*See Ex. 17; Oct. 21, 2016, Order.*) Without objection, Defendant's counsel accepted service, and thereafter Defendant

filed his Answer to Plaintiff's Complaint wherein he raised the statute of limitations as an affirmative defense. (*See* Ex. 18; Def.'s Answer at 13.)

On November 10, 2016, Plaintiff filed his Motion to Reconsider pursuant to Rule 59, SCRCP, requesting that the Court reconsider its October 21, 2016, ruling so as to not preclude Plaintiff's cause of action on the basis of the statute of limitations. (*See* Ex. 19; Nov. 10, 2016, Motion to Reconsider.) The Court denied Plaintiff's motion by order dated March 16, 2017. (*See* Ex. 20; Mar. 16, 2017, Order.) Prior to the March 16, 2017, Order, Defendant's counsel emailed the Court wherein she reiterated that she had accepted service on behalf of Defendant, and wherein she admits that the Court had jurisdiction over Defendant *vis-à-vis* said acceptance. (*See* Ex. 21; Mar. 7, 2017, Def.'s Email to the Hon. Benjamin Culbertson.) Defendant filed his Motion for Summary Judgment on March 31, 2017, based upon his belief that the statute of limitations bars this action due to Plaintiff's purported failure to timely serve his Summons and Complaint in this case. (*See* Ex. 22; Motion for Summ. J.)

LEGAL STANDARD

Pursuant to Rule 56, "[a] party against whom a claim, counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in his favor as to all or any part thereof." Rule 56(b), SCRCP. Furthermore, "[t]he judgment sought shall be rendered forthwith if ... there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law and should not be granted even when there is no dispute as to evidentiary facts if there is disagreement concerning the conclusion to be drawn from those facts. *Holmes v. East Cooper Cmty. Hosp., Inc.*, 408 S.C. 138, 758 S.E.2d 483 (2014).

In ruling on a motion for summary judgment, evidence and inferences which can be drawn therefrom should be viewed in light most favorable to non-moving party. *Manji v. Blackwell*, 323 S.C. 91, 473 S.E.2d 837 (Ct. App. 1996). In order to withstand a motion for summary judgment in cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence. *Fountain v. First Reliance Bank*, 398 S.C. 434, 730 S.E.2d 305 (2012). Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. *Murphy v. Tyndall*, 384 S.C. 50, 681 S.E.2d 28 (Ct. App. 2009).

ARGUMENT

Defendant's Motion for Summary Judgment is based upon his belief that Plaintiff's claim is barred by the statute of limitations due to Plaintiff's purported failure to timely serve his Summons and Complaint. This is despite the Clerk of Court's finding that Defendant was properly served by publication, that Defendant was in default, the fact that Defendant has voluntarily submitted himself to the personal jurisdiction of this Court, and the fact that Defendant has admitted that the Court had jurisdiction over him at the time his counsel accepted service of Plaintiff's Complaint.

Prior to Defendant's Motion for Summary Judgment, the parties presented their respective arguments to the Court as to Defendant's service and default as set forth more fully above. In short, the Court set aside the Clerk of Court's determination that Plaintiff had satisfied the requirements of service by publication and that Defendant was in default. However, as was argued by Plaintiff, the Court's October 21, 2016, Order and March 23, 2013, Order are overly broad in stating that the Court has no personal jurisdiction over Defendant, and that service was not properly perfected on Defendant. As was brought before the Court in Plaintiff's arguments, the Court's

respective orders appear to contradict the Court's request that Defendant's counsel accept service on behalf of Defendant and that Defendant file an Answer to Plaintiff's Complaint. Without objection, Defendant's counsel accepted service and Defendant filed his Answer to Plaintiff's Complaint, thereby submitting Defendant to the personal jurisdiction of the Court and effecting service of Plaintiff's Summons and Complaint. As to the latter, Plaintiff contends that, irrespective of Defendant's counsel's accepting service, Defendant was previously (and properly) served by publication in March 2016 within the statute of limitations period. Defendant's counsel even admits that the Court, at least as of the time of her acceptance, has jurisdiction over Defendant. To that end, where Defendant raises the statute of limitations as an affirmative defense in his Answer as well as the basis for his Motion for Summary Judgment, the Court should deny Defendant's motion due to the fact that this action was properly commenced within the statute of limitations period, and this Court has jurisdiction over Defendant.

I. Plaintiff's Cause of Action was Properly and Timely Commenced in Accordance with Rule 3(a)(1)-(2), SCRCP, and S.C. Code Ann. § 15-3-20.

In South Carolina, "a civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 3(a)(1)-(2), SCRCP. For the purpose of tolling any statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court and delivered for service to the sheriff of the county in which the defendant usually or last resided. *Sunshine Sportswear & Elecs., Inc. v. WSOC Television, Inc.*, 738 F. Supp. 1499, 1511 (D.S.C. 1989). In 2002, the South Carolina legislature amended section 15-3-20 of the South Carolina Code to provide that a civil action commences as of the date of filing if actual service is

accomplished within 120 days after filing, and became effective on May 24, 2002. S.C. Code Ann. § 15-3-20.

A party can waive a statute of limitations defense. *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 234, 599 S.E.2d 462, 466 (Ct. App. 2004) (citing *McLendon v. S.C. Dep't of Highways & Pub. Transp.*, 313 S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994)). Waiver is a question of fact for the finder of fact. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992). Furthermore, waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Id.* at 342-44, 415 S.E.2d at 387. A party's waiver may be expressed or implied by a party's conduct, and it may be applied to bar a party from relying on a statute of limitations defense in a dispositive motion. *See Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 404 S.E.2d 33 (1991) (“[w]aiver of [the statute of] limitations may be shown by words or conduct. Thus, waiver may result from express agreement, ... from failure to claim the defense, or by any action or inaction manifestly inconsistent with an intention to insist on the statute.” *Id.* at 315, 404 S.E.2d at 34 (quoting 54 C.J.S. Limitation of Actions § 22 at 52 (1987)) (emphasis in original)). The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962).

Here, Plaintiff stands by his assertion that Defendant was properly served by publication and his cause of action was properly commenced within the statute of limitation period, as is more fully set forth in this memorandum. Irrespective of that assertion, Defendant's appearance and untimely conduct in this case rises to the level of waiver. Defendant's counsel first appeared in July 2016 and appeared at Defendant's damages hearing in August 2016. Shortly thereafter, Defendant's counsel requested a continuance, which the Court granted. In September 2016,

Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication, nine months after the publication had run and more than a month after counsel had appeared on Defendant's behalf. It was ultimately determined by the Court that Plaintiff's published Summons lacked a filing date and that Defendant's default was removed; however, Defendant's counsel did accept service on behalf of Defendant and thereafter Defendant filed his Answer. Moreover, Defendant's counsel expressly admitted to the Court that it had jurisdiction over Defendant. Certainly, such conduct rises to the level of waiver and Defendant should be barred from relying on a statute of limitations defense in this instance. As such, Defendant's Motion for Summary Judgment should be denied.

II. Plaintiff's Service of Defendant by Publication Was Proper and Effective, Rendering Plaintiff's Cause of Action Timely Under Applicable Law.

The service of the summons and complaint, as well as notice of the pendency of a cause action, is based upon statutory law and has constitutional implications. To that end, both the United States Constitution and the South Carolina Constitution mandate that persons who may lose their rights should be informed of the risk of such loss. The United States Constitution provides that a state may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Similarly, the South Carolina Constitution provides that "[n]o person shall be finally bound by a judicial or quasi judicial decision affecting private rights except on due notice and an opportunity to be heard." S.C. Const. art. I, § 22. It has been recognized that, where a person upon whom service is sought, "employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights." *Caldwell v. Wiquist*, 402 S.C. 565, 576, 741 S.E.2d 583, 589 (Ct. App. 2013) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950)).

What constitutes proper service is governed by statute, and by the South Carolina Rules of Civil Procedure. Specifically, Rule 4(d)(1), SCRPC, requires that, in those instances in which the defendant in an action is an individual, service shall be made “by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein....” Rule 4 of the South Carolina Rules of Civil Procedure, as well as Title 15, Chapter 9 of the South Carolina Code of Laws, provides for alternative means of service in the event personal service cannot be had on an individual. First, Rule 4(d)(8) allows for service to be made by the USPS, certified mail restricted delivery with return receipt requested Rule 4(e) provides further that “[w]henver a statute or an order of court provides for service of a summons and complaint or of a notice ... service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.” Thus, effective service may be accomplished under S.C. Code § 15-9-710 *et seq.*, which allows for service to be made by publication, providing certain criteria have been met. By statute, service of the summons and complaint may be had by publication “[w]hen the person on whom the service of the summons cannot, after due diligence, be found within the State...” S.C. Code § 15-9-710.

Here, Plaintiff followed the necessary procedures for serving Defendant by publication after a thorough, diligent effort to serve Defendant at his last known address by both certified, restricted mail and the Horry County Sheriff’s Department. This was sufficiently shown to the Clerk of Court of Horry County whose decision to grant service of Defendant by publication was both just and proper under the laws of the State of South Carolina, and should not be disturbed. Accordingly, Defendant’s Motion for Summary Judgment should be denied.

A. Plaintiff Met His Burden to the Clerk of Court of Horry County in Establishing the Appropriateness of Defendant's Service by Publication, and the Clerk of Court's Decision is Unreviewable Absent Evidence of Fraud or Collusion.

When the person on whom the service of the summons is to be made cannot be found within the state after due diligence to locate him has occurred, and where the clerk of court for common pleas is satisfied that the person cannot be found, and where it appears to the clerk of court that a cause of action exists against the person on whom service is to be made, the clerk of court may grant an order that the service be made by publication. S.C. Code § 15-9-710. The existence of the factual basis necessary to satisfy the requirements of S.C. Code § 15-9-710 make an order for service by publication unreviewable absent fraud or collusion. *Caldwell*, 402 S.C. at 574, 741 S.E.2d at 588. In *Caldwell*, the judgment debtor moved to set aside two default judgments that arose out of personal injury complaints filed by two individuals whose vehicles were struck by a vehicle operated by the judgment debtor. *Id.* The Beaufort County Court of Common Pleas denied the judgment debtor's motions, and the South Carolina Court of Appeals held that the affidavits requesting service of process by publication were deficient on their face. *Id.*

As stated, the clerk of court, or other issuing officer, may authorize publication when, upon reviewing the petition and supporting affidavit, the clerk is satisfied that a cause of action exists against the defendant and that the defendant cannot be located after due diligence. South Carolina courts have routinely noted that service by publication is in derogation of the common law and the statutes allowing it must consequently be strictly construed. *See, e.g., Brown v. Malloy*, 345 S.C. 113, 546 S.E.2d 195 (Ct. App. 2001); *Tenney v. Am. Pipe Mfg. Co.*, 96 F. 919 (D.S.C. 1899). Consequently, the decision of the officer ordering service by publication is final in the absence of a showing of fraud or collusion. *Yarbrough v. Collins*, 293 S.C. 290, 292-93, 360 S.E.2d 300, 301 (1987) (citing *Yates v. Gridley*, 16 S.C. 496 (1882)). In the absence of such a showing of fraud or

collusion, the trial court is without authority to overrule the findings of a clerk of court regarding due diligence. *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct. App. 1997). When neither allegations nor proof of fraud or collusion are presented to the trial court, it must correctly refuse to set aside service. *Wachovia Bank of S.C. v. Player*, 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000). It is difficult to challenge the validity of an order granting leave to effectuate service via publication, as an affidavit in support of a petition for publication is, under most circumstances, unassailable; however, it can be effectively challenged if the moving party can demonstrate that the order was procured through fraud or collusion. See, e.g., *Montgomery*, 325 S.C. 500, 480 S.E.2d 467; *Wachovia*, 341 S.C. 424, 535 S.E.2d 128. Neither fraud nor collusion can, however, be proven without having the opportunity to present evidence. *Id.*

In *Montgomery*, an issue before our State's Court of Appeals was the determination of whether the order of publication was valid based on Montgomery's lack of diligence in attempting to locate the Mullinses. The *Montgomery* Court held that the trial court was "*without authority* to overrule the finding of the clerk of court that the Mullinses could not, after due diligence, be found in the County and State of their last known residence." *Montgomery*, 325 S.C. at 505-06, 480 S.E.2d at 470 (emphasis added). In reaching its conclusion, the *Montgomery* Court looked to the then decade old precedent set by the South Carolina Supreme Court that, in the absence of fraud or collusion, the decision of the officer ordering service by publication is final. *Id.* (citing *Yarbrough* at 293 S.C. 292-293, 360 S.E.2d at 301).

Here, Defendant has neither alleged nor proved fraud or collusion, therefore the Order of Publication should be final and fatal to Defendant's Motion for Summary Judgment. The signed Order on Defendant's Motion to Set Aside states that Defendant did not use "reasonable diligence" to locate Defendant because he did not call Defendant's cell phone. Such argument exceedingly

fails to rise to the level of fraud or collusion. As set forth in *Montgomery*, the law on this issue is clear that, in the absence of fraud or collusion, the decision of the officer ordering service by publication is final and unassailable. Plaintiff rightfully and lawfully employed the Horry County Sheriff's Department to locate and serve Defendant at his last known address after certified, restricted delivery at Defendant's 186 Williamsburg Road failed. Ultimately, the sheriff's department, the law enforcement authority for Horry County, returned an affidavit of non-service despite their respective due diligence to locate and serve Defendant. The use of the sheriff's department was sufficient for the Clerk of Court to order service by publication.

Still, the Court's Order on Defendant's Motion to Set Aside states that Plaintiff could have obtained his address by simply calling Defendant's cell phone. But, it is unlikely that an individual would be forthcoming with his current or even accurate address knowing that a law firm is attempting to track him down for the purpose of bringing a cause of action against him. The record is devoid of any evidence of fraud or collusion, and, to wit, there is no law, statutory or otherwise, which provides that not calling a defendant's cell phone to obtain his address rises to the level of fraud or collusion, or that such falls short of due diligence. As to the latter, Plaintiff employed two proper avenues of service prior to publication (certified mail and the sheriff's department), and nowhere in the rules does it require a plaintiff to call a cell phone to ascertain the whereabouts of a defendant. Defendant's argument is also puzzling on this issue, as he simultaneously argues that it was somehow improper for Plaintiff to look to the collision report for the Defendant's correct address for service, but proper to look to the same report to easily determine Defendant's by calling the number listed as Defendant's cell phone. Thus, Plaintiff used reasonable due diligence, the Clerk of Court's determination as to service by publication was proper and final on the issue of service, and Defendant's Motion for Summary Judgment should be denied.

B. Plaintiff's Publication in the *North Myrtle Beach Times* Met the Requirements of the Clerk of Court's Order and the Requirements of S.C. Code Ann. § 15-9-740.

Service by publication is generally governed by South Carolina Code Sections 15-9-710, *et seq.* The South Carolina Supreme Court has ruled with certainty that the service by publication statutes may be applied to actions *in personam* so long as the due process minimum contacts requirement is satisfied. *Hendrix v. Hendrix*, 296 S.C. 200, 371 S.E.2d 528 (1988) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945) (approving *in personam* jurisdiction over nonresidents who maintain minimum contacts within the forum state)). Moreover, any service of process must be "reasonably calculated to reach interested parties." *Aetna Cas. and Surety Co. v. Jenkins*, 282 S.C. 107, 112, 317 S.E.2d 460, 464 (Ct. App. 1984) (quoting *Mullane*, 339 U.S. 306).

Section 15-9-740 of the South Carolina Code sets forth the requirements for service by publication as follows:

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. In case of minors, persons imprisoned outside of this State, lunatics confined outside of this State or in like cases, a similar order shall be made and like proceedings be had as in case of adults not under disabilities.

In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of such filing. When service is made by publication the ten days' notice of application for judgment to be made at chambers as required in contested cases of certain kinds as provided by law may be inserted in the first or any subsequent publication mailed to the last known residence of the defendant....

S.C. Code Ann. § 15-9-740.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). In order to be a “newspaper of general circulation within a community,” a newspaper should contain news of general interest to the community and it must reach a diverse readership. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976). Additionally, a newspaper of general circulation has been defined as one that has a content appealing to the general public and having more than a *de minimis* number of actual paid subscribers. *Great Southern Media v. McDowell Cty.*, 304 N.C. 427, 284 S.E.2d 457 (1981).

In *Brown v. Malloy*, 345 S.C.113, 546 S.E.2d 195 (Ct. App. 2001), the Court of Appeals addressed the question of the sufficiency of notice pursuant to publication in a case involving termination of parental rights and adoption. The *Brown* Court referenced an order of publication which required that notice be published in a newspaper of general circulation in the county where the minor defendant was conceived and where the biological father is last known to reside. 345 S.C. at 126, 546 S.E.2d at 201-02 (noting that the requirements of the order of publication is the mandate of section 15-9-740, which requires publication in a newspaper “most likely to give notice to the person to be served”).

Precise compliance “with the rules is not required to effect service of process.” *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010). Instead, a court reviewing notice compliance must analyze “whether the plaintiff has *sufficiently complied with the rules* such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* (internal citations omitted) (emphasis added). The Supreme Court of the United States has routinely held that “notice [must be] reasonably calculated, under all the

circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

South Carolina courts have never required exacting compliance with the rules to effect service of process. *See Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900) (noting that when an officer’s return is defective as to time and place of service, such defective return can be amended to state facts); *see also Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff’s incomplete, unsworn return may be amended). Rather, the courts of this state are to inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 209 (1995).

Here, Plaintiff’s notice in the *North Myrtle Beach Times* stated that Plaintiff’s Complaint was “filed in the office of the Clerk of Court, HORRY Court of Common Pleas, on the [sic]”.

(*See Ex. 11.*) Clearly, this is a scrivener’s error in Plaintiff’s notice, as it did not include the date of filing. Yet, and most notably, this error is *not* fatal to the information conveyed by

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE, that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
Court of Common Pleas, on the
a/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina
N 12/24, 31, 1/7-STC

Plaintiff’s Notice. The notice very clearly informed readers that a Summons and Complaint had been filed against Defendant, and provided the name, address, and telephone number of Plaintiff’s counsel. Paramount in Plaintiff’s notice is the inclusion of, and direction to, the Horry County Court of Common Pleas where a copy of Plaintiff’s Summons and Complaint could be easily accessed via the filed case number present at the top of the notice. Such reference implicitly provided all readers the precise office at which the public filing could be accessed, and conferred upon readers the information necessary to obtain the date and time of Plaintiff’s filing although

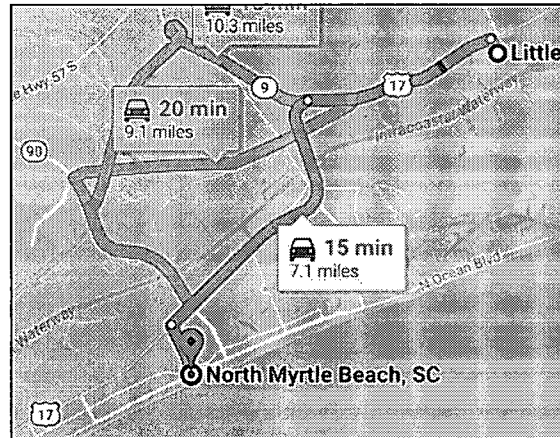
the same is extraneous as Defendant's Answer would be due 30 days after service - the running of the publication, not filing. The Clerk of Court for Horry County has long since provided information on filing not only at its physical office, but also via its website which was and is publically accessible at all times relevant to this cause of action.

Accordingly, the date of filing, or lack thereof, is implicitly contained in Plaintiff's notice and in any event is inconsequential to this matter. To be sure, there are circumstances where a lawsuit's date of filing is relevant to due process notice requirements. Dates of filing are relevant in divorce proceedings, mortgage foreclosures, or even probate actions. With all three of these examples, the date of filing is relevant to the matter because statutes provide specific timelines for interested parties to appear and take part in the litigation through hearings or public filings; however, this matter is different as it is a personal injury civil lawsuit based on a motor vehicle accident which is known to have occurred on April 8, 2013. Defendant, who was unable to be located until his counsel appeared, did not lose any constitutional right to object by being unaware of this lawsuit's filing date. In this circumstance, the only dates that are germane to this analysis are the dates on which the publication ran in the *North Myrtle Beach Times*, which ran December 24 and 31, 2015, and January 7, 2016. Therefore, the thirty days for Defendant to respond to Plaintiff's Complaint began running on January 7, 2016, the last day of publication.

Plaintiff sufficiently complied with the statute controlling notice via publication. Yet, the Court decided that, after the appearance of Defendant's counsel, the case would be best served by allowing Defendant's counsel to accept service, which Defendant's did without objection, and to submit an Answer because the notice did not, on its face contain the Complaint's filing date. Plaintiff's notice must only *substantially* comply with the statute, and the lack of filing date on the

face of the notice does not deprive the court of jurisdiction over Defendant even though the Court found it appropriate to let the Defendant out of default.

As to Plaintiff's use of the *North Myrtle Beach Times*, the signed Order on Defendant's Motion to Set Aside cites S.C. Code Ann. § 15-9-740 for the proposition that notice by publication must be made in "the one newspaper . . . most likely to give notice to the person to be served" and that "the summons, as published, must state the time and place of such filing." The Order provides that Plaintiff's publication in the



North Myrtle Beach Times was improper because it is not a paper of "general circulation in Horry County" and because Defendant lived in Little River, not North Myrtle Beach. However, Little River is a community in Horry County, South Carolina with a population of nearly 9,000. Little River is approximately seven miles from North Myrtle Beach and is considered to be among the communities in Horry County's Grand Strand. The *North Myrtle Beach Times* is a weekly news publication that is distributed to Little River and Loris, South Carolina, which has been the case for four decades. (See Ex. 10.) Contrary to Defendant's assertion, the *North Myrtle Beach Times* is, in fact, the newspaper published closest to Little River. Therefore, the *North Myrtle Beach Times* was the only realistic option for publication given its proximity to Little River, which Defendant admits is the community in which he lived before, at the time of, and after the subject collision. Furthermore, the weekly nature of publication, and the information provided within the *North Myrtle Beach Times* make it the most likely newspaper to provide notice to Defendant. Given that Plaintiff's notice in the *North Myrtle Beach Times* contained the necessary information

under the law, and that the *North Myrtle Beach Times* is a statutorily compliant “newspaper,” this Court should find that Plaintiff’s notice was proper, thus precluding Defendant’s argument that this cause of action was not commenced and served within the statute of limitations period. Consequently, Defendant’s Motion for Summary Judgment should be denied.

C. Plaintiff’s Filed and Published Summons Complied with Rule 4, SCRPC, Because Both Provided Defendant Must Respond Within Thirty Days.

Rule 4 of the South Carolina Rules of Civil Procedure requires that the summons in a civil matter contain a statement detailing the “time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint.” Rule 4(b), SCRPC.

Here, the signed Order on Defendant’s Motion to Set Aside provides that “the Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him.” This statement is factually incorrect because Plaintiff’s filed Summons explicitly states that the Defendant must answer Plaintiff’s Complaint within thirty days or Plaintiff will apply for the relief demanded in his Complaint. Specifically, Plaintiff’s Summons (filed with his Complaint and excerpted below) clearly indicates that Defendant is “required to Answer the Complaint . . . within 30 days . . . and if you fail to Answer the Complaint . . . Plaintiff will apply to the court for the relief demanded. . . .” (See Ex. 2 and excerpted below.)

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

It is very evident that Plaintiff's filed Summons complies with Rule 4(b) because it notifies the Defendant that he must respond within thirty days and that failure to do so will have consequences. The filed Summons is not ambiguous and conforms with Rule 4(b).

Likewise, Plaintiff's published Summons (excerpted right) states that Defendant must respond within thirty days, or Plaintiff will "apply to the Court for judgment by default for the relief demanded in the Complaint." (*See* Ex.11.) In both the filed Summons and the published Summons, Plaintiff fully complied with Rule 4(b) because he notified Defendant that he would apply for relief in thirty days absent Defendant's Answer. Both the filed and published Summons warn Defendant about the consequences of his failure to appear, namely judgment by default; however, the signed Order on this issue states that the Summons, presumably the filed Summons, does not comply with Rule 4(b). On this basis, Court's respective rulings on October 21, 2016, and March 16, 2017, are overly broad in stating that the Court has no personal jurisdiction over Defendant. As was previously argued to before the Court, and germane to Defendant's Motion for Summary Judgment, Plaintiff's Summons does, in fact, satisfy the requirements of Rule 4, SCRPC, which precludes Defendant's assertion of the statute of limitations as an affirmative defense here. This is underlined by Defendant's acceptance of service and admission that the Court has jurisdiction over Defendant. Thus, Defendant's Motion for Summary Judgment should be denied.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-26-5633
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT
SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Anas-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina
NOTICE

II. Defendant Has Submitted Himself to the Personal Jurisdiction of the Court.

Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance. *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007) (noting that, under Rule 4(d), SCRCP, voluntary appearance by a defendant is equivalent to personal service, and that it is immaterial whether the defendant invokes the term “appearance” to demonstrate sufficient intent to submit to the court’s jurisdiction). The *Stearns* Court additionally set forth that, although Rule 5(b), SCRCP, generally provides less stringent standards for serving pleadings subsequent to the original summons and complaint, Rule 5(a), SCRCP, requires service pursuant to Rule 4, SCRCP, when a party makes new or additional claims against another party that has been held in default for failure to appear. *Id.* at n. 2.

Long-standing precedent sets forth that a defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case. *State v. Dudley*, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct. App. 2003); *see also Cheraw Motor Sales Co. v. Rainwater*, 125 S.C. 509, 513 119 S.E. 237, 239 (1923). An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction.” *Dudley*, 354 S.C. at 542, 581 S.E.2d at 186. No specific act constitutes an appearance, as “a defendant may choose to come into court with trumpets, or quietly by the back door.” *Stephens v. Ringling*, 102 S.C. 333, 342, 86 S.E. 683, 685 (1915). Accordingly, courts decide on a case-by-case basis whether a defendant’s act demonstrates an intent to submit to the court’s jurisdiction. On many occasions, the South Carolina Supreme Court has found that a party can make a voluntary appearance without formally announcing same. *See, e.g., Triangle Auto*

Spring Co. v. Gromlovitz, 270 S.C. 386, 389–90, 242 S.E.2d 430, 431 (1978) (holding that consenting to a confession of judgment constitutes a voluntary appearance); *Connell v. Connell*, 249 S.C. 162, 167, 153 S.E.2d 396, 399 (1967) (holding that raising the defense of *res judicata* constitutes a voluntary appearance); *Southeastern Equip. Co. v. One 1954 Autocar Diesel Tractor*, 234 S.C. 213, 218, 107 S.E.2d 340, 342 (1959) (holding that filing a motion to set aside an attachment constitutes a voluntary appearance).

Here, even if Defendant was not properly served with Plaintiff's Summons and Complaint, Defendant waived any objection to personal jurisdiction by appearing and defending this matter, as is also set forth and discussed in Section I of this memorandum. In particular, Defendant's counsel, in her Notice of Appearance on behalf of Defendant, states that that she "hereby provides the Court and counsel of notice that she is representing the Defendant in the above-captioned action." Additionally, Defendant's counsel states in her March 7, 2017, email that "[the Court] asked if I would accept service of the Summons and Complaint and I indicated that I would" and that "

III. Plaintiff's Cause of Action Against Defendant Should Be Heard on Its Merits.

Public policy supports the overall premise that a lawsuit should be resolved on its merits. To avoid resolving litigation by default, strict compliance with the publication statutes is appropriate. *See Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 152, 169 S.E.2d 387, 390 (1969) (noting that the statute applicable to vacating a default judgment "should be liberally construed to see that justice is promoted and to strive for disposition of cases on their merits" (citation omitted)). Federal courts recognize the same policy. *See Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 417 (4th Cir. 2010) ("[w]e have repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed

of on their merits.”); *see also Tazco, Inc. v. Dir., Office of Workers Comp. Programs, U.S. Dep’t of Labor*, 895 F.2d 949, 950 (4th Cir. 1990) (noting “[t]he law disfavors default judgments as a general matter....”)

Here, given that the action was properly commenced and served within the statute of limitations, and it would be against public policy to deny Plaintiff’s cause of action to be properly presented before the trier of fact. To grant summary judgment in favor of Defendant based on the facts presented here would effectively dispose of a case which presents questions of material fact which only a jury can properly decide. Thus, Defendant’s Motion for Summary Judgment should be denied, and Plaintiff’s case should be allowed to proceed before the trier of fact.

CONCLUSION

In determining whether any triable issues of fact exist, the Court must view the evidence, and all reasonable inferences that may be drawn from the evidence, in the light most favorable to the non-moving party. The non-moving party is only required to submit a scintilla of evidence in order to withstand a motion for summary judgment. Plaintiff in this case has not only presented a mere scintilla of evidence, but has established that Defendant was properly served, that Plaintiff’s cause of action was properly commenced, and that, notably, that Defendant breached his duty of care to Plaintiff. For the reasons set forth herein, Defendant’s Motion for Summary Judgment should be denied. The applicable standard of care to be decided by the Court as a matter of law, but the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Therefore, summary judgment is not appropriate.

[Signature Block on Following Page]

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

/s/ Matthew L. Nall

Roy T. Willey, IV, Esquire

S.C. Bar Number: 101010

Eric M. Poulin, Esquire

S.C. Bar Number: 100209

Matthew L. Nall, Esquire

S.C. Bar Number: 102329

62 Columbus Street

Charleston, S.C. 29403

(843) 614-8888

Charleston, South Carolina

Dated: April 11, 2017

[illegible]

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

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<table border="1"> <tr> <td>Race</td> <td>A - Asian/Pacific Islander</td> <td>W - Caucasian</td> <td>a) Injury Status</td> <td>2 - Non-injury</td> <td>Seating Loc.</td> <td>20 - Pedestrian</td> <td>60 - Sleeper of Cab</td> <td>Restraint/Safety Device</td> </tr> <tr> <td>5 - African American</td> <td>M - Hispanic</td> <td>0 - Other</td> <td>3 - Not Injured</td> <td>3 - Inhabiting</td> <td>01 02 03</td> <td>30 - Training Unit</td> <td>70 - Riding on Unit Exterior</td> <td>00 - None Used</td> </tr> <tr> <td>1 - Asian/Pacific Islander</td> <td>U - Unknown</td> <td>4 - Unknown</td> <td>1 - Possible Injury</td> <td>4 - Fleeing</td> <td>04 05 06</td> <td>40 - Bus or Van (4th Floor or Higher)</td> <td>80 - Laid</td> <td>11 - Shoulder belt</td> </tr> <tr> <td colspan="4">Air Bag Deployment / Switch</td> <td>Ejection</td> <td>b) 2 or 3 Wheel Motorized Vehicle</td> <td>50 - Other Enclosed Area (containing)</td> <td>99 - Unknown</td> <td>21 - Grid</td> </tr> <tr> <td>1 - Deployed Front</td> <td>4 - Not Deployed</td> <td>1 - Not Ejected</td> <td colspan="2">Head Injury</td> <td>1 - Yes</td> <td>51 - Other Unenclosed Area (containing)</td> <td></td> <td>31 - Shoulder & Lap Belt</td> </tr> <tr> <td>2 - Deployed Side</td> <td>7 - Not Applicable</td> <td>2 - Part Ejected</td> <td colspan="2">Location After Impact</td> <td>3 - Freed from Vehicle</td> <td>a) Transported to Medical Facility</td> <td></td> <td>81 - Other</td> </tr> <tr> <td>3 - Deployed Both</td> <td>9 - Deployment Unknown</td> <td>3 - Tot. 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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BOBBY FOSTER

Plaintiff(s)

vs.

JULIAN NEIL ARMSTRONG

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-26-

5633

(Please Print)

Submitted By: Eric Poulin/Roy Willey/Sam Flynn

Address: 62 Columbus Street, Charleston, SC 29403

SC Bar #: 100209/101010/101729

Telephone #: (843)614-8888

Fax #: (843)853-2291

Other:

E-mail: eric@akimlawfirm.com

roy@akimlawfirm.com

sam@akimlawfirm.com

NOTE: The cover sheet 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 cover sheet 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)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199)

- Torts - Professional Malpractice**
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299)

- Torts - Personal Injury**
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☒ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ 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)

- 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)
☐ Other (799)

- Administrative Law/Relief**
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899)

- 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 Commission (990)
☐ Employment Security Comm (991)
☐ Other (999)

- Special/Complex /Other**
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699)
☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510)

Submitting Party Signature:

Date:



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

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.

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FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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. (Medical malpractice mediation is mandatory statewide.)
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.

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

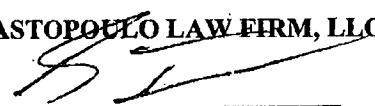
HORRY COUNTY
2015 JUL 27 PM 2:12
JULIAN NEIL ARMSTRONG
CLERK OF COURT

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

ANASTOPOULO LAW FIRM, LLC


Sam Flynn, Esquire
S.C. Bar No.: 101729
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

COMPLAINT
(Jury Trial Demand)

HORRY COUNTY
2015 JUL 27 PM 2:12
CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges and says as follows:

1. That the Plaintiff, Bobby Foster, (herein referred to as "Plaintiff") is a citizen and resident of the city of Ash, State of North Carolina.
2. That upon information and belief, Defendant Julian Neil Armstrong, (herein referred to as "Defendant") is a citizen and resident of Horry County, State of South Carolina.
3. That the motor vehicle collision that is the subject of this action occurred in Horry County, State of South Carolina.
4. That this Court has jurisdiction over the parties and the subject matter of this action.
5. That on or about April 8, 2013, Plaintiff was lawfully traveling east on SC 90 in a 2000 Dodge Van license plate YPM6186, VIN number 2B4GP44G0YR523493.
6. That on or about April 8, 2013, Defendant was traveling east on SC 90 in a 1995 Lexus license plate DWP624, VIN number JT8GK13T5S0090073.
7. That on or about April 8, 2013, Plaintiff came to a lawful stop for traffic.
8. That on or about April 8, 2013 Defendant was following too closely, travelling too fast for conditions, failed to stop, and violently struck Plaintiff's vehicle from behind.
9. That at all times material hereto, Defendant had a duty to operate his vehicle in a safe and prudent manner and to avoid injuring other motorists.

10. That the collision and the resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendant in any one or more of the following respects:

- a. In failing to keep a proper lookout while operating the vehicle;
- b. In failing to maintain control of the vehicle;
- c. In failing to stay in his lane of traffic;
- d. In failing to slow down to a controllable speed to stay in his lane of traffic;
- e. In failing to keep a safe distance from Plaintiff;
- f. In failing to use due care;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or use his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating the vehicle in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating the vehicle at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating the vehicle without using due care and without regard for safety and rights of Plaintiff;
- q. In operating the vehicle in a negligent, grossly negligent, careless, reckless,

willful, wanton and unlawful manner so as to create a dangerous situation;

- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- s. In negligently and carelessly operating the vehicle in such a manner to cause the vehicle to strike Plaintiff and cause personal injuries;
- t. In driving while distracted;
- u. In failing to immediately report an accident involving personal injury;
- v. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- w. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

11. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.

12. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff was jerked, thrown and slammed within the interior of his vehicle by the force of the Defendant's vehicle, causing him to sustain serious and painful personal injuries including, but not limited to, pain and suffering, and injuries to his back and shoulder.

13. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for his medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require him to expend a significant amount of money for his medical care, treatment and attendant services in the future;
- c) Plaintiff has been unable to work and has been deprived of his income;
- d) Upon information and belief, the nature of Plaintiff's injuries will deprive him of employment opportunity and income in the future;
- e) The pain of his injuries has resulted in his loss of enjoyment of life and change in his personality, all to permanent detriment to his health and physical well-being; and
- f) Upon information and belief, the Plaintiff was required to expend significant amounts of money to replace and repair property damage caused in the accident.

14. That Defendant's acts and omissions, as is set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendant's conscious indifference to the consequences of such acts and omissions.
15. That because of the Defendant's acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.
16. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory and exemplary or punitive damages for his personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC


Sam Flynn, Esquire
S.C. Bar No.: 101729
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Dated at Charleston, SC
This 22nd day of July, 2015.

ANASTOPOULO LAW FIRM

Akim A. Anastopoulos (SC)
Kate J. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AkdmLawFirm.com

Thursday, August 13, 2015

Sent Via Certified Mail, Restricted Delivery
7015 0640 0005 7946 3544

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

RE: *Bobby Foster v. Julian Neil Armstrong*
Case No.: 2015-CP-26-5633

Dear Mr. Armstrong:

Enclosed for service upon you, and pursuant to Rule 5 of the S.C.R.C.P., please find a copy of the Summons & Complaint that has been filed in the above referenced action.

Upon receipt, please forward this letter and these important legal papers to your insurance company immediately. These documents are time sensitive.

Sincerely,


Peggy Teasley
Litigation Manager

Enclosure

Cc: Bobby Foster

Mailing: 62 Columbus Street, Charleston, South Carolina 29403
North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201

Appointment Only: Myrtle Beach * Wilmington, North Carolina



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See tracking for related item: 9590952106150123692623

DATE & TIME	STATUS OF ITEM	LOCATION
September 4, 2015, 12:52 am	Departed USPS Facility	CHARLESTON, SC 29423
Your item departed our USPS facility in CHARLESTON, SC 29423 on September 4, 2015 at 12:52 am. The item is currently in transit to the destination.		
September 3, 2015, 1:37 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
September 2, 2015, 3:42 pm	Departed USPS Facility	COLUMBIA, SC 29201
August 31, 2015, 9:05 am	Unclaimed/Max Hold Time Expired	LITTLE RIVER, SC 29566
August 15, 2015, 1:13 pm	Notice Left	LITTLE RIVER, SC 29566
August 14, 2015, 8:55 am	Arrived at USPS Facility	COLUMBIA, SC 29201
August 14, 2015, 6:26 am	Departed USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 10:45 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 4:30 pm	Acceptance	CHARLESTON, SC 29403

Available Actions

FILED
HORRY COUNTY
2015 MAR -8 PM 3:26
MELANIE HOGGINS-WARD
CLERK OF COURT

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Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
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ANASTOPOULO LAW FIRM

Akim A. Anastopoulos (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AkimLawFirm.com

Tuesday, September 15, 2015

Horry County Sheriff's Office
Attn: Civil Process
P. O. Box 380
Conway, SC 29526

RE: *Bobby Foster v. Julian Neil Armstrong*
Case No.: 2015-CP-26-5633

Dear Sir/Madam:

Enclosed please find the Summons and Complaint in the above referenced matter to be served upon **Julian Neil Armstrong, 186 Williamsburg Road, Little River, SC**. Also enclosed is our firm's check in the amount of \$15 in payment for this service.

If you have any questions, please do not hesitate to contact me at 1-800-313-2546.

Sincerely,



Peggy Teasley
Litigation Manager
Enclosure

Cc: Bobby Foster

Mailing: 62 Columbus Street, Charleston, South Carolina 29403
North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Pee Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201

Appointment Only: Myrtle Beach * Wilmington, North Carolina



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

ORDER FOR PUBLICATION

FILED
HORRY COUNTY
15 NOV 23 PM 11:13
CLERK OF COURT
MELANIE HOGGARD-WARD

THIS MATTER comes before the Court pursuant to the Plaintiff's petition requesting an Order of Publication authorizing the service of the Defendant via publication.

Having reviewed the Plaintiff's Petition, and Affidavit, the Court finds that after due diligence, the Defendant cannot be found in this state, or at Defendant's last known residence. The Court finds that it is appropriate and necessary to serve the Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, that service upon the Defendant shall be effectuated by publishing the Summons, and notice of filing of the Complaint in the above referenced case in local newspaper, once weekly for three (3) consecutive weeks, and by forwarding a copy of the pleadings to the Defendant at Defendant's last known address.

IT IS SO ORDERED.

Melanie Hoggard-Ward
Clerk of Court **PRESIDING JUDGE COURT OF COMMON PLEAS**
HORRY JUDICIAL CIRCUIT

DATED: 11/24/15



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

AFFIDAVIT OF PUBLICATION

State of South Carolina

County of Horry

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the

Legal Notice

was printed and published in said newspaper

for and during the weekly publication,

and appeared in the issues of the

North Myrtle Beach Times *December 24th 31st*

and *January 7th* A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

this

7th

day of

January

A.D. 2016

Henry C. Hester, Sr.

Notary Public for South Carolina

Commission Expires May 26, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-26-5633
BOBBY FOSTER
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG
DEFENDANT

SUMMONS

TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Ana-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.

s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

NOTICE

TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
Court of Common Pleas, on the
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina

N 12/24, 31, 1/7-3TC



IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

ORDER FOR PUBLICATION

FILED
HORRY COUNTY
15 NOV 23 PM 11:13
CLERK OF COURT

THIS MATTER comes before the Court pursuant to the Plaintiff's petition requesting an Order of Publication authorizing the service of the Defendant via publication.

Having reviewed the Plaintiff's Petition, and Affidavit, the Court finds that after due diligence, the Defendant cannot be found in this state, or at Defendant's last known residence. The Court finds that it is appropriate and necessary to serve the Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, that service upon the Defendant shall be effectuated by publishing the Summons, and notice of filing of the Complaint in the above referenced case in local newspaper, once weekly for three (3) consecutive weeks, and by forwarding a copy of the pleadings to the Defendant at Defendant's last known address.

IT IS SO ORDERED.

Melanie Higgins-Ward
Clerk of Court
PRESIDING JUDGE COURT OF COMMON PLEAS
HORRY JUDICIAL CIRCUIT

DATED: 11/24/15



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Little River South Carolina is known for charter fishing, the Blue Crab Festival, Casino Boats & Fresh Seafood



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Little River SC

News & Events

Photos

Fishing

Casino Boats

Hotels & Motels

Restaurants

Marinas

Golf

Real Estate

Souvenirs

Fresh Seafood

Fun Stuff to Do

Locals

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Myrtle Beach Web Design

Welcome...
LITTLE RIVER SOUTH CAROLINA

Little River South Carolina is the oldest -- and one of the most unique -- towns along the greater Grand Strand.

Known for its fresh seafood, fishing charters, annual blue crab festival, and historic centuries-old live oak trees, it is one of the last communities on the Grand Strand where a slower pace of life still exists.

Little River is about 20 miles to the north of the hustle and bustle of Myrtle Beach, so residents and visitors alike share more peaceful days in this quaint fishing village.

Yet Little River is just a short drive to all the Grand Strand's famous attractions, signature golf courses, unique variety shows, shopping outlets and world-class entertainment.

Enter your starting location

Enter your destination

Start Now!

And with two Las-Vegas-style casino gambling boats now docked in Little River, locals and tourists flock to the waterfront twice a day, every day, for world-class casino gambling excursions into international waters where gambling is legal.

Little River is also home to generations of charter and commercial fishermen and shrimpers. Here you can choose between short party-boat fishing trips near the shore, or spend an entire day fishing in the deep waters of the Gulf Stream.

For those who love to play in the waterway instead of fish, there are jet ski rentals at the waterfront as well as dock space and pontoon boat rentals at Crickett Cove and Coquina Harbor marinas.

It's no secret that property values and real estate in Little River are rapidly rising in value since almost every one who visits wants to move or have a second home here.

There's a quality of life that residents cherish and visitors admire in our beautiful town on the north end of the Grand Strand.



Webmaster's Note: As readers may or may not know, Little River is an historic fish Intracoastal Waterway, unincorporated, in Horry County, South Carolina.

EXHIBIT

9

tabbies

In viewing online descriptions of Little River, most notably at Wikipedia, we've read definitions stating that Little River is merely a CDP, or zip code designation. **Nothing could be further from the truth.**

Little River is the oldest settlement in Horry County, as well as one of the oldest villages in the state, and is mentioned by name in civil war records and other documents preserved from the 1700s, 1800s, and 1900s. In contrast, **zip codes were implemented in 1963.**

The video at the top of this page highlights several picturesque spots in our beautiful town of Little River.

The photo above is taken on the deck of Crab Catchers Restaurant on Water Front Avenue, a locals' favorite spot for fresh fish, oysters, shrimp, or for watching the fisherman coming in with their catches and the gambling boats load and unload their passengers.

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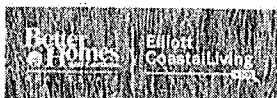
North Myrtle Beach Times

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North Myrtle Beach Times

Welcome to North Myrtle Beach and the newspaper serving our community and the Grand Strand for 38 years, the *North Myrtle Beach Times*.

Top News Stories

& Current Events

Chamber of Commerce membership awards gala Saturday honors businesses - Apr 6, 2017

The North Myrtle Beach Chamber of Commerce, CVB 2017 Membership Award held on Saturday, March 25, at The

Hatley takes part in beach renourishment, preservation hearing 2017

North Myrtle Beach Mayor Marilyn Hatley, acting in her role as vice chairperson South Carolina Beach Advocates

Dockside Village coming to Barefoot Landing - Mar 30, 2017

Burroughs & Chapin is planning a major transformation of Barefoot Landing over few years, starting with the

ALDI opens with huge crowd - Mar 30, 2017

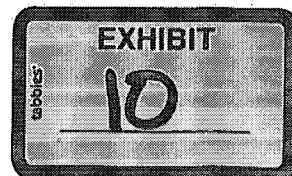
Last Thursday morning at approximately 8:30 a.m. ALDI Food Store held its grand opening in the Surfwood Shopping Center

Fire department to install free smoke alarms - Mar 23, 2017

North Myrtle Beach firefighters and members of participating organizations will install smoke alarms for residents on

City receives funding for beach project - Mar 22, 2017

North Myrtle Beach Times



North Myrtle Beach Times

PO Box 725
North Myrtle Beach,
S.C. 29597

Phone: 843-249-3525

Send Email:

nmbtimes@sc.rr.com



Send in your Church Calendar to

North Myrtle Beach Times/Loris Times
P.O. Box 725, North Myrtle Beach, S.C. 29597
or email: nmbtimes@sc.rr.com

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AFFIDAVIT OF PUBLICATION FILED
HORRY COUNTY

State of South Carolina

County of Horry

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the

Legal Notice

was printed and published in said newspaper

for and during the weekly publication;

and appeared in the issues of the

North Myrtle Beach Times December 24th 31st

and January 7th A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

this 7th day of January

A.D. 2016

Henry C. Hecker, Sr.

Notary Public for South Carolina

Commission Expires May 26, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2016-CP-26-8833
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT

SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Anes-
tjoudis Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.

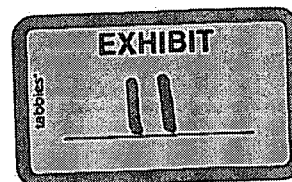
Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888

ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
County of Common Pleas, on the
6th Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888

ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina

N 12/24/16 1/7/17C



IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff(s),

v.

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

JULIAN NEIL ARMSTRONG,

Defendant(s).

FILED
HORRY COUNTY
2016 MAR - 8 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

Plaintiff's Attorney: Matthew Nall, Eric Poulin, Roy Willey
Bar Number: 102329, 100209, 101010
Address: 62 Columbus St., Charleston SC 29403
Phone: 843-614-8888 Fax: 843-853-2291
E-Mail: matt@akimlawfirm.com,
eric@akimlawfirm.com, roy@akimlawfirm.com

Defendant's Attorney:
Bar Number:
Address:
Phone:
E-Mail:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS III and III)
☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)

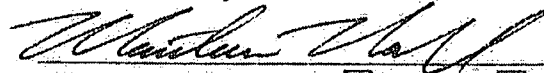
SECTION I: Hearing Information

Nature of Motion: Motion for Entry of Default - Request for Damages Hearing
Estimated Time Needed: 15 Min. Court Reporter Need: ☒ YES / ☐ NO

SECTION II: Motion / Order Type

- ☐ Written motion attached
☒ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.



Wednesday, February 10, 2016

Signature of Attorney for ☒ Plaintiff / ☐ Defendants Date Submitted

SECTION III: Motion Fee

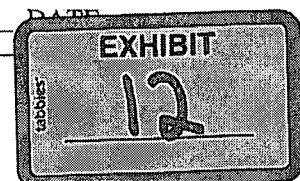
☒ PAID - AMOUNT: \$25.00

- ☐ EXEMPT:
- ☐ Rule to Show Cause in Child or Spousal Support
 - ☐ Domestic Abuse or Abuse and Neglect
 - ☐ Indigent Status ☐ State Agency v. Indigent Party
 - ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
 - ☐ Motion for Stay in Bankruptcy
 - ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
 - ☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
 - Name of Court Reporter: _____
 - ☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE
CODE: _____



CLERK'S SECTION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

PLAINTIFF'S MOTION FOR ENTRY
OF DEFAULT AND REQUEST FOR
HEARING ON DAMAGES

FILED
HORRY COUNTY
2016 APR 11 PM 3:25
CLERK OF COURT
MELANIE J. WARD

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Julien Neil Armstrong and schedule a hearing to determine damages.

INTRODUCTION

1. Plaintiff brought this action against Defendant Julian Neil Armstrong as a result of injuries suffered in an automobile accident that occurred on April 8, 2013. After an unsuccessful attempt to serve the Defendant personally through certified mail and the Horry County Sheriff, Plaintiff published Notice of the Summons and Complaint in The North Myrtle Beach Times. Defendant Julien Neil Armstrong did not file a responsive pleading or otherwise defend the suit.

2. Plaintiff is, therefore, entitled to entry of default and a hearing on damages.

ARGUMENT AND AUTHORITIES

3. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

4. Rule 55(b) permits the court to enter default judgment against a party against whom

default has been entered. SCRCP 55(b)(1).

5. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney Matthew Nall's sworn affidavit, attached as Exhibit A.

6. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

Upon information and belief, Defendant Julien Neil Armstrong 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. [Exhibit B].

7. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. [Exhibit C].

8. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015. [Exhibit D].

9. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. [Exhibit E].

10. Under SCRCP 12(a), the time for Defendant to respond is thirty (30) days after being served with process.

11. Because Defendant Julien Neil Armstrong did not file a responsive pleading or otherwise defend, Plaintiff is entitled to Entry of Default.

12. Plaintiff's damages are unliquidated and a hearing is requested to receive evidence of Plaintiff's damages.

PRAYER

13. For these reasons, Plaintiff asks the Court to enter a Default against Defendant Julien Neil Armstrong and to schedule an evidentiary hearing to determine Plaintiff's damages.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Matthew L. Nall, Esquire

SC Bar Number: 102329

Eric M. Poulin, Esquire

SC Bar Number: 100209

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Anastopoulos Law Firm, LLC

62 Columbus Street

Charleston, SC 29403

(843) 614-8888

Charleston, South Carolina

March 2, 2016

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

AFFIDAVIT OF MATTHEW NALL

FILED
HORRY COUNTY
2016 MAR -8 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW, the affiant, Matthew Nall, and first being duly sworn upon his oath
under the pains and penalties of perjury now states the following:

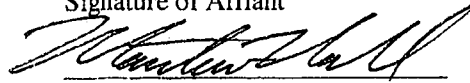
1. I am the above named affiant, Matthew Nall.
2. I, Matthew Nall, am an attorney with Anastopoulo Law Firm, LLC.
3. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. The package was sent to Defendant's last known address:

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

4. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015.
5. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7.
6. Upon information and belief, Defendant Julian Neil Armstrong is neither an infant nor incompetent adult.
7. As of today's date, March 2, 2016, Defendant Julian Neil Armstrong has failed to file a responsive pleading.

SIGNATURE ON FOLLOWING PAGE

Signature of Affiant



Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016.

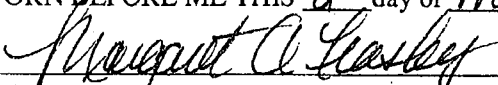

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 12-4-2017

EXHIBIT B
(Affidavit of Non-Military Service)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

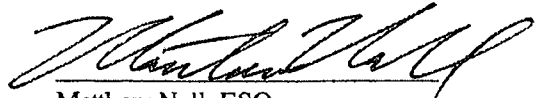
**AFFIDAVIT OF NON-MILITARY
SERVICE**

FILED
HORRY COUNTY
2016 MAR -8 PM 3:26
MELBA HUGGINS-WARD
CLERK OF COURT

Personally appeared before me the undersigned attorney, who first being duly sworn,
deposes and says:

That he is familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940,
and to induce the Court to enter a default judgment against Defendant Julian Neil Armstrong,
represents to the Court that from his file in this matter, and on information and belief based on
the hereinafter enumerated facts, Defendant Julian Neil Armstrong is/are not in the Military
Service of the United States and is/are not entitled to the protection of the Civil Relief Act of
1940 and Amendments thereto. The source of information on which he bases his belief is as
follows: Research made by the Anastopoulo Law Firm, LLC and Bobby Foster, Plaintiff herein.

Signature of Affiant:


Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016.

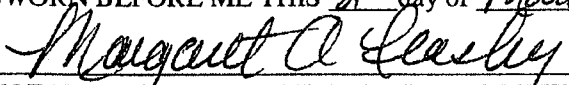

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 12-4-2017

EXHIBIT C
(Proof of Service)

ANASTOPOULO LAW FIRM

Akim A. Anastopoulos (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Mariantha L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1 (800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AkimLawFirm.com

Thursday, August 13, 2015

Sent Via Certified Mail, Restricted Delivery
7015 0640 0005 7946 3544

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

RE: *Bobby Foster v. Julian Neil Armstrong*
Case No.: 2015-CP-26-5633

Dear Mr. Armstrong:

Enclosed for service upon you, and pursuant to Rule 5 of the S.C.R.C.P., please find a copy of the Summons & Complaint that has been filed in the above referenced action.

Upon receipt, please forward this letter and these important legal papers to your insurance company **immediately**. **These documents are time sensitive.**

Sincerely,



Peggy Teasley
Litigation Manager

Enclosure

Cc: Bobby Foster

Mailing: 62 Columbus Street, Charleston, South Carolina 29403
North Charleston: 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418
Fees Due: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201

Appointment Only: Myrtle Beach * Wilmington, North Carolina

FILED
HORRY COUNTY
2016 MAR - 8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633



USPS Tracking®



Customer Service ›
Have questions? We're here to help.



Get Easy Tracking Updates ›
Sign up for My USPS.

Tracking Number: 70150840000579463544

Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail Restricted Delivery Return Receipt

See tracking for related item: 9590952106150123692623

DATE & TIME	STATUS OF ITEM	LOCATION
September 4, 2015, 12:52 am	Departed USPS Facility	CHARLESTON, SC 29423

Your item departed our USPS facility in CHARLESTON, SC 29423 on September 4, 2015 at 12:52 am. The item is currently in transit to the destination.

September 3, 2015, 1:37 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
September 2, 2015, 3:42 pm	Departed USPS Facility	COLUMBIA, SC 29201
August 31, 2015, 9:05 am	Unclaimed/Max Hold Time Expired	LITTLE RIVER, SC 29566
August 15, 2015, 1:13 pm	Notice Left	LITTLE RIVER, SC 29566
August 14, 2015, 8:55 am	Arrived at USPS Facility	COLUMBIA, SC 29201
August 14, 2015, 6:26 am	Departed USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 10:45 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 4:30 pm	Acceptance	CHARLESTON, SC 29403

FILED
HORRY COUNTY
2015 MAR -8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

Sign up for My USPS ›



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605693

STATE OF SOUTH CAROLINA,)
)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG

Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.

Phillip E. Thompson
Phillip E. Thompson
Sheriff of Horry County

Jane B. Jenkins
NOTARY PUBLIC FOR SOUTH CAROLINA

David Floyd
DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
HORRY COUNTY
7/16 MAR - 8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

AFFIDAVIT OF PUBLICATION

FILED

HORRY COUNTY

State of South Carolina

2016 JAN 20 AM 10:05

County of Horry

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the Legal Notice

was printed and published in said newspaper

for and during the weekly publication,

and appeared in the issues of the

North Myrtle Beach Times December 24th, 31st

and January 7th A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

this 7th day of January

A.D. 2016

Harry C. Hecker, Sr.

Notary Public for South Carolina

Commission Expires May 26, 2020.

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER 2015 CP 2605633
BOBBY FOSTER
PLAINTIFF
VS
JULIAN NEIL ARMSTRONG
DEFENDANT

SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Area
Topolo Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29403, within thirty (30)
days after the date hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.
Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
Office of the Clerk of Court, HORRY
County of Common Pleas, on the
5th day of January, 2016.
Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888
ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina
1/12/16 11:17 AM

FILED
HORRY COUNTY
MELANIE HUGGINS-WARD
CLERK OF COURT
2016 MAR -8 PM 3:26



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**ORDER FOR ENTRY OF DEFAULT
AND REFERRAL FOR HEARING ON
DAMAGES**

FILED
HORRY COUNTY
2016 APR -8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT

The Notice of Summons and Complaint in this matter was published in The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. Defendant Julien Neil Armstrong failed to submit a responsive pleading or defend the suit and on March 2, 2016, Plaintiff filed a Motion for Entry of Default and Request for a Hearing on Damages.

THE COURT HEREBY FINDS Defendant Julien Neil Armstrong was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the last day of publication and Plaintiff properly moved for entry of default on March 2, 2016.

IT ORDERED that Defendant Julien Neil Armstrong, is in Default and this Entry of Default is considered effective as of March 2, 2016, the date the Court was first notified of Defendant Julien Neil Armstrong's default through Plaintiff's Motion For Entry of Default.

IT SO FURTHER ORDERED that this matter is to be set on the Court's docket for a hearing on damages pursuant to Plaintiff's request.

Dated: 3/8/16

Melanie Huggins-Ward

Clerk of Court
Horry County Court of Common Pleas



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

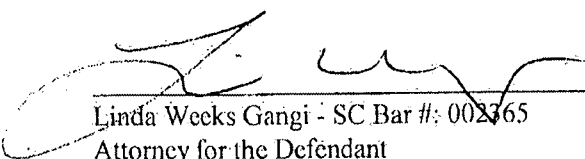
NOTICE OF APPEARANCE
(Jury Trial Requested)

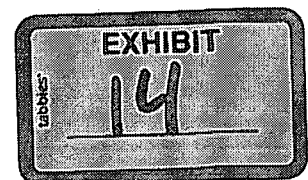
The undersigned hereby provides the Court and counsel of notice that she is representing the Defendant in the above-captioned action. All notices concerning this matter including, but not limited to, notice of a damages hearing should be sent to the undersigned.

THOMPSON & HENRY, P.A.

Conway, South Carolina

July 18, 2016.


Linda Weeks Gangi - SC Bar #: 002365
Attorney for the Defendant
Post Office Box 1740
Conway, South Carolina 29528
Telephone: (843) 248-5741
Fax: (843) 248-5112
lgangi@thompsonlaw.com



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)

vs.)

JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF MAILING

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 17th day of July 2016 mailed a copy of the **Notice of Appearance and Certificate of Mailing** to the undersigned counsel for Plaintiff at his/her/their address of record, with sufficient postage attached thereto, as follows:

cric@anastapoulolawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403


Ann Shearin

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bobby Foster,
☐ Plaintiff

v.

Julian Neil Armstrong,
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015--CP-26-5633MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Eric Poulin, Bar No. 100209 Address: 62 Columbus St, Charleston, SC 29403 phone: 843-614-8888 fax: 843-853-229 e-mail: eric@akimlawfirm.com other:	Defendant's Attorney: Linda Weeks Gangi, Bar No. 002365 Address: POB 1740, Conway, SC 29528-1740 phone: 843-248-5741 fax: 843-248-5112 e-mail: lgangi@thompsonlaw.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Set Aside Default Estimated Time Needed: 15 Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type	
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25 ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11-03)



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)
vs.)
JULIAN NEIL ARMSTRONG,)
Defendant.)

**MOTION TO SET ASIDE
ORDER FOR ENTRY OF
DEFAULT AND ORDER
FOR PUBLICATION**

TO: THE PLAINTIFF AND ERIC POULIN, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the Defendant through his undersigned attorney will move before the Presiding Judge of the Court of Common Pleas at the Horry County Courthouse in Conway, South Carolina on the tenth (10th) day after service hereof or as soon as counsel might be heard for an Order setting aside the Order for Entry of Default and Referral for Hearing on Damages as well as the Order for Publication.

The basis for this Motion is that the Plaintiff's Summons is insufficient. Rule 4(b) of the *South Carolina Rules of Civil Procedure* specifically requires the following:

"The Summons shall . . . contain . . . the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

The Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him. The failure of the Summons to comply with the provisions of Rule 4(b) of the *South Carolina Rules of Civil Procedure* results in the court having no personal jurisdiction over the defendant and the judgment is void. Ex parte *South Carolina Dept.*

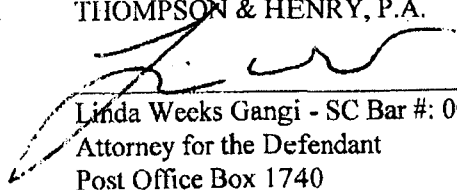
of Revenue, 350 S.C. 404, 566 S.E.2d 196 (S.C. App. 2001) and *State Board of Medical Examiners vs. Finwick Hall, Inc.*, 387 S.E.2d 458 (1990). Furthermore, the Summons published in the newspaper does not comply with S.C. Code Ann. §15-9-740 which requires that the information which is published must state the time and place of filing the Summons and Complaint. The publication of the Summons in this case does not state the date of the filing of the Summons in the Court of Common Pleas for Horry County, South Carolina. Furthermore, the Order for Publication signed by the Clerk of Court and dated November 24, 2015 required that the Defendant be served "via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Summons was published in the North Myrtle Beach Times. The Defendant did not live in North Myrtle Beach at the time of the accident or at any time subsequent thereto. The Defendant never received notice of this lawsuit until August of 2016. The Defendant moved from 186 Williamsburg Road, Little River, South Carolina to 4153 Horseshoe Road, Little River, South Carolina in August of 2015. The Defendant's cellphone number is reflected on the Accident Report. That cellphone number is still the Defendant's cellphone number so his location could have easily been determined had Plaintiff's counsel called Defendant's cellphone number. If the Plaintiff had used reasonable diligence as required by S. C. Code Ann. §15-9-740, the Defendant's whereabouts could easily have been obtained. Therefore, the Defendant requests that this Court set aside the Order for Entry of Default and Referral for Hearing on Damages, allow the Defendant to answer and allow the Defendant to fully defend this action before a jury. The Defendant has a meritorious defense.

The undersigned asserts that this Motion completely sets forth the Defendant's position and the filing of a Memorandum would serve no purpose.

Conway, South Carolina

September 20, 2016.

THOMPSON & HENRY, P.A.



Linda Weeks Gangi - SC Bar #: 002365

Attorney for the Defendant

Post Office Box 1740

Conway, SC 29528-1740

(843) 248-5741 (p)

(843) 248-5112 (f)

lgangi@thompsonlaw.com

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

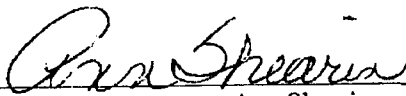
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
)
Plaintiff,)
)
vs.)
)
JULIAN NEIL ARMSTRONG,)
)
Defendant.)
_____)

CERTIFICATE OF MAILING

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 21st day of September 2016 mailed a copy of the **Motion to Set Aside Order for Entry of Default and Order for Publication and Certificate of Mailing** to the undersigned counsel for Plaintiff at his address of record, with sufficient postage attached thereto, as follows:

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403


Ann Shearin



Michael Close <michael@akimlawfirm.com>

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HOPRY - COMMON PLEAS - CASE#2015CP2605633

Bobby Foster vs. Julian Neil Armstrong

Fri, Oct 21, 2016 at 2:39 PM

Matthew Nall <matt@akimlawfirm.com>

To: "bculbertsonj@sccourts.org" <bculbertsonj@sccourts.org>, "bculbertsonic@sccourts.org" <bculbertsonic@sccourts.org>

Cc: Ann Shearin <Ann@thompsonlaw.com>, lgangi@thompsonlaw.com, Eric Poulin <eric@akimlawfirm.com>, "Katie Eri, Roy, Peggy, Sue Sam" <ziptrial@googlegroups.com>

Judge Culbertson,

Plaintiff disagrees with the findings of fact and conclusions of law in Defendant's Proposed Order Setting Aside Order of Publication and Setting Aside Order for Entry of Default and Referral for Hearing on Damages.

To my recollection, the Court vacated the Order of Default and requested that Mrs. Gangi accept service. The ultimate finding was that service via publication was proper, but that the publication's language lacked the date of the Complaint's filing. As such, good cause existed to remove the default. The Court did not rule on issues of personal jurisdiction and did not rule to set aside the Order for Publication.

As I mentioned in the hearing, this case arose from an April 2013 vehicular collision. My concern is that if Defendant's Proposed Order becomes the law of this case, Defendant will be able to claim the Statute of Limitations has passed.

Accordingly, I would propose that the portions of the Proposed Order stating that "this Court finds that this Court has no personal jurisdiction over the Defendant" be struck and any portion stating service was improper also be struck. The Court allowed the default to be lifted. Therefore, this case should be allowed to move forward on its merits rather than a technicality.

Thank you for your attention to this matter and please let me know if you have any questions or concerns.

[Quoted text hidden]

Regards,

Matthew Nall

Anastopoulos Law Firm LLC

62 Columbus Street | Charleston, SC 29403

Tel: 843-614-8888 | Fax: 843-853-2291

www.akimlawfirm.com | matt@akimlawfirm.com

Office Locations: N. Charleston | Florence

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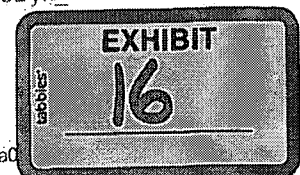
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STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)

vs.)

JULIAN NEIL ARMSTRONG,)
Defendant.)

ORDER SETTING ASIDE
ORDER FOR PUBLICATION AND
SETTING ASIDE ORDER FOR ENTRY
OF DEFAULT AND REFERRAL FOR
HEARING ON DAMAGES

PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
HEARING DATE:
PRESIDING JUDGE:

MATTHEW NALL, ESQ.
LINDA WEEKS GANGI, ESQ.
OCTOBER 17, 2016
BENJAMIN H. CULBERTSON

HORRY COUNTY
CLERK OF COURT
OCT 26 PM 3:05

The Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication on September 21, 2016. Thereafter, that Motion came to be heard before the undersigned on October 17, 2016. The Plaintiff was represented by Matthew Nall, Esq. of Anastapoulo Law Firm, LLC and the Defendant was represented by Linda Weeks Gangi, Esq. of Thompson & Henry, P.A. at the time of the hearing. This Court heard such arguments of counsel and reviewed all documents filed with the Court in this action.

One basis for the Defendant's Motion is that the Plaintiff's Summons is insufficient. Rule 4(b) of the *South Carolina Rules of Civil Procedure* specifically requires the following:

"The Summons shall . . . contain . . . the time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint."

The Summons filed in this action does not notify the Defendant that if he fails to appear and defend

Page 1 of 3

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a judgment by default will be rendered against him. The failure of the Summons to comply with the provisions of Rule 4(b) of the *South Carolina Rules of Civil Procedure* results in the court having no personal jurisdiction over the defendant; thus, the Orders issued in this case are void. Ex parte *South Carolina Dept. of Revenue*, 350 S.C. 404, 566 S.E.2d 196 (S.C. App. 2001) and *State Board of Medical Examiners vs. Finwick Hall, Inc.*, 387 S.E.2d 458 (1990). Furthermore, the Summons published in the newspaper does not comply with S.C. Code Ann. §15-9-740 which requires that the information which is published must state the time and place of filing the Summons and Complaint. The publication of the Summons in this case does not state the date of the filing of the Summons in the Court of Common Pleas for Horry County, South Carolina. Failure to comply with S.C. Code Ann. §15-9-740 results in this Court having no personal jurisdiction over the Defendant.

The Order for Publication signed by the Clerk of Court and dated November 24, 2015 required that the Defendant be served "via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Summons was published in the North Myrtle Beach Times. The Defendant did not live in North Myrtle Beach at the time of the accident or at any time subsequent thereto. The North Myrtle Beach Times is not a newspaper of general circulation in Horry County. Publication of the Summons in the North Myrtle Beach Times is not proper service and does not meet the requirements of S.C. Code Ann. §15-9-740.

The Defendant never received notice of this lawsuit until August of 2016. The Defendant moved from 186 Williamsburg Road, Little River, South Carolina to 4153 Horseshoe Road, Little River, South Carolina in August of 2015. The Affidavit signed by the Sheriff's deputy who attempted service of the Summons and Complaint on the Defendant at 186 Williamsburg Road, Little River, South Carolina indicated that the Defendant had moved. The Defendant's cellphone

Page 2 of 3

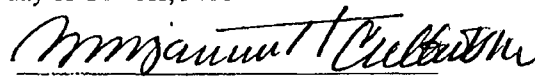
MAC

number is reflected on the Accident Report. That cellphone number is still the Defendant's cellphone number so his location could have easily been determined by calling the Defendant's cellphone number. S.C. Code Ann. §15-9-740 requires that reasonable diligence be used to ascertain the residence of the Defendant. If the Plaintiff had used reasonable diligence as required by S.C. Code Ann. §15-9-740, the Defendant's whereabouts could easily have been ascertained and proper service effected.

Based on the failure of the original Summons filed with the Court to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, the failure of the publication to include the date of filing of the Summons and Complaint as required by S.C. Code Ann. §15-9-740, the failure to publish the Summons in a newspaper of general circulation in Horry County, and the failure of the Plaintiff to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740, this Court finds that this Court has no personal jurisdiction over the Defendant and that service of the Summons and Complaint was not properly perfected on the Defendant. The Order for Publication and the Order for Entry of Default and Referral for Hearing on Damages are hereby set aside and declared null and void and of no force and effect. The Plaintiff shall amend the Summons to comply with Rule 4(b). The Defendant through his attorney, Linda Weeks Gangi, Esq., has agreed to accept service of the Summons and Complaint in the above-captioned action and will file an Answer within thirty (30) days from the date of receipt of this Order.

AND IT IS SO ORDERED this the 21st day of October, 2016.

In Chambers


The Honorable Benjamin H. Culbertson
Presiding Judge of the Fifteenth Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633

BOBBY FOSTER,)
Plaintiff,)

vs.)

JULIAN NEIL ARMSTRONG,)
Defendant.)

CERTIFICATE OF MAILING

I, Ann Shearin, an employee for Thompson & Henry, P.A., attorneys for the Defendant in the above-captioned action, certify that I have this 26th day of October 2016 mailed copies of the following documents:

- a. Order Setting Aside Order for Publication and Setting Aside Order for Entry of Default and Referral for Hearing on Damages; and
- b. Certificate of Mailing

to the undersigned counsel for Plaintiff at his address of record, with sufficient postage attached thereto, as follows:

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
Attorney for the Plaintiff



Ann Shearin
ann@thompsonlaw.com

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Bobby Foster,

☐ Plaintiff

v.

Julian Neil Armstrong,

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2015--CP-26-5633MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Matthew Nall, Bar No. Address: 62 Columbus St, Charleston, SC 29403 phone: 843-614-8888 fax: 843-853-229 e-mail: matt@akimlawfirm.com other:	Defendant's Attorney: Linda Weeks Gangi, Bar No. 002365 Address: POB 1740, Conway, SC 29528-1740 phone: 843-248-5741 fax: 843-248-5112 e-mail: lgangi@thompsonlaw.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Order Setting Aside Order for Publication, Default & Referral for Hearing on Damages Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant _____ Date submitted: <u>October 26, 2016</u>	
SECTION III: Motion Fee ☐ PAID - AMOUNT: ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☒ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Date Filed: _____ Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

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SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

**IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO: 2015-CP-26-5633**

BOBBY FOSTER,
Plaintiff,
vs.
JULIAN NEIL ARMSTRONG,
Defendant.

**ANSWER ON BEHALF OF
THE DEFENDANT**
(Jury Trial Requested)

The Defendant answering the Plaintiff's Complaint would respectfully show unto this Court:

1. Each and every allegation of the Plaintiff's Complaint which is not hereafter specifically admitted, modified or explained is denied and strict proof demanded thereof.

FOR A FIRST DEFENSE:

2. The Defendant does not have sufficient information to form a belief as to the allegations contained in paragraph 1 and therefore denies same and demands strict proof thereof.

3. The Defendant admits the allegations contained in paragraphs 2, 3 and 4.

4. The Defendant admits so much of the allegations of paragraphs 5, 6, 7 and 8 as they state that on or about April 8, 2013 a collision occurred between a vehicle driven by the Plaintiff and a vehicle driven by the Defendant. The Defendant denies the remaining allegations contained in paragraphs 5, 6, 7 and 8 and demands strict proof thereof.

5. The Defendant admits so much of the allegations of paragraph 9 as they are consistent with Title 56 of the South Carolina Code and the Rules of the Road as set forth in South Carolina



case law. The Defendant denies any allegations contained in paragraph 9 that are inconsistent therewith.

6. The Defendant denies the allegations contained in paragraphs 10, 11, 12, 13, 14, 15 and 16 and demands strict proof thereof.

FOR A SECOND DEFENSE:

7. Each and every allegation of the first defense is incorporated herein when not inconsistent herewith.

8. The accident referred to in the Plaintiff's Complaint and the Plaintiff's alleged injuries and damages, if any, were due to and caused by the negligence, gross negligence, recklessness, willfulness and wantonness of the Plaintiff combining and concurring with any and all acts of the Defendant as a direct and proximate cause thereof, and without which the same would not have occurred.

9. Therefore, the Plaintiff's alleged injuries and damages were caused in whole or in part, or were contributed to by the Plaintiff's own negligence and recklessness, and not by any negligence on the part of the Defendant.

10. Therefore, the Defendant pleads the Plaintiff's sole negligence or negligence equal to or greater than that of the Defendant, and contributory recklessness of the Plaintiff as a complete defense to this action; and pleads overall the South Carolina doctrine of comparative negligence as a defense to this action and any amount of recovery available to the Plaintiff herein.

FOR A THIRD DEFENSE:

11. Each and every allegation of the first and second defenses is incorporated herein when not inconsistent herewith.

12. Plaintiff's seeking punitive damages violates Defendant's rights under Article I, §10 of the United States Constitution, as well as the Fifth, Sixth, Eighth and Fourteenth Amendments of the United States Constitution and the similar provisions of the Constitution of South Carolina including but not limited to Article I, §3 and Article I, §15 of the Constitution of South Carolina for the following reasons:

- (a) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because the jury or fact finder has total discretionary power to award punitive damages, and adequate objective legal standards do not exist to guide and limit the jury's or fact finder's discretion, thus allowing an award of punitive damages to be irrational, arbitrary and capricious and based upon vague, unpredictable, conflicting and purely subjective standards;
- (b) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because the vague and inconsistent legal standards for the imposition of punitive damages deprive these defendants of sufficient notice of the type of conduct and mental state upon which a punitive damage award could result from alleged misconduct;
- (c) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because the guidelines, standards, procedures and instructions for the imposition of punitive damages are ambiguous, indefinite, vague, uncertain, conflicting, purely subjective, and fundamentally unfair;
- (d) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and Article I, §3 and Article I, §15 of the South Carolina Constitution are violated because no objective limitations are established concerning the amount or severity of punitive damages awards;
- (e) The Eighth Amendment of the United States Constitution and the same or similar provisions of the South Carolina Constitution

including, but not limited to, Article I, §15 of the South Carolina Constitution are violated because punitive damages constitute penal damages and amount to an unconstitutional criminal and excessive fine or punishment in a civil proceeding;

- (f) The Fifth and Sixth Amendments of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §12, Article I, §14 and Article I, §23 of the South Carolina Constitution are violated because Defendant is not allowed to exercise in this case all the constitutional and statutory rights which must be accorded to a party which is subject to the imposition of a criminal penalty in the form of punitive damages;
- (g) The equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §3 of the South Carolina Constitution are violated because the imposition of punitive damages discriminates against Defendants on the basis of wealth and greater amounts of punitive damages for the identical claims may be awarded against some Defendants who have more economic wealth than other Defendants;
- (h) The First Amendment of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §2 of the South Carolina Constitution are violated because the imposition of punitive damages is based upon vague, conflicting, uncertain, and purely subjective standards, without adequate notice to Defendant, and thereby create a chilling effect on speech and expression;
- (i) The due process and equal protection clauses of the Fifth and Fourteenth Amendments of the United States Constitution and the same or similar provisions of the South Carolina Constitution including, but not limited to, Article I, §3 of the South Carolina Constitution are violated because the imposition of punitive damages impairs Defendant's right of access to the courts to adjudicate civil disputes;
- (j) Article I, §10 of the United States Constitution and the same or similar provision of the South Carolina Constitution including, but not limited to, Article I, §4 are violated because the imposition of punitive damages impairs Defendant's right to contract.

- (k) Further, this answering Defendant asserts that should the jury award punitive damages, the Court determine that the punitive damages do not violate procedural due process or substantive due process, then this answering Defendant would assert that punitive damages should be limited as provided by S. C. Code Ann. §15-32-530(A).

FOR A FOURTH DEFENSE:

13. Each and every allegation of the first, second and third defenses is incorporated herein when not inconsistent herewith.

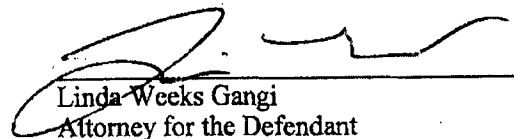
14. The Defendant would assert that the Plaintiff failed to timely serve the Defendant within the statute of limitations and thus, pleads the statute of limitations as a complete defense.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays that same be dismissed, for the cost of this action and for such other and further relief as this Court may deem just and proper

Conway, South Carolina

October 26, 2016.

THOMPSON & HENRY, P.A.



Linda Weeks Gangi
Attorney for the Defendant
Post Office Box 1740
Conway, South Carolina 29528
Telephone: (843) 248-5741
Fax: (843) 248-5112
lgangi@thompsonlaw.com
SC Bar #: 002365

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

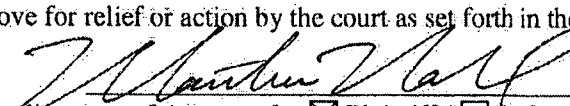
Plaintiff(s),

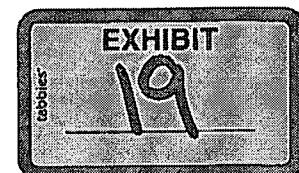
v.

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

JULIAN NEIL ARMSTRONG,

Defendant(s).

Plaintiff's Attorney: Eric Poulin, Roy Willey Matthew Nall Bar Number: 100209, 101010, 102329 Address: 62 Columbus Street, Charleston, SC 29403 Phone: 843-614-8888 Fax: 843-494-5536 E-Mail: eric@akimlawfirm.com, roy@akimlawfirm.com, matt@akimlawfirm.com	Defendant's Attorney: Linda Weeks Gangi Bar Number: Address: Post Office Box 1740 Conway, SC 29528 Phone: (843) 248-5741 E-Mail: lgangi@thompsonlaw.com
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS III and III) ☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion to Reconsider Estimated Time Needed: 15 minutes Court Reporter Need: ☒ YES / ☐ NO	
SECTION II: Motion / Order Type ☒ Written motion attached ☐ Form Motion / Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendants November 02, 2016 Date Submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	



JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE _____
☐ Other: _____	CODE: _____ DATE: _____
CLERK'S SECTION	
Collected by: _____	Date Filed: _____
☐ MOTION FEE COLLECTED: _____	
☐ CONTESTED - AMOUNT DUE: _____	

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**PLAINTIFF'S MOTION TO
RECONSIDER**

TO: THE HONORABLE JUDGE CULBERTSON AND ALL COUNSEL OF RECORD

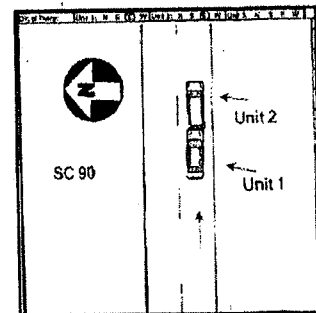
Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Plaintiff Bobby Foster ("Plaintiff") submits this Motion to Reconsider this Court's Judgment on Defendant Julian Armstrong's ("Defendant") Motion to Set Aside Order for Publication and to Set Aside Order for Entry of Default and Referral for Hearing on Damages. The grounds for Plaintiff's Motion are as follows:

- The Court removed Defendant's default in order for the case to move forward on its merits. Therefore the Court should reconsider its Order to clarify that it has personal jurisdiction over the Defendant and the suit is not barred by the statute of limitations.

Therefore, Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the statute of limitations. This Motion is supported by the applicable statutes, rules of court, pleadings, memoranda, and any oral arguments presented by counsel at a hearing on this matter.

STATEMENT OF FACTS

This case arose from an April 2013 rear-end collision in Horry County in. Plaintiff and Defendant were eastbound on SC-90. Exhibit 1: Police Report. Defendant ("Unit 1") struck Plaintiff ("Unit 2") from



behind as Plaintiff was stopped for traffic. Plaintiff was injured as a result.

Plaintiff filed suit against Defendant in July 2015. Exhibit 2: Compl. Plaintiff employed the Horry County Sheriff's Department to serve Defendant. Exhibit 3: Cert. of Service. Despite a diligent search, the Sheriff's Deputies were unable to serve Defendant. Id. Thereafter, this Court approved service via publication. Exhibit 4: Order Approving Pub. All information indicated that Defendant lived in the small community of Little River, South Carolina, so Plaintiff published notice in the North Myrtle Beach Times. Exhibit 5: Aff. of Pub. The Notice ran during the weeks of December 24 and 31, 2015, and January 7, 2016. Id. After three consecutive weeks of publication, Plaintiff moved this Court for an Order of Default on March 2, 2016. Exhibit 6: Mot. for Default. Default was entered on March 8, 2016.

In July 2016, Defendant's Counsel appeared. In August 2016, Plaintiff's damages hearing was scheduled for the second time. Shortly after, Defendant's Counsel requested a continuance, which was granted. In September 2016, Defendant filed a Motion to Set Aside Default, nine months after the publication had run and more than a month after Counsel had appeared.

Defendant's Motion claimed that Plaintiff's Summons, attached to his Complaint, was insufficient because it did not "notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." Def. Mot. to Set Aside Default 2. Defendant's Motion further argued that the Summons, which was published in the newspaper, was statutorily in compliant because it lacked the Complaint's filing location and date. Id. Defendant also took issue with publication in the North Myrtle Beach Times, despite Defendant's residence in Little River. Id. Defendant claimed that Plaintiff did not use reasonable diligence because he did not call Defendant's cell phone number to ascertain his whereabouts. Id.

On Monday, October 17, 2016, the Court heard arguments on Defendant's Motion to Set Aside Order of Publication and to Set Aside the Entry of Default and Referral for Damages Hearing. Both parties argued the issues as laid out in their respective memoranda. Ultimately, the Court stated it would not address issues of personal jurisdiction, but stated that because the published summons lacked a filing date, it would remove the default. Correspondingly, the Court asked Defense Counsel to accept service on behalf of the Defendant and provide a written order.

Later, Defendant circulated his Proposed Order which substantially repeated the same issues in his Motion to Set Aside Order of Publication and to Set Aside the Entry of Default and Referral for Damages. The Proposed Order stated that the Court is without personal jurisdiction over Defendant and the Orders of Publication and Default were void. Plaintiff emailed the Court and Defense Counsel stating his objection to the findings of no jurisdiction and voiding the order of publication. Exhibit 7. Plaintiff stated his concern that should Defendant's Proposed Order be signed by the Court, Defendant would be able to allege noncompliance with the statute of limitations, since the wreck occurred in April 2013. Id. The Court signed Defendant's Proposed Order.

As a result, Defendant filed his Answer with the Court and raised the statute of limitations as an affirmative defense. Def. Answer ¶ 13. Concurrent with Defendant's Answer, he also served initial discovery requests and noticed Plaintiff's deposition. Exhibit 8.

LEGAL STANDARD

Rule 59(e) allows a party to file a motion to reconsider a judgment for two specific reasons. SCRCP 59; Elam v. S.C. Dep't of Transp., 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). First, a motion to reconsider is appropriate when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes

for the court to reconsider or rule on it.” Elam, 361 S.C. at 24, 602 S.E.2d at 780. Second, “a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” Id.

ARGUMENT

This Court should reconsider its Order on Defendant’s Motion to Set Aside Order of Publication and Order of Default and Request for Damages Hearing because the current Order does not accurately reflect the outcome of the hearing. The Court granted Defendant’s Motion to Set Aside Default due to a typographical error in the published Summons and requested Defense Counsel accept service of the Complaint. However, the Order states that the Court has no jurisdiction over the Defendant. Defendant’s Default was vacated by a technicality; likewise, Plaintiff should not be prohibited from litigating his claim due to a technicality.

I. THE COURT REMOVED DEFENDANT’S DEFAULT IN ORDER FOR THE CASE TO MOVE FORWARD ON ITS MERITS. THEREFORE, THE COURT SHOULD RECONSIDER ITS OPINION TO CLARIFY THAT IT HAS PERSONAL JURISDICTION OVER THE DEFENDANT AND THE SUIT IS NOT BARRED BY THE STATUTE OF LIMITATIONS.

At the hearing on this matter, the Court decided to allow the Defendant out of Default because Plaintiff’s published Notice did not contain the Complaint filing date. However, the signed Order is overly broad and does not accurately reflect the results of the hearing. The Order states that “The Court has no personal jurisdiction over the Defendant and that service of the Summons and Complaint was not properly perfected on the Defendant.” This statement seems to contradict the Court’s request that Defense Counsel accept service on behalf of Defendant and allow the case to move forward. Based on this Order, Defendant is out of default and has filed his Answer stating that this case is barred by the statute of limitations. However, this suit has been filed since July 2015 and Plaintiff used reasonable diligence to prosecute his case. In the

interest of justice, the Court should reconsider its Motion to bar Defendant from claiming the statute of limitations as an affirmative defense.

A. Plaintiff's filed and published Summons complied with Rule 4 because both stated Defendant must respond within thirty days.

Rule 4(b) of the South Carolina Rules of Civil Procedure requires that the summons in a civil matter contain a statement detailing the "time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint." SCRCP 4(b). The signed Order states, "The Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." This statement is incorrect because Plaintiff's filed Summons states that the Defendant must answer within thirty days or Plaintiff will apply for the relief demanded in the Complaint.

Specifically, Plaintiff's Summons (filed with the Complaint and excerpted, below) clearly states that Defendant is "required to Answer the Complaint . . . within 30 days . . . and if you fail to Answer the Complaint . . . Plaintiff will apply to the court for the relief demanded"

Exhibit 2.

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

Clearly, the filed Summons complies with Rule 4(b) because it notifies the Defendant that he must respond within thirty days and that failure to do so will have consequences. The filed Summons is not ambiguous and conforms with Rule 4(b).

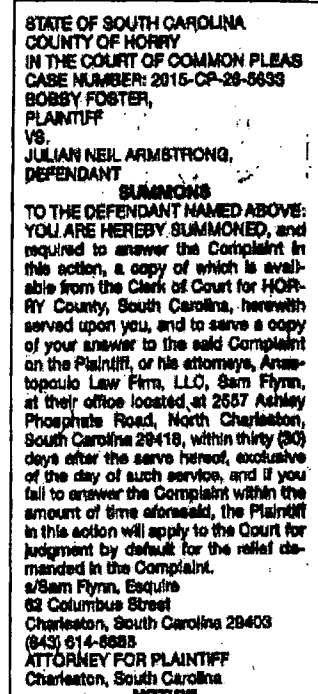
Likewise, Plaintiff's published Summons (excerpted, right) states that Defendant must respond within thirty days, or Plaintiff will "apply to the Court for judgment by default for the relief demanded in the Complaint." Ex. 5.

In both the filed Summons and the published Summons, Plaintiff fully complied with Rule 4(b) because he notified Defendant that he will apply for relief in thirty days absent Defendant's Answer. Both the filed and published Summons warn Defendant about the consequences of his failure to appear.

However, the signed Order on this issue states that the Summons, presumably the filed Summons, does not comply with Rule 4(b). On this basis, the Order states that there is no personal jurisdiction over the Defendant. This portion contradicts the Court's statement that it would not address issues of personal jurisdiction. The Court should reconsider this issue because both Summons satisfy Rule 4's requirements. Furthermore, this issue is deserving of reconsideration because the signed Order voids the Court's jurisdiction over Defendant and creates a statute of limitations issue.

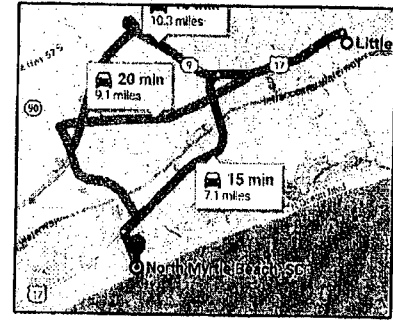
B. Publication in the North Myrtle Beach Times was proper.

The signed Order on Defendant's Motion cites S.C. Code Ann. § 15-9-740 for the proposition that notice by publication must be made in "the one newspaper . . . most likely to give notice to the person to be served" and that "the summons, as published, must state the time



and place of such filing.” S.C. Code Ann. § 15-9-740. The Order states Plaintiff’s publication in the North Myrtle Beach Times was improper because it is not a paper of “general circulation in Horry County” and because Defendant lived in Little River, not North Myrtle Beach.

Little River is a community in Horry County, South Carolina with a population of nearly 9,000. Little River is approximately seven miles from North Myrtle Beach. The North Myrtle Beach Times is a weekly news publication that is distributed to Little River and Loris, South Carolina. Exhibit 9: North Myrtle Beach Times Website. The North Myrtle Beach Times is the newspaper published closest to Little River. Therefore, the North Myrtle Beach is the only realistic option for publication given its proximity to Little River. Furthermore, the weekly nature of publication, and the information provided within the paper make it the most likely newspaper to provide notice to Defendant.



Accordingly, the Court should reconsider this issue to the extent that the Order states service was not proper because notice was not published in a paper of general circulation in Horry County. The North Myrtle Beach Times is the closest publication to Defendant’s last known address and most reasonably targeted to give him notice of suit.

C. Defendant neither alleged nor proved fraud or collusion, therefore the Order of Publication is final.

The signed Order on Defendant’s Motion states Defendant did not use “reasonable diligence” to locate Defendant because he did not call Defendant’s cell phone. However, the law on this issue is clear: “in the absence of fraud or collusion, the decision of the officer ordering service by publication is final.” Montgomery v. Mullins, 325 S.C. 500, 506, 480 S.E.2d 467, 470

(Ct. App. 1997). Plaintiff used the Horry County Sheriff's Department to locate and serve Defendant. Ultimately, the Sheriff's Department – the law enforcement authority for Horry County – returned an affidavit of non-service despite their due diligence. Ex. 3. The use of the Sheriff's Department was sufficient for the Court to order service by publication.

Still, the Order states Plaintiff could have obtained his address by simply calling Defendant's cell phone. But, it is unlikely that an individual would be forthcoming with their current address knowing that a law firm is attempting to track them down to sue them. The Court should reconsider this portion of the Order insofar as an Order of Publication is final absent fraud or collusion and Plaintiff did use reasonable diligence. Defendant did not present any evidence of fraud or collusion. Defendant's only argument is that Plaintiff did not call Defendant on his cell phone.

D. Plaintiff's Notice substantially complied with the statutes on service and the lack of filing date is not fatal to proper service.

Precise compliance "with the rules is not required to effect service of process." Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010). Instead, a court reviewing Notice compliance must analyze "whether the plaintiff has **sufficiently complied with the rules** such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Id. (internal citations omitted)(emphasis added). "In all cases in which publication is made the complaint must first be filed and the summons, as published, must state the time and place of such filing." S.C. Code Ann. § 15-9-740. However, the Supreme Court has routinely held "notice [must be] reasonably calculated, under all the circumstances, to apprise interested

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE, that the Summons in the above mentioned action of which the foregoing is a copy, together with the Complaint therein was filed in the office of the Clerk of Court, HORRY Court of Common Pleas, on the s/Bern Flynn, Esquire
 62 Columbus Street
 Charleston, South Carolina 29403
 (843) 614-8888
ATTORNEY FOR THE PLAINTIFF
 Charleston, South Carolina
 N 12/24, 81, 1/7-8TC

parties of the pendency of the action and afford them an opportunity to present their objections.”
Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314, 70 S. Ct. 652, 657, 94 L. Ed. 865 (1950).

Plaintiff's Notice stated that the Complaint was “filed in the office of the Clerk of Court, HORRY Court of Common Pleas, on the [sic]”. Ex. 5. Clearly, this is a scrivener's error in the Notice, as it did not include the date of filing. Yet, this error is not fatal to the information conveyed by the Notice. The Notice informed readers that:

- 1) A Summons & Complaint were filed against Defendant;
- 2) In the Horry County Court of Common Pleas;
- 3) The name, address, and telephone number of the filing attorney and law firm.

Ex. 5. The Notice provided information that there was a suit filed against Defendant, where it could be obtained, and who he could contact if he had any questions. The date of filing, or lack thereof is inconsequential to this matter. To be sure, there are circumstances where a suit's filing date is relevant to due process notice requirements. Dates of filing are relevant in divorce proceedings, mortgage foreclosures, or even probate actions. With all three of these examples, the date of filing is relevant to the matter because statutes provide specific timelines for interested parties to appear and take part in the litigation through hearings or public filings.

This case is different. In a personal injury civil suit, based on a motor vehicle accident, the date of filing is irrelevant to a defendant being served via publication. The defendant, who was unable to be located, does not lose any constitutional right to object by being unaware of the suit's filing date. In this circumstance, the only dates that are germane to this analysis are the dates on which the publication ran in the local newspaper. Here, the Notice ran December 24 and 31, 2015, and January 7, 2016. Ex. 5. Therefore, the thirty days for Armstrong to respond to the Complaint began running on January 7, 2016, the last day of publication.

Plaintiff sufficiently complied with the statute controlling notice via publication. Yet, the Court decided that after the appearance of Defense Counsel, the case would be best served by allowing the defendant to submit an Answer because the Notice did not contain the Complaint's filing date. Therefore, the Court should reconsider its Order on this issue to the extent that the Order states the Notice was not statutorily compliant. The notice must only *substantially* comply with the statute, and the lack of filing date does not deprive the court of jurisdiction over Defendant.

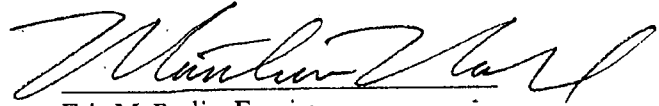
CONCLUSION

At the hearing Defendant's Motion, the Court decided that good cause was shown to remove the default and allow Defendant to answer because there was no date on the Notice. Tellingly, the Court asked Defense Counsel if she would be willing to accept service of the Complaint. Defense Counsel agreed to accept service. It is apparent that the Court thought this matter should move forward on its merits in the interest of justice. Unfortunately, this case arose from an April 2013 car wreck. The Court's Order states that it has no personal jurisdiction over the Defendant, the Notice of Publication was in error and now void, and vacated the entry of default. Based on the Order, Defendant filed an Answer claiming the statute of limitations as a total defense. Therefore, Plaintiff respectfully requests that the Court clarify its opinion on this matter to address the issue of the statute of limitations. Plaintiff has used reasonable diligence to move his case forward and should not be blocked out from justice on a technicality.

SIGNATURE ON FOLLOWING PAGE

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Eric M. Poulin, Esquire
SC Bar Number: 100209
Roy T. Willey, IV, Esquire
SC Bar Number: 101010
Matthew L. Nall, Esquire
SC Bar Number: 102329
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

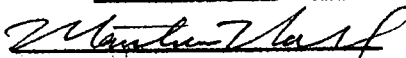
ATTORNEYS FOR THE PLAINTIFF

Charleston, South Carolina

November 2, 2016

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES
THAT (S)HE SERVED A COPY OF THE
PLEADING OR FOREGOING PAPERS ON
ALL COUNSEL OF RECORD THIS 2nd
DAY OF November, 20 16



201352953

SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM										# of Units		Arrested, At-Fault, or Driving Report		Notified		Arrested	
TR - 310 (Rev. 11/2010)										02		02		1845		1845	
Date: 04-08-2013 Time of Collision: 1600										Collision Location (Rt. # / Name): 590 /		Mileage: 0.8		Dir.: N E		In (Near) City or Town of: NORTH MYRTLE BEACH	
1- Interstate 4- Secondary 2- US Primary 5- County 3- SC Primary 6- PP										Base Intersection (Rt. # / Name): / PINNACLE PL		1- Main 6- Connector 2- Alternate 7- Business 3- Spur 9- Other		GPS COORDINATES 00 00 00 00		DEGREES MINUTES SECONDS	
R.R. Id.: From: Ramp Only To: 1- Interstate 4- Secondary N E 1- Entrance N E 2- US Primary 5- County S W 2- Exit S W 3- SC Primary 6- Other										Second Intersection (Rt. # / Name): / GOLF AVE		1- Main 6- Connector 2- Alternate 7- Business 3- Spur 9- Other		Latitude: 33 51 48.78		Longitude: 78 38 53.50	
E-460503 Driver/Pedestrian's Full Name: ARMSTRONG JULIAN NEIL Unit 1 Sex: M Race: B Street/R.F.D.: 180 WILLIAMSBURG RD Birth Date: 08-05-1995 City, State, & Zip: LITTLE RIVER SC 295687812 State: SC Driver's License #: 102586664 Class: D Insurance Company: STATE FARM Year: 1995 Body: 4S Vehicle Make: LEXS VIN #: JTBGK13T5S0000073 State: SC Year: 2015 License Plate #: DWP824 Owner's D.L. #: UNKNOWN Home Telephone: (843) 5040638 Owner's Full Name: ARMSTRONG FRANCIS NEIL Bus. Telephone: Street/R.F.D.: 186 WILLIAMSBURG RD Contributed To Collision: Yes No City, State, & Zip: LITTLE RIVER SC 295687812 Estimated Speed: 20 Speed Limit: 40 C.D.L. Req. Yes (No) TBS Req. Yes (No) No/Orig Info (see back): Yes (No) Summons #: 0323075 Code: 21 Code Towed: Yes (No)										E-460787 Driver/Pedestrian's Full Name: FOSTER BOBBY Unit 2 Sex: M Race: W Street/R.F.D.: 3315 DREW ST Birth Date: 09-25-1950 City, State, & Zip: ASH NC 28420-3025 State: NC Driver's License #: 23836037 Class: C Insurance Company: NATIONWIDE Year: 2000 Body: VN Vehicle Make: DODG VIN #: 2B4GP4400YR523483 State: NC Year: 2013 License Plate #: YPM6186 Owner's D.L. #: 23836037 Home Telephone: (910) 3637403 Owner's Full Name: FOSTER BOBBY Bus. Telephone: Street/R.F.D.: 3315 DREW ST Contributed To Collision: Yes No City, State, & Zip: ASH NC 28420-3025 Estimated Speed: 0 Speed Limit: 40 C.D.L. Req. Yes (No) TBS Req. Yes (No) No/Orig Info (see back): Yes (No) Summons #: Code: Code Towed: Yes (No)		State: Year: License Plate #: Owner's D.L. # Home Telephone: Owner's Full Name Bus. Telephone: Street/R.F.D. Contributed To Collision: City, State, & Zip Yes No Estimated Speed: C.D.L. Req. Yes (No) TBS Req. Yes (No) No/Orig Info (see back): Yes (No) Summons #: Code: Summons #: Code Towed: Yes (No)					
Dir. of Travel: Unit 1: N S (E) W Unit 2: N S (E) W Unit 3: N S E W										Unit 1 Dam.: \$2000 Unit 2 Dam.: \$2000 Unit 3 Dam.: \$ Prop. Dam. 1: \$ Prop. Dam. 2: \$ Property Owner/Victim: Address: City: State: Zip: Phone:		Unit 1 AND UNIT 2 WERE TRAVELING EAST ON SC 90. UNIT 2 STOPPED FOR TRAFFIC. UNIT 1 STRUCK UNIT 2. UNIT 1 WAS DRIVING TOO FAST FOR CONDITIONS.					
										PLAINIFF'S EXHIBIT							
NOTICE - THE TR-310 IS FOR STATISTICAL REPORTING PURPOSES ONLY AND IS A REFLECTION OF THE OFFICER'S BEST KNOWLEDGE, OPINION AND BELIEF COVERING THE COLLISION BUT NOWARRANT IS MADE AS TO THE FACTUAL ACCURACY THEREOF.										Investigating Officer's Name: FROST - M K Rank: /CPL Badge #: T 4 2 5 Jurisdiction Code: H P O 5 Review Date: 04-08-2013 Reviewer's Name: C F Costa Rank: CPL Internal Agency Code: 13FL043454							

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - Horry - COMMON PLEAS - CASE#2015CP2605633

2013522953

UNIT	Date of Birth	Sex	Race	INJ	Seat	R/S/D	A23	Expt	LAI	Tran	Name	Street Address	Zip Code
01	08-05-1995	M	B	0	01	13	4	1	1	2	ARMSTRON JULIAN NEIL	188 WILLIAMSBURG RD LITTLE SC	295607811
02	00-25-1950	M	W	1	01	13	4	1	1	1	FOSTER BOBBY	3315 DREW ST ASH NC	28420-3025

Race		A - American Indian		W - Caucasian		a) Injury Status		2 - Non-injured/Injured		Seating Loc.		20 - Pedestrian		60 - Sleeper of Cab		Restraint/Safety Device	
3 - Asian American		H - Hispanic		O - Other		3 - Not Injured		3 - Inhabiting		01 02 03		30 - Training Unit		70 - Riding on Unit Exterior		00 - None Used	
1 - American Native or American Indian		U - Unknown		4 - Unk.		4 - Possible Injury		4 - Fatal		04 05 06		40 - Bicyclist or Veh (4th row or higher)		80 - Laid		10 - Shoulder Belt	
Air Bag Deployment / Switch		Ejection		b) 2 or 3 Wheel Motorized Vehicle		Head Injury		1 - Yes		2 - No		50 - Other Endowed Area (mountain)		99 - Unk. NA		20 - Laid Only	
1 - Deployed Front 4 - Not Deployed		1 - Not Ejected		2 - Not Ejected		2 - Not Ejected		2 - Not Ejected		3 - Free from Injuries		51 - Other Uninjured Area (mountain)		99 - Unk. NA		30 - Other	
2 - Deployed Side 7 - Not Deployed		2 - Not Ejected		3 - Not Ejected		3 - Not Ejected		3 - Not Ejected		4 - Not Available		51 - Other Uninjured Area (mountain)		99 - Unk. NA		13 - Shoulder & Laid Out 99 - Unk.	
3 - Deployed Both 9 - Deployment Unk.		3 - Not Ejected		4 - Not Ejected		4 - Not Ejected		4 - Not Ejected		5 - Not Available		51 - Other Uninjured Area (mountain)		99 - Unk. NA		Pedestrian, Motor Pedestrian, Other	
4 - Deployment Off Person 9 - Unk.		4 - Not Ejected		5 - Not Ejected		5 - Not Ejected		5 - Not Ejected		6 - Not Available		51 - Other Uninjured Area (mountain)		99 - Unk. NA		31 - Helmet 51 - Restraint Clothing	
5 - Not Ejected		6 - Not Ejected		7 - Not Ejected		7 - Not Ejected		7 - Not Ejected		7 - Not Available		51 - Other Uninjured Area (mountain)		99 - Unk. NA		61 - Protective Pads 61 - Ligning	

Sequence of Events		Collision, Not Fixed		Collision, Fixed Object		Collision, Fixed Object		Collision, Fixed Object		Collision, Fixed Object		Collision, Fixed Object		Collision, Fixed Object	
1 - Not Trapped		2 - Not Trapped		3 - Not Trapped		3 - Not Trapped		3 - Not Trapped		3 - Not Trapped		3 - Not Trapped		3 - Not Trapped	
2 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)	
3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)	
3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)		3 - Extruded (Mechanical Means)	

Vehicle Type		15 - Full Size Van		27 - Pedestrian		01 - School Bus		01 - School Bus		01 - School Bus		01 - School Bus		01 - School Bus	
01 - Automobile		16 - Van Van		28 - Motor Vehicle		02 - Passenger Bus		02 - Passenger Bus		02 - Passenger Bus		02 - Passenger Bus		02 - Passenger Bus	
12 - Access Truck		17 - Semi-Truck		29 - Motor Vehicle		03 - Other		03 - Other		03 - Other		03 - Other		03 - Other	
13 - Truck Tractor		25 - Motorcycle		30 - Motor Vehicle		04 - Other		04 - Other		04 - Other		04 - Other		04 - Other	
14 - Other Truck		26 - Other Motorcycle		31 - Train		05 - Other		05 - Other		05 - Other		05 - Other		05 - Other	

Vehicle Use Code		04 - Ambulance		08 - Farm Use		12 - Fire Fighting		12 - Fire Fighting		12 - Fire Fighting		12 - Fire Fighting		12 - Fire Fighting	
01 - Personal		05 - Military		09 - Wrecker or Tow		13 - Logging		13 - Logging		13 - Logging		13 - Logging		13 - Logging	
02 - Driver Training		06 - Transport Passenger		10 - Police		14 - Other		14 - Other		14 - Other		14 - Other		14 - Other	
03 - Construction/Maint.		07 - Transport Property		11 - Government		15 - Other		15 - Other		15 - Other		15 - Other		15 - Other	

Vehicle Attachment		4 - Flat Trailer		8 - Towed Motor Vehicle		C - Other Trailer		C - Other Trailer		C - Other Trailer		C - Other Trailer		C - Other Trailer	
1 - None		5 - Flat Trailer		9 - Petroleum Tanker		D - Flat Bed		D - Flat Bed		D - Flat Bed		D - Flat Bed		D - Flat Bed	
2 - Motor Vehicle		6 - Trailer w/Boat		A - Lumber Trailer		E - Train Trailer		E - Train Trailer		E - Train Trailer		E - Train Trailer		E - Train Trailer	
3 - Semi-Trailer		7 - Cargo Trailer		B - Automobile Trailer		F - Other		F - Other		F - Other		F - Other		F - Other	

Action Prior to Impact		01 - Stopping		03 - Parked		21 - Approaching Lefting Vehicle		21 - Approaching Lefting Vehicle		21 - Approaching Lefting Vehicle		21 - Approaching Lefting Vehicle		21 - Approaching Lefting Vehicle	
02 - Changing Lanes		09 - Stopped or		22 - Entering Crossing Location		22 - Entering Crossing Location		22 - Entering Crossing Location		22 - Entering Crossing Location		22 - Entering Crossing Location		22 - Entering Crossing Location	
03 - Entering Intersection		10 - Turning left		23 - Stopping/Waiting on Vehicle		23 - Stopping/Waiting on Vehicle		23 - Stopping/Waiting on Vehicle		23 - Stopping/Waiting on Vehicle		23 - Stopping/Waiting on Vehicle		23 - Stopping/Waiting on Vehicle	
04 - Entering Intersection		11 - Turning right		24 - Pushing Vehicle		24 - Pushing Vehicle		24 - Pushing Vehicle		24 - Pushing Vehicle		24 - Pushing Vehicle		24 - Pushing Vehicle	
05 - Making U-turn		12 - Turning left		25 - Stopping		25 - Stopping		25 - Stopping		25 - Stopping		25 - Stopping		25 - Stopping	
06 - Movement/Entirely Straight Ahead		13 - Turning right		26 - Walking, Playing, Cycling		26 - Walking, Playing, Cycling		26 - Walking, Playing, Cycling		26 - Walking, Playing, Cycling		26 - Walking, Playing, Cycling		26 - Walking, Playing, Cycling	
07 - Overriding/Backing		14 - Turning left		27 - Working		27 - Working		27 - Working		27 - Working		27 - Working		27 - Working	

Weather Condition		1 - Clear		6 - Fog, Smog, Smoke		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal	
2 - Rain		7 - Snow		7 - Blowing Sand		3 - Severe Crosswinds		3 - Severe Crosswinds		3 - Severe Crosswinds		3 - Severe Crosswinds		3 - Severe Crosswinds	
3 - Dark		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)	
4 - Daylight		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)	
5 - Daylight		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)	

Light Condition		3 - Dark		6 - Dark (Street Lamps On)		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal		22 - Flashing Traffic Signal	
4 - Daylight		7 - Dark (Lighting Unswitched)		7 - Dark (Lighting Unswitched)		7 - Dark (Lighting Unswitched)		7 - Dark (Lighting Unswitched)		7 - Dark (Lighting Unswitched)		7 - Dark (Lighting Unswitched)		7 - Dark (Lighting Unswitched)	
5 - Daylight		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)		8 - Dark (Street Lamps On)	
6 - Daylight		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)		9 - Dark (Lighting Unswitched)	
7 - Daylight		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)		10 - Dark (Street Lamps On)	

Junction Type		01 - Frontal		03 - Frontal Intersection		07 - Shared Use Pacific or Trail		12 - Y-Intersection		12 - Y-Intersection		12 - Y-Intersection		12 - Y-Intersection	
02 - Driveway		04 - Four-way Intersection		08 - T-Intersection		13 - Non-junction		13 - Non-junction		13 - Non-junction		13 - Non-junction		13 - Non-junction	
03 - Driveway		05 - Railway Grade Crossing		09 - Traffic Circle		14 - Unk.		14 - Unk.		14 - Unk.		14 - Unk.		14 - Unk.	

Contributing Factors		01 - Driver		02 - Driver		03 - Driver		04 - Driver		05 - Driver		06 - Driver		07 - Driver	
01 - Driver		02 - Driver		03 - Driver		04 - Driver		05 - Driver		06 - Driver		07 - Driver		08 - Driver	
02 - Driver		03 - Driver		04 - Driver		05 - Driver		06 - Driver		07 - Driver		08 - Driver		09 - Driver	
03 - Driver		04 - Driver		05 - Driver		06 - Driver		07 - Driver		08 - Driver		09 - Driver		10 - Driver	
04 - Driver		05 - Driver		06 - Driver		07 - Driver		08 - Driver		09 - Driver		10 - Driver		11 - Driver	

Roadway		30 - Debris		49 - Other		50 - Debris		50 - Debris		50 - Debris		50 - Debris		50 - Debris	
31 - Nonhighway Work		49 - Unk.		51 - Lying Bar/Debris in Roadway		51 - Lying Bar/Debris in Roadway		51 - Lying Bar/Debris in Roadway		51 - Lying Bar/Debris in Roadway		51 - Lying Bar/Debris in Roadway		51 - Lying Bar/Debris in Roadway	
32 - Obstruction in Roadway		52 - Obstruction in Roadway		52 - Obstruction in Roadway		52 - Obstruction in Roadway		52 - Obstruction in Roadway		52 - Obstruction in Roadway		52 - Obstruction in Roadway		52 - Obstruction in Roadway	
33 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)		53 - Road Surface Condition (i.e., Wet)	
34 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)		54 - Road Surface Condition (i.e., Wet)	

Non-Mobility		60 - Animal in Road		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.	
61 - Glass		68 - Other		69 - Unk.		69 - Unk.		69 - Unk.		69 - Unk.		69 - Unk.		69 - Unk.	
62 - Obstruction		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.		63 - Weather Cond.	
63 - Weather Cond.		68 - Other		69 - Unk.		69 - Unk.		69 - Unk.		69 - Unk.		69 - Unk.		69 - Unk.	
64 - Work Zone		65 - Work Zone		66 - Work Zone		67 - Work Zone		68 - Work Zone		69 - Work Zone		70 - Work Zone		71 - Work Zone	

Vehicle Damage		70 - Bumper		78 - Windshield		78 - Windshield		78 - Windshield		78 - Windshield		78 - Windshield		78 - Windshield	
71 - Steering		77 - Restraint System		78 - Truck Coupling		78 - Truck Coupling		78 - Truck Coupling		78 - Truck Coupling		78 - Truck Coupling		78 - Truck Coupling	
72 - Power Plant		79 - Cargo		80 - Fuel System		80 - Fuel System		80 - Fuel System		80 - Fuel System		80 - Fuel System		80 - Fuel System	
73 - Transmission		79 - Cargo		80 - Fuel System		80 - Fuel System		80 - Fuel System		80 - Fuel System		80 - Fuel System		80 - Fuel System	
74 - Lights		80 - Fuel System		81 - Other		81 - Other		81 - Other		81 - Other		81 - Other		81 - Other	

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

BOBBY FOSTER

Plaintiff(s)

vs.

JULIAN NEIL ARMSTRONG

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2015-CP-26-

5633

(Please Print)

Submitted By: Eric Poulin/Roy Willey/Sam Flynn

Address: 62 Columbus Street, Charleston, SC 29403

SC Bar #: 100209/101010/101729

Telephone #: (843)614-8888

Fax #: (843)853-2291

Other:

E-mail:

eric@akimlawfirm.com

roy@akimlawfirm.com

sam@akimlawfirm.com

NOTE: The cover sheet 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 cover sheet 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)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

- Torts - Professional Malpractice**
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- Previous Notice of Intent Case #
- 20 -CP-
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

- Torts - Personal Injury**
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☒ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ 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)

- 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)
- ☐ Other (799)

- Administrative Law/Relief**
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture-Consent Order (850)
- ☐ Other (899)

- 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 Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

- Special/Complex /Other**
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature:

Date:

PLAINTIFF'S EXHIBIT

2

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

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.

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - Horry - COMMON PLEAS - CASE#2015CP2605633

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

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

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. (Medical malpractice mediation is mandatory statewide.)
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.**

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
) FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

SUMMONS
(Jury Trial Demanded)

HORRY COUNTY
2015 JUL 27 PM 2:12
JULIAN NEIL ARMSTRONG
JURY TRIAL DEMAND
COURT

TO: THE DEFENDANT(S) ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

ANASTOPOULOU LAW FIRM, LLC


Sam Flynn, Esquire
S.C. Bar No.: 101729
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTEENTH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

COMPLAINT
(Jury Trial Demand)

HORRY COUNTY
2015 JUL 27 PM 2:12
FILED
CLERK OF COURT

The Plaintiff, complaining of the Defendant, alleges and says as follows:

1. That the Plaintiff, Bobby Foster, (herein referred to as "Plaintiff") is a citizen and resident of the city of Ash, State of North Carolina.
2. That upon information and belief, Defendant Julian Neil Armstrong, (herein referred to as "Defendant") is a citizen and resident of Horry County, State of South Carolina.
3. That the motor vehicle collision that is the subject of this action occurred in Horry County, State of South Carolina.
4. That this Court has jurisdiction over the parties and the subject matter of this action.
5. That on or about April 8, 2013, Plaintiff was lawfully traveling east on SC 90 in a 2000 Dodge Van license plate YPM6186, VIN number 2B4GP44G0YR523493.
6. That on or about April 8, 2013, Defendant was traveling east on SC 90 in a 1995 Lexus license plate DWP624, VIN number JT8GK13T5S0090073.
7. That on or about April 8, 2013, Plaintiff came to a lawful stop for traffic.
8. That on or about April 8, 2013 Defendant was following too closely, travelling too fast for conditions, failed to stop, and violently struck Plaintiff's vehicle from behind.
9. That at all times material hereto, Defendant had a duty to operate his vehicle in a safe and prudent manner and to avoid injuring other motorists.

10. That the collision and the resulting injuries and damages to Plaintiff were caused directly and proximately by one or more of the following negligent, grossly negligent, negligent *per se*, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the

Defendant in any one or more of the following respects:

- a. In failing to keep a proper lookout while operating the vehicle;
- b. In failing to maintain control of the vehicle;
- c. In failing to stay in his lane of traffic;
- d. In failing to slow down to a controllable speed to stay in his lane of traffic;
- e. In failing to keep a safe distance from Plaintiff;
- f. In failing to use due care;
- g. In failing to properly observe the road and traffic conditions;
- h. In failing to obey traffic laws and/or signs;
- i. In failing to use his horn, if he had any;
- j. In traveling too fast for conditions;
- k. In failing to properly maintain the vehicle;
- l. In failing to yield the right of way;
- m. In failing to apply his brakes or use his steering mechanism to avoid the collision;
- n. In negligently and carelessly operating the vehicle in a high and excessive rate of speed under the circumstances then and there existing;
- o. In operating the vehicle at a high rate of speed and far in excess of the reasonable and prudent speed under the circumstances and conditions then and there existing;
- p. In operating the vehicle without using due care and without regard for safety and rights of Plaintiff;
- q. In operating the vehicle in a negligent, grossly negligent, careless, reckless,

willful, wanton and unlawful manner so as to create a dangerous situation;

- r. In failing to exercise the degree of care and caution that a reasonable and prudent person would have exercised under the circumstances then and there prevailing;
- s. In negligently and carelessly operating the vehicle in such a manner to cause the vehicle to strike Plaintiff and cause personal injuries;
- t. In driving while distracted;
- u. In failing to immediately report an accident involving personal injury;
- v. In any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
- w. In any other such manner that Plaintiff may become aware of through discovery and/or at trial.

11. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur, various medical expenses, and has otherwise been damaged and injured.

12. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff was jerked, thrown and slammed within the interior of his vehicle by the force of the Defendant's vehicle, causing him to sustain serious and painful personal injuries including, but not limited to, pain and suffering, and injuries to his back and shoulder.

13. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendant, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

- a) Plaintiff has been required to expend a significant amount of money for his medical care, treatment and attendant services;
- b) Upon information and belief, the nature of Plaintiff's injuries will require him to expend a significant amount of money for his medical care, treatment and attendant services in the future;
- c) Plaintiff has been unable to work and has been deprived of his income;
- d) Upon information and belief, the nature of Plaintiff's injuries will deprive him of employment opportunity and income in the future;
- e) The pain of his injuries has resulted in his loss of enjoyment of life and change in his personality, all to permanent detriment to his health and physical well-being; and
- f) Upon information and belief, the Plaintiff was required to expend significant amounts of money to replace and repair property damage caused in the accident.

14. That Defendant's acts and omissions, as is set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendant's conscious indifference to the consequences of such acts and omissions.

15. That because of the Defendant's acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendant and to deter the Defendant and others from similar behavior.

16. That upon information and belief, Plaintiff is entitled to judgment against the Defendant for actual, compensatory and exemplary or punitive damages for his personal injuries and property damages set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that she may be entitled, to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendant for an amount to be ascertained by the jury at the trial of this action, for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

ANASTOPOULO LAW FIRM, LLC


Sam Flynn, Esquire
S.C. Bar No.: 101729
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Anastopoulos Law Firm, LLC
62 Columbus Street
Charleston, SC 29403
(843) 614-8888

Dated at Charleston, SC
This 22nd day of July, 2015.

STATE OF SOUTH CAROLINA,)
)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

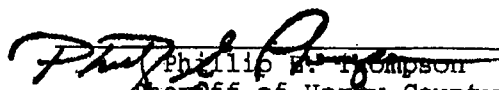
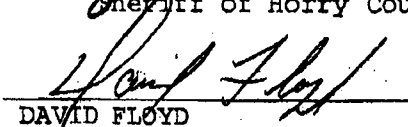
Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG

Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.


NOTARY PUBLIC FOR SOUTH CAROLINA


Phillip A. Thompson
Sheriff of Horry County

DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE HORRY JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

ORDER FOR PUBLICATION

FILED
HORRY COUNTY
15 NOV 23 PM 11:13
CLERK OF COURT

THIS MATTER comes before the Court pursuant to the Plaintiff's petition requesting an Order of Publication authorizing the service of the Defendant via publication.

Having reviewed the Plaintiff's Petition, and Affidavit, the Court finds that after due diligence, the Defendant cannot be found in this state, or at Defendant's last known residence. The Court finds that it is appropriate and necessary to serve the Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED, that service upon the Defendant shall be effectuated by publishing the Summons, and notice of filing of the Complaint in the above referenced case in local newspaper, once weekly for three (3) consecutive weeks, and by forwarding a copy of the pleadings to the Defendant at Defendant's last known address.

IT IS SO ORDERED.

Melanie Huggins Ward
Clerk of Court **PRESIDING JUDGE COURT OF COMMON PLEAS**
HORRY JUDICIAL CIRCUIT

DATED: 11/24/15



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

AFFIDAVIT OF PUBLICATION

State of South Carolina

County of Horry

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the Legal Notice

was printed and published in said newspaper

for and during the weekly publication,

and appeared in the issues of the

North Myrtle Beach Times December 24th, 31st

and January 7th A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

this 7th day of January

A.D. 2016

Henry C. Hecker, Sr.

Notary Public for South Carolina

Commission Expires May 26, 2020.

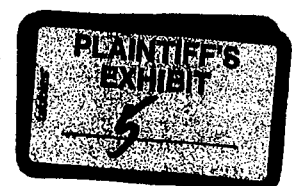
STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-26-5633
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT

SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and
required to answer the Complaint in
this action, a copy of which is avail-
able from the Clerk of Court for HOR-
RY County, South Carolina, herewith
served upon you, and to serve a copy
of your answer to the said Complaint
on the Plaintiff, or his attorneys, Anas-
topoulos Law Firm, LLC, Sam Flynn,
at their office located at 2557 Ashley
Phosphate Road, North Charleston,
South Carolina 29418, within thirty (30)
days after the serve hereof, exclusive
of the day of such service, and if you
fail to answer the Complaint within the
amount of time aforesaid, the Plaintiff
in this action will apply to the Court for
judgment by default for the relief de-
manded in the Complaint.

s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888

ATTORNEY FOR PLAINTIFF
Charleston, South Carolina

NOTICE
TO THE DEFENDANT NAMED ABOVE:
TAKE NOTICE, that the Summons in
the above mentioned action of which
the foregoing is a copy, together with
the Complaint therein was filed in the
office of the Clerk of Court, HORRY
Court of Common Pleas, on the
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR THE PLAINTIFF
Charleston, South Carolina
N 12/24, 31; 1/7-30



IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**PLAINTIFF'S MOTION FOR ENTRY
OF DEFAULT AND REQUEST FOR
HEARING ON DAMAGES**

FILED
HORRY COUNTY
2016 MAR 28 PM 3:25
CLERK OF COURT
JULIA WARD

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Julian Neil Armstrong and schedule a hearing to determine damages.

INTRODUCTION

1. Plaintiff brought this action against Defendant Julian Neil Armstrong as a result of injuries suffered in an automobile accident that occurred on April 8, 2013. After an unsuccessful attempt to serve the Defendant personally through certified mail and the Horry County Sheriff, Plaintiff published Notice of the Summons and Complaint in The North Myrtle Beach Times. Defendant Julian Neil Armstrong did not file a responsive pleading or otherwise defend the suit.

2. Plaintiff is, therefore, entitled to entry of default and a hearing on damages.

ARGUMENT AND AUTHORITIES

3. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).
4. Rule 55(b) permits the court to enter default judgment against a party against whom



default has been entered. SCRCP 55(b)(1).

5. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney Matthew Nall's sworn affidavit, attached as Exhibit A.

6. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

Upon information and belief, Defendant Julien Neil Armstrong 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. [Exhibit B].

7. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. [Exhibit C].

8. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015. [Exhibit D].

9. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. [Exhibit E].

10. Under SCRCP 12(a), the time for Defendant to respond is thirty (30) days after being served with process.

11. Because Defendant Julien Neil Armstrong did not file a responsive pleading or otherwise defend, Plaintiff is entitled to Entry of Default.

12. Plaintiff's damages are unliquidated and a hearing is requested to receive evidence of Plaintiff's damages.

PRAYER

13. For these reasons, Plaintiff asks the Court to enter a Default against Defendant Julien Neil Armstrong and to schedule an evidentiary hearing to determine Plaintiff's damages.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC



Matthew L. Nall, Esquire

SC Bar Number: 102329

Eric M. Poulin, Esquire

SC Bar Number: 100209

Roy T. Willey, IV, Esquire

SC Bar Number: 101010

Anastopoulos Law Firm, LLC

62 Columbus Street

Charleston, SC 29403

(843) 614-8888

Charleston, South Carolina

March 2, 2016

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

AFFIDAVIT OF MATTHEW NALL

FILED
HORRY COUNTY
2016 MAR -8 PM 3:25
MELANIE HUGGINS-WARD
CLERK OF COURT

COMES NOW, the affiant, Matthew Nall, and first being duly sworn upon his oath
under the pains and penalties of perjury now states the following:

1. I am the above named affiant, Matthew Nall.
2. I, Matthew Nall, am an attorney with Anastopoulo Law Firm, LLC.
3. Plaintiff attempted to serve Defendant Armstrong via USPS Certified Mail Restricted Delivery, the package was returned unclaimed after the maximum holding time expired on August 31, 2015. The package was sent to Defendant's last known address:

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

4. Plaintiff attempted to serve the Summons and Complaint upon Defendant Armstrong through the Horry County Sheriff's Office, and was given an Affidavit of Non-Service on September 24, 2015.

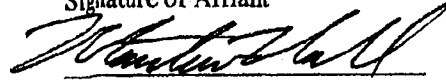
5. Plaintiff then petitioned the Court to published Notice of the Summons and Complaint in The North Myrtle Beach Times. After approval, The North Myrtle Beach Times published the Notice on December 24, 31, and January 7.

6. Upon information and belief, Defendant Julian Neil Armstrong is neither an infant nor incompetent adult.

7. As of today's date, March 2, 2016, Defendant Julian Neil Armstrong has failed to file a responsive pleading.

SIGNATURE ON FOLLOWING PAGE

Signature of Affiant



Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016



NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

My commission expires: 12-4-2017

EXHIBIT B
(Affidavit of Non-Military Service)

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

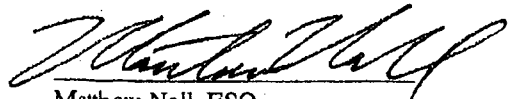
AFFIDAVIT OF NON-MILITARY
SERVICE

FILED
HORRY COUNTY
2016 MAR -8 PM 3:26
MELBAE HUGGINS-WARD
CLERK OF COURT

Personally appeared before me the undersigned attorney, who first being duly sworn,
deposes and says:

That he is familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940,
and to induce the Court to enter a default judgment against Defendant Julian Neil Armstrong,
represents to the Court that from his file in this matter, and on information and belief based on
the hereinafter enumerated facts, Defendant Julian Neil Armstrong is/are not in the Military
Service of the United States and is/are not entitled to the protection of the Civil Relief Act of
1940 and Amendments thereto. The source of information on which he bases his belief is as
follows: Research made by the Anastopoulo Law Firm, LLC and Bobby Foster, Plaintiff herein.

Signature of Affiant:


Matthew Nall, ESQ.

SWORN BEFORE ME THIS 2nd day of March 2016

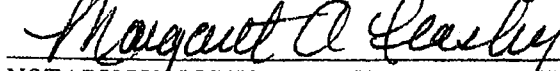

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 12-4-2017

EXHIBIT C
(Proof of Service)

ANASTOPOULO LAW FIRM

Akim A. Anastopoulos (SC)
Kate L. Bostrom (NC)
Samuel R. Flynn (SC)
Marianthe L. Kolokithas (SC)
Eric M. Poulin (GA)(NC)(SC)(CA)
Casey Van Valkenburgh (SC)(IL)
P. Heath Ward (SC)
Katie M. Wilensky (SC)
Roy T. Willey, IV (SC)
Evan P. Williams (SC)

Toll Free: 1(800) 313-2546
Facsimile: (843) 494-5536

Reply to Columbus Street Office
www.AldmLawFirm.com

Thursday, August 13, 2015

Sent Via Certified Mail, Restricted Delivery
7015 0640 0005 7946 3544

Julian Neil Armstrong
186 Williamsburg Road
Little River, SC 29566

RE: *Bobby Foster v. Julian Neil Armstrong*
Case No.: 2015-CP-26-5633

Dear Mr. Armstrong:

Enclosed for service upon you, and pursuant to Rule 5 of the S.C.R.C.P., please find a copy of the Summons & Complaint that has been filed in the above referenced action.

Upon receipt, please forward this letter and these important legal papers to your insurance company immediately. These documents are time sensitive.

Sincerely,

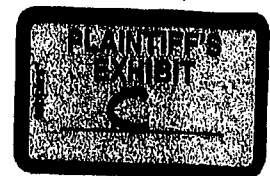

Peggy Teasley
Litigation Manager

Enclosure

Cc: Bobby Foster

Mailing: 64 Columbus Street, Charleston, South Carolina 29403
North Charleston: 2657 Ashley Phosphate Road, North Charleston, South Carolina 29418
Fes Dee: 150 W. Evans Street, Florence, South Carolina 29501
Columbia: 1201 Main Street, Suite 1901, Columbia, South Carolina 29201

Appointment Only: Myrtle Beach * Wilmington, North Carolina



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - Horry - COMMON PLEAS - CASE#2015CP2605633

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MELANIE HUGGINS-WARD
CLERK OF COURT



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Product & Tracking Information

Postal Product:
First-Class Mail®

Features:
Certified Mail Restricted Delivery Return Receipt

See tracking for related item: 9590952106150123692623

DATE & TIME	STATUS OF ITEM	LOCATION
September 4, 2015, 12:52 am	Departed USPS Facility	CHARLESTON, SC 29423

Your item departed our USPS facility in CHARLESTON, SC 29423 on September 4, 2015 at 12:52 am. The item is currently in transit to the destination.

September 3, 2015, 1:37 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
September 2, 2015, 3:42 pm	Departed USPS Facility	COLUMBIA, SC 29201
August 31, 2015, 9:05 am	Unclaimed/Max Hold Time Expired	LITTLE RIVER, SC 29566
August 15, 2015, 1:13 pm	Notice Left	LITTLE RIVER, SC 29566
August 14, 2015, 8:55 am	Arrived at USPS Facility	COLUMBIA, SC 29201
August 14, 2015, 6:26 am	Departed USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 10:45 pm	Arrived at USPS Facility	CHARLESTON, SC 29423
August 13, 2015, 4:30 pm	Acceptance	CHARLESTON, SC 29403

Available Actions

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MELANIE HUGGINS-WARD
CLERK OF COURT

Track Another Package

Tracking (or receipt) number

Track It

Manage Incoming Packages

Track all your packages from a dashboard.
No tracking numbers necessary.

Sign up for My USPS >



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - Horry - COMMON PLEAS - CASE#2015CP2605633

STATE OF SOUTH CAROLINA,)
)
COUNTY OF HORRY)

CASE NUMBER:# 2015CP265633

NON-SERVICE

AFFIDAVIT

Personally appeared before me DAVID FLOYD
who being duly sworn states that he/she is a Deputy Sheriff for Horry
County, South Carolina and that the SUMMONS AND COMPLAINT, COVER SHEET
on behalf of BOBBY FOSTER was delivered to the
VS
JULIAN NEIL ARMSTRONG

Sheriff of Horry County on the 24th day of SEPTEMBER 2015, for service on
the Defendant at 186 WILLIAMSBURG ROAD
LITTLE RIVER, SC

South Carolina; and that Deponent made a diligent search, but was unable
to locate JULIAN NEIL ARMSTRONG

Sworn to before me this 26th
day of OCTOBER , 2015.

Phillip A. Thompson
Phillip A. Thompson
Sheriff of Horry County

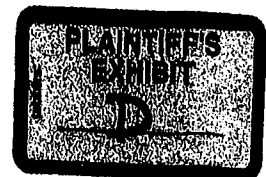
Joyce B. Jenkins
JOYCE B. JENKINS
NOTARY PUBLIC FOR SOUTH CAROLINA

David Floyd
DAVID FLOYD
Deputy Sheriff

MY COMMISSION EXPIRES: 9-15-2016

UNABLE TO LOCATE. NEIGHBOR ADVISED THAT SUBJECT HAS MOVED.

FILED
HORRY COUNTY
2016 MAR -8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT



ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

AFFIDAVIT OF PUBLICATION FILED
HORRY COUNTY

State of South Carolina

County of Horry

Pauline L. Lowman

Personally appears before me,

and after being duly sworn,

That she is the Publisher of

the North Myrtle Beach Times

a newspaper published at

North Myrtle Beach in

the County and State aforesaid;

that the Legal Notice

was printed and published in said newspaper

for and during the weekly publication,

and appeared in the issues of the

North Myrtle Beach Times December 24th 31st

and January 7th A.D. 2016

Pauline L. Lowman

Sworn to and subscribed before me

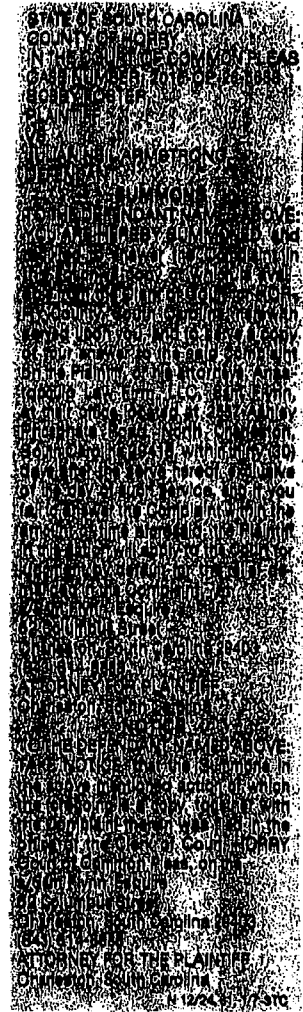
this 7th day of January

A.D. 2016

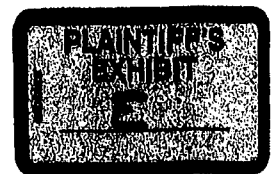
Henry C Hecker, Sr

Notary Public for South Carolina

Commission Expires May 26, 2020.



FILED
HORRY COUNTY
2016 MAR - 8 PM 3:26
MELANIE HUGGINS-WANT
CLERK OF COURT



IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 14TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff(s),

v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**ORDER FOR ENTRY OF DEFAULT
AND REFERRAL FOR HEARING ON
DAMAGES**

FILED
HORRY COUNTY
7/11/17 - 8 PM 3:26
MELANIE HUGGINS-WARD
CLERK OF COURT

The Notice of Summons and Complaint in this matter was published in The North Myrtle Beach Times published the Notice on December 24, 31, and January 7. Defendant Julien Neil Armstrong failed to submit a responsive pleading or defend the suit and on March 2, 2016, Plaintiff filed a Motion for Entry of Default and Request for a Hearing on Damages.

THE COURT HEREBY FINDS Defendant Julien Neil Armstrong was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the last day of publication and Plaintiff properly moved for entry of default on March 2, 2016.

IT ORDERED that Defendant Julien Neil Armstrong, is in Default and this Entry of Default is considered effective as of March 2, 2016, the date the Court was first notified of Defendant Julien Neil Armstrong's default through Plaintiff's Motion For Entry of Default.

IT SO FURTHER ORDERED that this matter is to be set on the Court's docket for a hearing on damages pursuant to Plaintiff's request.

Dated: 3/8/16

Melanie Huggins-Ward
Clerk of Court
Horry County Court of Common Pleas

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff(s),

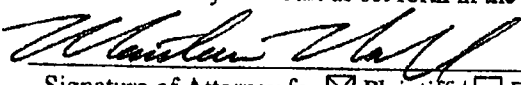
v.

JULIAN NEIL ARMSTRONG,

Defendant(s).

**MOTION AND ORDER
INFORMATION FORM AND COVER
SHEET**

FILED
HORRY COUNTY
2016 MAR - 8 PM 3:25
MELANIE HOGGINS-WARD
CLERK OF COURT

Plaintiff's Attorney: Matthew Nall, Eric Poulin, Roy Willey Bar Number: 102329, 100209, 101010 Address: 62 Columbus St., Charleston SC 29403 Phone: 843-614-8888 Fax: 843-853-2291 E-Mail: matt@akimlawfirm.com, eric@akimlawfirm.com, roy@akimlawfirm.com	Defendant's Attorney: Bar Number: Address: Phone: E-Mail:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Entry of Default – Request for Damages Hearing Estimated Time Needed: 15 Min. Court Reporter Need: ☒ YES / ☐ NO	
SECTION II: Motion / Order Type ☐ Written motion attached ☒ Form Motion / Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☒ Plaintiff / ☐ Defendants Wednesday, February 10, 2016 Date Submitted	
SECTION III: Motion Fee ☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ DATE: _____

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - HORRY - COMMON PLEAS - CASE#2015CP2605633

Copy

CLERK'S SECTION

Date Filed: _____

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

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Matthew Nall <matt@akimlawfirm.com>

Bobby Foster vs. Julian Neil Armstrong

Matthew Nall <matt@akimlawfirm.com>

Fri, Oct 21, 2016 at 12:47 PM

To: Eric Poulin <eric@akimlawfirm.com>

Cc: "ziptrial@googlegroups.com" <ziptrial@googlegroups.com>

Roy is out currently, but let me know if this is ok:

Judge Culbertson,

Plaintiff disagrees with the findings of fact and conclusions of law in Defendant's Proposed Order Setting Aside Order of Publication and Setting Aside Order for Entry of Default and Referral for Hearing on Damages.

To my recollection, the Court vacated the Order of Default and requested that Mrs. Gangi accept service of the Complaint on behalf of Defendant Armstrong. The ultimate decision was that Plaintiff's Notice did not contain a date of filing and therefore was defective. The Court did not rule on issues of personal jurisdiction and did not rule on setting aside the Order for Publication.

As I mentioned in the hearing, this case arose from an April 2013 vehicular collision. My concern is that if Defendant's Proposed Order becomes the law of this case, Defendant will be able to claim the Statute of Limitations has passed.

Accordingly, I would propose that the portions of the Proposed Order stating that "this Court finds that this Court has no personal jurisdiction over the Defendant" be struck. The Court allowed the default to be lifted. Therefore, this case should be allowed to move forward on its merits rather than a technicality.

Thank you for your attention to this matter. I have copied Mrs. Gangi to this email as well. Please let me know if you have any questions or concerns.

[Quoted text hidden]

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THOMPSON & HENRY, P.A.
ATTORNEYS AT LAW
1300 SECOND AVENUE, THIRD FLOOR
POST OFFICE BOX 1740
CONWAY, SOUTH CAROLINA 29528

LINDA WEEKS GANGI
lgangi@thompsonlaw.com

TELEPHONE
(843) 248-5741
FAX
(843) 248-5112

October 26, 2016

eric@akimlawfirm.com
Eric M. Poulin, Esq.
Anastopoulo Law Firm, LLC
62 Columbus Street
Charleston, SC 29403

Re: *Bobby Foster vs. Julian Neil Armstrong*
Civil Action No.: 2015-CP-26-5633
Claim No.: 40-2K34-502
SF Ins: Deloria G. Armstrong
DOL: April 8, 2013

Dear Eric:

Please find enclosed herewith copies of the following documents with regard to the above-captioned action:

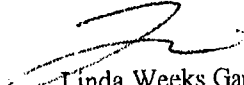
- a. Answer on Behalf of the Defendant;
- b. Defendant's Interrogatories to the Plaintiff;
- c. Defendant's First Request for Production of Documents to the Plaintiff;
- d. Notice of Taking Deposition of the Plaintiff; and
- e. Certificate of Mailing.

Please note that I have scheduled the Plaintiff's deposition for a date far enough in advance for you to timely provide me with your client's written discovery answers; however, if the date and time are not convenient with you and/or your client, please do not hesitate to contact my office to reschedule same for a mutually convenient date and time.

With kindest personal regards, I remain

Yours very truly,

THOMPSON & HENRY, P.A.


Linda Weeks Gangi

LWG/avs
Enclosures



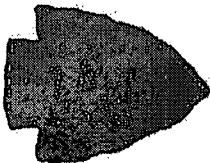
ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - Horry - COMMON PLEAS - CASE#2015CP2605633

North Myrtle Beach Times

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<http://www.northmyrtlebeachtimes.com/>

North Myrtle Beach Times

Welcome to North Myrtle Beach and the newspaper serving our community and the Grand Strand for 45 years, the North Myrtle Beach Times.

Little River Chamber reinvests in community - Sep 8, 2016

The Little River Chamber of Commerce & Visitors Center formally thanked the Little River Volunteer Firefighters

Fire truck Push-In event held on Wednesday - Sep 1, 2016

The North Myrtle Beach Public Safety Department held a fire truck Push-In event Wednesday following City Council's

Public Safety Department will hold test on Monday - Aug 25, 2016

On Monday, Aug. 29, between 1 and 2 p.m., the North Myrtle Beach Public Safety Department will conduct a test of an

Cherry Grove dredging project continues moving forward by burl disposal basin - Aug 25, 2016

The Cherry Grove Dredging Project in North Myrtle Beach continues to move forward as initial dredge is projected

Nine veterans presented with Quilts of Valor - Aug 18, 2016

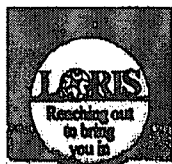
On Monday, Aug. 15, representatives of the local chapter of the Quilts of Valor Foundation presented nine veterans with

Employees receive recognition during NMB City Council meeting - Aug 18, 2016

During the Aug. 15 North Myrtle Beach City Council meeting, Zoning Enforcement Officer Dorian Dixon was named Employee

Joe Hill named Horry County's Police Chief - Aug 12, 2016

After a national search, Joseph Hill has been named the new Chief of Police for Horry County.



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-5633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

ORDER

PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
HEARING DATE:
PRESIDING JUDGE:

MATTHEW NALL, ESQUIRE
LINDA WEEKS GANGI, ESQUIRE
FEBRUARY 27, 2016
BENJAMIN H. CULBERTSON

2017 MAR 23 PM 3:48

The Plaintiff filed a Motion to Reconsider this Court's Order dated October 21, 2016 and filed October 26, 2016 setting aside the Order for Publication and setting aside the Order for Entry of Default and Referral for Hearing on Damages. Plaintiff's counsel seeks to have this Court reconsider its October 21, 2016 Order so that this litigation is not precluded by the Statute of Limitations. The issue of the Statute of Limitations is not properly before this Court.

Based on the failure of the original Summons filed with the Court to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, the failure of the publication to include the date of filing of the Summons and Complaint as required by S.C. Code Ann. §15-9-740, the failure to properly publish the Summons, and the failure of the Plaintiff to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740, this Court found in its October 21, 2016 Order that the Summons is defective and that service of the Summons and Complaint was not properly perfected on the Defendant. Thus, this Court has no personal jurisdiction over the Defendant. The Order for Publication and the Order for Entry of Default and Referral for

Page 1 of 2 / JHC

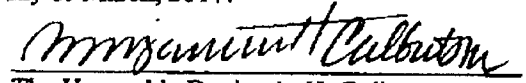


Hearing on Damages were properly set aside and declared null and void and of no force and effect in this Court's Order of October 21, 2016.

This Court having reviewed all information provided to it by the parties and heard both parties' arguments on the issues raised in the Plaintiff's Motion to Reconsider, the Plaintiff's Motion to Reconsider is hereby denied.

AND IT IS SO ORDERED this the 16 day of March, 2017.

In Chambers


The Honorable Benjamin H. Culbertson
Chief Administrative Judge of the Fifteenth
Judicial Circuit



Ben Lee <ben@akimlawfirm.com>

Fwd: Foster vs. Armstrong

Matthew Nall <matt@akimlawfirm.com>

Tue, Mar 7, 2017 at 10:51 AM

To: "Katie Eri, Roy, Peggy, Sue Sam" <ziptrial@googlegroups.com>

----- Forwarded message -----

From: **Linda Gangi** <LGangi@thompsonlaw.com>

Date: Tue, Mar 7, 2017 at 10:48 AM

Subject: RE: Foster vs. Armstrong

To: "bculbertsonj@sccourts.org" <bculbertsonj@sccourts.org>, "bculbertsonlc@sccourts.org" <bculbertsonlc@sccourts.org>

Cc: Matthew Nall <matt@akimlawfirm.com>

Dear Judge Culbertson: At the original hearing on my Motion to Set Aside Order for Entry of Default and the Order for Publication, you asked if I would accept service of the Summons and Complaint and I indicated that I would. Based on your honor's request at the original motion hearing in October, I filed an answer on October 28, 2016. I did not raise any jurisdictional objections in the answer. The issues of proper service and personal jurisdiction had already been ruled on by your honor. Your honor ruled that the court had no personal jurisdiction over the defendant because the summons was defective and service was not made in accordance with the order for publication and applicable statutes. Service was not effected on my client until I agreed to accept service in October of 2016. The court had jurisdiction at the point in time when I accepted service but not before that. The fact that I did not raise an issue of personal jurisdiction in my answer has no bearing on the fact that the Summons is defective and there was never proper service on my client until I accepted service and filed the answer. As your honor stated in court at the time of the hearing on the Plaintiff's Motion for Reconsideration, the issue of the statute of limitations is not before the court. I believe that the Order I prepared and forwarded to the court fairly captures your honor's ruling on the Plaintiff's Motion for Reconsideration.

Linda Weeks Gangi

THOMPSON & HENRY, P.A.

1300 Second Avenue, 3rd Floor

Conway, SC 29526

Phone (843) 248-5741

Fax (843) 248-5112

lgangi@thompsonlaw.com

NOTICE: This email contains information belonging to Thompson & Henry, P.A.

This message is intended solely for the use of the individual to whom it is addressed and may contain information that is privileged, confidential or otherwise exempt from disclosure under applicable law. If the reader of this message is not the intended recipient or the employee or agent responsible for delivering the message to the intended recipient, you are hereby notified that any dissemination, distribution, or copying of this communication is strictly prohibited. If you have received this communication in error, please immediately reply to this message or notify me by telephone at 843-248-5741, and delete the message.



<https://mail.google.com/mail/u/0/?ui=2&ik=c1d9020730&view=pt&q=gangi&qs=true&search=query&msg=15aa977936366ad1&>

1/2

From: Matthew Nall [mailto:matt@akimlawfirm.com]
Sent: Tuesday, March 07, 2017 9:40 AM
To: bculbertson@sccourts.org; bculbertsonj@sccourts.org; bculbertsonlc@sccourts.org
Cc: Neicey Smith <neicey@thompsonlaw.com>; Katie Eri, Roy, Peggy, Sue Sam
 <ziptrial@googlegroups.com>; Linda Gangi <LGangi@thompsonlaw.com>
Subject: Re: Foster vs. Armstrong

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

To view this discussion on the web visit https://groups.google.com/d/msgid/ziptrial/CAA-6g%3DwYcDrGAghvSt_jrreg0c1BvVtTKsddcngw-nCF3McZw%40mail.gmail.com.

[Quoted text hidden]

ELECTRONICALLY FILED - 2017 Apr 11 10:05 AM - Horry - COMMON PLEAS - CASE#2015CP2605633

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2015-CP-26-5633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**MOTION FOR SUMMARY JUDGMENT
AND MEMORANDUM**

TO: THE PLAINTIFF AND MATTHEW L. NALL, ATTORNEY FOR THE
PLAINTIFF;

YOU WILL PLEASE TAKE NOTICE that the Defendant through his undersigned attorney will move before the Presiding Judge of the Court of Common Pleas at the Horry County Courthouse in Conway, South Carolina on the tenth day of service hereof or as soon thereafter as counsel might be heard for an Order Granting Summary Judgment. The basis for this motion is that the Statute of Limitations bars this action because the Plaintiff failed to timely serve the Summons and Complaint in the above-captioned action. The automobile accident which is the subject of this action occurred on April 8, 2013 (See paragraphs 5, 6, 7 and 8 of the Plaintiff's Complaint). The Plaintiff filed the Complaint on July 27, 2015. Thereafter, the Plaintiff attempted to serve the Defendant with the Summons and Complaint through the sheriff's department but the Defendant had moved. (See Affidavit of Non Service of the Sheriff). Thereafter, Plaintiff's counsel obtained an Order for Publication. The Plaintiff published the Summons in the North Myrtle Beach Times. No Answer was filed by the Defendant. An Order for Entry of Default was obtained by Plaintiff's counsel. Thereafter, Defendant's counsel moved to set aside the Order for Publication and the Order for Entry of Default. The Order for Entry of Default and the Order for Publication were set aside by Order dated October 21, 2016 and filed October 26, 2016 in the



Office of the Clerk of Court for Horry County. The basis for setting aside these Orders was fourfold; The Summons was insufficient. It did not comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*. The Summons did not notify the Defendant that if he fails to appear and defend, a judgment by default would be rendered against him. The failure of the Summons to comply with the provisions of Rule 4(b) of the *South Carolina Rules of Civil Procedure* results in the Court having no personal jurisdiction over the Defendant. Furthermore, the Summons published in the newspaper did not comply with S. C. Code Ann. §15-9-740 which requires that the information which is published must state the time and place of filing of the Summons and Complaint. The publication of the Summons in this case did not state the date of filing of the Summons in the Court of Common Pleas for Horry County. Furthermore, the Order of Publication signed by the Clerk of Court and dated November 24, 2015 required that the Defendant be served "via publication in a daily newspaper of the Defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Summons was published in a North Myrtle Beach Times which is not a newspaper of general circulation in Horry County. It is not a daily newspaper and the Defendant never lived in North Myrtle Beach. The publication was not as ordered. Finally, the Court found that the Plaintiff did not use due diligence in locating the Defendant. The Defendant's correct cell phone number was contained in the accident report so that his location could have easily been determined by calling the cell phone number. S.C. Code Ann. §15-9-740 requires that reasonable diligence be used to ascertain the residence of the Defendant. The Court found that the Plaintiff did not use reasonable diligence as required by S.C. Code Ann. §15-9-740. Based on the failure of the original Summons filed with the Court to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, the failure of the publication to include the date of the filing of the Summons and Complaint as required by S.C. Code Ann. §15-9-740, the failure to

publish the Summons in a daily newspaper of general circulation in Horry County, and the failure of the Plaintiff to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740, the Court found that it had no personal jurisdiction over the Defendant and that the service of the Summons and Complaint was not properly perfected on the Defendant. The Court ordered that the Order for Publication and the Order for Entry of Default and Referral for Hearing on Damages be set aside and declared null and void and of no force and effect. At the time of the hearing to set aside the Orders on October 21, 2016, the Court asked whether or not defense counsel would accept service of the Summons and Complaint and file an Answer within thirty days from the date of receipt of the Order. The Court also required the Plaintiff to amend the Summons to comply with Rule 4(b). The Summons to date has never been amended. No Acceptance of Service was ever provided to the Defendant's attorney. Defendant filed an Answer on October 26, 2016. That Answer raised the issue of the Statute of Limitations. Clearly the Statute of Limitations ran prior to service being perfected on the Defendant.

The Defendant certifies that his argument has been fully set forth above and a Memorandum would serve no purpose.

Conway, South Carolina

March 30, 2017

THOMPSON & HENRY, P.A.

s/Linda Weeks Gangi
Linda Weeks Gangi
Attorney for the Defendant
PO Box 1740
Conway, SC 29528-1740
(843) 248-5741 (p)
lgangi@thompsonlaw.com
SC Bar No. 2365

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

BOBBY FOSTER,

CASE NO.: 2015-CP-26-5633

Plaintiff,

**MOTION AND ORDER INFORMATION FORM
AND COVER SHEET**

v.

JULIAN NEIL ARMSTRONG,

Defendant.

Plaintiff's Attorney: Matthew L. Nall; Roy T. Willey, IV; Eric M. Poulin
Bar Number: 102329; 101010; 100209
Address: 62 Columbus Street, Charleston, SC 29403
Phone: 843-614-8888 Fax: 843-853-2291
E-Mail: matt@akimlawfirm.com; roy@akimlawfirm.com; eric@akimlawfirm.com

Defendant's Attorney: Linda Weeks Gangi
Bar Number:
Address: P.O. Box 1740, Conway, SC 29528
Phone: (843) 248-5741
E-Mail: lgangi@thompsonlaw.com

- ☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS III and III)**
☐ **PROPOSED ORDER / CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion for Summary Judgment

Estimated Time Needed: 15 Minutes Court Reporter Need: ☒ YES / ☐ NO

SECTION II: Motion / Order Type

- ☒ Written motion attached
☐ Form Motion / Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

/s Matthew L. Nall

April 27, 2017

Signature of Attorney for ☒ Plaintiff / ☐ Defendants

Date Submitted

SECTION III: Motion Fee

- ☒ **PAID – AMOUNT: \$25.00**
☐ **EXEMPT:** ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposal order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE

CODE: _____ DATE: _____

CLERK'S SECTION

Date Filed: _____

Collected by: _____

- ☐ **MOTION FEE COLLECTED:** _____
☐ **CONTESTED – AMOUNT DUE:** _____

ELECTRONICALLY FILED - 2017 JUN 07 4:37 PM - HORRY - COMMON PLEAS - CASE #2015CP2605633

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FOR THE 15TH JUDICIAL CIRCUIT
CASE NO: 2015-CP-26-5633

BOBBY FOSTER,

Plaintiff,

v.

JULIAN NEIL ARMSTRONG,

Defendant.

**PLAINTIFF'S MOTION TO
RECONSIDER**

TO: THIS HONORABLE COURT AND ALL COUNSEL OF RECORD

Pursuant to Rule 59 of the South Carolina Rules of Civil Procedure, Plaintiff Bobby Foster ("Plaintiff") submits this Motion to Reconsider this Court's Order granting summary judgment in favor of Defendant Julian Neil Armstrong ("Defendant"). The grounds for Plaintiff's Motion are as follows:

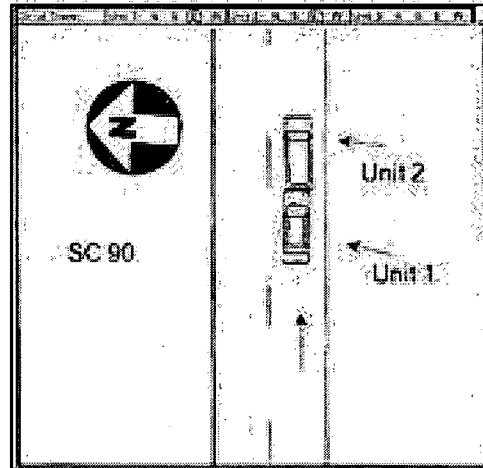
- The Court determined that Defendant was entitled to summary judgment as a matter of law based upon Plaintiff's purported failure to sufficiently and timely serve Defendant with Plaintiff's Summons and Complaint via publication within the statute of limitations despite the Horry County Clerk of Court's correct and unassailable determination that Defendant had, in fact, been served with Plaintiff's properly filed Summons and Complaint via publication within the statute of limitations period.
- The Court determined that Defendant was entitled to summary judgment as a matter of law as to service despite the fact Defendant admits that the Court had personal jurisdiction over him, and despite the fact that Defendant, without objection, voluntarily appeared to defendant this case and filed his Answer to Plaintiff's Complaint.

In light of the foregoing and based on the reasoning set forth more fully herein, Plaintiff respectfully requests this Court to reconsider its April 19, 2017, Order on Defendant's Motion for Summary Judgment so that litigation is not precluded by the statute of limitations. As is set

forth more fully herein, Plaintiff did, in fact, timely serve his Summons and Complaint as determined by the Horry County Clerk of Court, and the Court's granting of summary judgment in favor of Defendant should be reconsidered. Plaintiff's motion is supported by all applicable statutes, rules of court, pleadings, memoranda, and any oral arguments presented by counsel at a hearing on this matter.

STATEMENT OF FACTS

This case arises from an April 8, 2013, motor vehicle collision in Horry County wherein Plaintiff was lawfully traveling east on S.C. 90 when he came to a lawful stop for traffic. At that same time, Defendant (Unit 1) was also traveling east on S.C. 90 and was following too closely, travelling too fast for conditions, failed to stop, and consequently struck



Plaintiff's vehicle (Unit 2) from behind. (See Ex. 1; S.C. Traffic Collision Rpt.) The collision caused Plaintiff to suffer significant personal injuries and property damage.

On July 27, 2015, Plaintiff timely filed his Summons and Complaint with the Horry County Clerk of Court, and therein alleged that Defendant's negligence, gross negligence, negligence *per se*, careless, reckless, willful, wanton, and/or unlawful acts and/or omissions directly and proximately caused Plaintiff's injuries and damages. (See Ex. 2; Summons and Compl.) Upon receipt of the clocked copy of Plaintiff's Summons and Complaint from the Clerk of Court, Plaintiff attempted service of Defendant via certified mail, restricted delivery through the United States Postal Service ("USPS"). (See Ex. 3; Aug. 13, 2015, USPS Serv. Ltr.) Plaintiff's August 13, 2015, letter was sent to 186 Williamsburg Road, Little River, South

Carolina, 29566, which is the address identified as Defendant's residence in the South Carolina Collision Report. (See Ex. 1.) Plaintiff's letter was assigned a tracking number of 70150640000579463544 by the USPS, and, on August 15, 2015, the USPS left notice at 186 Williamsburg Road that certified, restricted correspondence had been sent to Defendant at that address. (See Ex 4; USPS Tracking Rpt.) Despite the notice left by the USPS, Plaintiff's service letter was unclaimed, and by August 31, 2015, the maximum hold time for Plaintiff's service letter had expired. (See Ex. 4.)

Upon learning of the expiration of the maximum USPS hold time, Plaintiff employed the Horry County Sheriff's Department to serve Defendant at his residence identified in the collision report. The Summons and Complaint was received by the sheriff's department on September 24, 2015. (See Ex. 5; Oct. 26, 2015, Non-Service Aff.) Despite a diligent search, the sheriff's department was unable to locate Defendant. (See Ex. 5.) On November 19, 2015, Plaintiff petitioned the Horry County Clerk of Court for an order allowing Defendant to be served via publication. (See Ex. 6; Nov. 19, 2015, Pet. for Pub.) On November 23, 2015, Plaintiff's counsel's Affidavit for Publication was filed with the Clerk of Court advising that counsel had attempted to serve Defendant through the sheriff's department, that Defendant had moved and left no forwarding address, and that Defendant's whereabouts were unknown. (See Ex. 7; Nov. 23, 2015, Aff. for Pub.) Thereafter, the Clerk of Court granted Plaintiff's petition, thus finding it "appropriate and necessary to serve Defendant via publication in the daily newspaper of Defendant's last known residence, 186 Williamsburg Road, Little River, South Carolina. (See Ex. 8; Nov. 24, 2015, Order for Pub.)

All information then known indicated that Defendant lived in the small town of Little River, South Carolina. According to the town's website, "Little River, South Carolina is the

oldest -- and one of the most unique -- towns along the greater Grand Strand.” (See Ex. 9; Little River, South Carolina Website, <http://www.littleriversc.com>.) Plaintiff published his notice in the *North Myrtle Beach Times*, which was and continues to be a well-known newspaper serving the Grand Strand, including Little River South Carolina, for four decades. (See Ex. 10; *North Myrtle Beach Times* Website, <http://www.nmbtimes.com>.) Plaintiff’s notice, pictured below and attached hereto as Exhibit 11, ran during the weeks of December 24 and 31, 2015, and January 7, 2016. After three consecutive weeks of publication, on March 2, 2016, Plaintiff moved the Clerk of Court to enter default against Defendant (see Ex. 12), which the Clerk of Court ordered on March 8, 2016, finding

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-26-5633
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT

SUMMONS
TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and required to answer the Complaint in this action, a copy of which is available from the Clerk of Court for HORRY County, South Carolina, herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff, or his attorneys, Anastopoulos Law Firm, LLC, Sam Flynn, at their office located at 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418, within thirty (30) days after the serve hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the amount of time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.
s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 814-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina
NOTICE

that Defendant “was properly served with notice via publication and failed to file and/or serve a responsive pleading within 30 days after the least date of publication and Plaintiff properly moved for entry of default on March 2, 2016.” (See Ex. 13; Mar. 8, 2016, Order for Entry of Default.)

In July 2016, Defendant’s counsel appeared in this matter. (See Ex. 14; Notice of Appearance.) In August 2016, Plaintiff’s damages hearing, which had been previously set, was scheduled for the second time. Shortly thereafter, Defendant’s counsel requested a continuance, which the Court granted. In September 2016, Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication, nine months after the publication had run and more

than a month after counsel had appeared on Defendant's behalf. Defendant's motion claimed that Plaintiff's Summons, attached to his Complaint, was insufficient because it did not "notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." (See Ex. 15; Def. Mot. to Set Aside.) Defendant's motion further argued that the Summons, which was published in the newspaper and which had been deemed sufficient by the Clerk of Court, was statutorily in compliant because it lacked the Complaint's filing location and date despite the Horry County Court of Common Pleas appearing on the notice along with the filed case number. (See Ex. 15.) Defendant also took issue with publication in the *North Myrtle Beach Times*, despite Defendant's residence in Little River. (See Ex. 15.) Defendant claimed that Plaintiff did not use "reasonable diligence" because he did not call Defendant's cell phone number to ascertain his whereabouts. (See Ex. 15.)

On Monday, October 17, 2016, the Court heard arguments on Defendant's Motion to Set Aside. Both parties argued the issues as laid out in their respective memoranda. Ultimately, the Court determined that it would not address issues of personal jurisdiction, but stated that, because the published Summons lacked a filing date, it would remove the default. Correspondingly, the Court asked Defendant's counsel to accept service on behalf of Defendant and provide a written order. Later, Defendant circulated his proposed order which substantially repeated the same issues in his Motion to Set Aside. The proposed order stated that the Court is without personal jurisdiction over Defendant and that the previous orders as to publication and default are void. Plaintiff's counsel promptly notified the Court and Defendant's counsel stating Plaintiff's objection to the findings of no jurisdiction and voiding the orders previously in force. (See Ex. 16; Oct. 21, 2016, Pl.'s E-Mail to the Hon. Benjamin Culbertson.) Notably, Plaintiff's counsel stated his concern that, should Defendant's proposed order be signed by the Court,

Defendant would effectively be able to allege noncompliance with the statute of limitations, since the collision occurred in April 2013. (*See* Ex. 16.)

The Court signed Defendant's proposed order on October 21, 2016, stating that Defendant's counsel "has agreed to accept service of the Summons and Complaint ... and will file an Answer within thirty (30) days from the date of receipt of this Order." (*See* Ex. 17; Oct. 21, 2016, Order.) Without objection, Defendant's counsel accepted service, and thereafter Defendant filed his Answer to Plaintiff's Complaint wherein he raised the statute of limitations as an affirmative defense. (*See* Ex. 18; Def.'s Answer at 13.)

On November 10, 2016, Plaintiff filed his Motion to Reconsider pursuant to Rule 59, SCRCR, requesting that the Court reconsider its October 21, 2016, ruling so as to not preclude Plaintiff's cause of action on the basis of the statute of limitations. (*See* Ex. 19; Nov. 10, 2016, Motion to Reconsider.) The Court denied Plaintiff's motion by order dated March 16, 2017. (*See* Ex. 20; Mar. 16, 2017, Order.) Prior to the March 16, 2017, Order, Defendant's counsel emailed the Court wherein she reiterated that she had accepted service on behalf of Defendant, and wherein she admits that the Court had jurisdiction over Defendant *vis-à-vis* said acceptance. (*See* Ex. 21; Mar. 7, 2017, Def.'s Email to the Hon. Benjamin Culbertson.) Defendant filed his Motion for Summary Judgment on March 31, 2017, based upon his belief that the statute of limitations bars this action due to Plaintiff's purported failure to timely serve his Summons and Complaint in this case. (*See* Ex. 22; Motion for Summ. J.)

Defendant's Motion for Summary Judgment was unexpectedly heard on April 17, 2017, by The Honorable Larry Hyman immediately following a previously scheduled roster meeting. Plaintiff's counsel of record was not present at that roster meeting due to scheduling conflicts, nor was Plaintiff for that matter. However, an associate of the Plaintiff's counsel was briefed as

to the roster meeting and attended the roster meeting for that limited purpose, of which Defense counsel and the Court was made aware. To be clear, the hearing on Defendant's Motion for Summary Judgment was already scheduled to be heard on and not until May 17, 2017, and was to be heard The Honorable Benjamin Culbertson who had already presided over numerous motion hearings on the issues of default and service in this case. Nonetheless, the hearing on Defendant's Motion for Summary Judgment was allowed to proceed with, at most, instantaneous notice without Plaintiff's counsel of record or the Plaintiff himself present.

Moreover, Plaintiff had only days before (on April 11, 2017) filed his Memorandum of Law in Opposition to Defendant's Motion for Summary Judgment wherein he very clearly sets forth the reasons why Defendant's motion should be denied. Plaintiff's memorandum was neither addressed nor discussed at the April 19, 2017, hearing of Defendant's Motion for Summary Judgment. A copy of Plaintiff's memorandum is attached hereto as Exhibit A, and the numbered exhibits previously identified herein are the exhibits as referenced and numbered in that memorandum. The Court's Form 4 Order granting Defendant's Motion for Summary Judgment, attached hereto as Exhibit B, was signed by the Court on April 19, 2017, and was received by Plaintiff's counsel on April 24, 2017, via the Clerk of Court's electronic filing system.

LEGAL STANDARD

Rule 59 of the South Carolina Rules of Civil Procedure allows a party to file a motion to reconsider a judgment for two specific reasons. Rule 59(e), SCRCP; *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). First, a motion to reconsider is appropriate when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it."

Elam, 361 S.C. at 24, 602 S.E.2d at 780. Second, “a party must file such a motion when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.*

ARGUMENT

Defendant’s Motion for Summary Judgment is based upon his belief that Plaintiff’s claim is barred by the statute of limitations due to Plaintiff’s purported failure to timely serve his Summons and Complaint. This is despite the Clerk of Court’s finding that Defendant was properly served by publication, that Defendant was in default, the fact that Defendant has voluntarily submitted himself to the personal jurisdiction of this Court, and the fact that Defendant has admitted that the Court had jurisdiction over him at the time his counsel accepted service of Plaintiff’s Complaint.

Prior to Defendant’s Motion for Summary Judgment, the parties presented their respective arguments to the Court as to Defendant’s service and default as set forth more fully above. In short, the Court set aside the Clerk of Court’s determination that Plaintiff had satisfied the requirements of service by publication and that Defendant was in default. However, as was argued by Plaintiff, the Court’s October 21, 2016, Order and March 23, 2013, Order are overly broad in stating that the Court has no personal jurisdiction over Defendant, and that service was not properly perfected on Defendant. As was brought before the Court in Plaintiff’s arguments, the Court’s respective orders appear to contradict the Court’s request that Defendant’s counsel accept service on behalf of Defendant and that Defendant file an Answer to Plaintiff’s Complaint. Without objection, Defendant’s counsel accepted service and Defendant filed his Answer to Plaintiff’s Complaint, thereby submitting Defendant to the personal jurisdiction of the Court and effecting service of Plaintiff’s Summons and Complaint. As to the latter, Plaintiff contends that, irrespective of Defendant’s counsel’s accepting service, Defendant was previously

(and properly) served by publication in March 2016 within the statute of limitations period. Defendant's counsel even admits that the Court, at least as of the time of her acceptance, has jurisdiction over Defendant. To that end, where Defendant raises the statute of limitations as an affirmative defense in his Answer as well as the basis for his Motion for Summary Judgment, the Court should reconsider its April 19, 2017, Order granting summary judgment in favor of Defendant and thereby deny Defendant's motion due to the fact that this action was properly commenced within the statute of limitations period, and this Court has jurisdiction over Defendant.

I. Plaintiff's Cause of Action was Properly and Timely Commenced in Accordance with Rule 3(a)(1)-(2), SCRPC, and S.C. Code Ann. § 15-3-20.

In South Carolina, "a civil action is commenced when the summons and complaint are filed with the clerk of court if: (1) the summons and complaint are served within the statute of limitations in any manner prescribed by law; or (2) if not served within the statute of limitations, actual service must be accomplished not later than one hundred twenty days after filing." Rule 3(a)(1)-(2), SCRPC. For the purpose of tolling any statute of limitations, an attempt to commence an action is equivalent to the commencement thereof when the summons and complaint are filed with the clerk of court and delivered for service to the sheriff of the county in which the defendant usually or last resided. *Sunshine Sportswear & Elecs., Inc. v. WSOC Television, Inc.*, 738 F. Supp. 1499, 1511 (D.S.C. 1989). In 2002, the South Carolina legislature amended section 15-3-20 of the South Carolina Code to provide that a civil action commences as of the date of filing if actual service is accomplished within 120 days after filing, and became effective on May 24, 2002. S.C. Code Ann. § 15-3-20.

A party can waive a statute of limitations defense. *City of N. Myrtle Beach v. Lewis-Davis*, 360 S.C. 225, 234, 599 S.E.2d 462, 466 (Ct. App. 2004) (citing *McLendon v. S.C. Dep't*

of Highways & Pub. Transp., 313 S.C. 525, 525-26, 443 S.E.2d 539, 540 (1994). Waiver is a question of fact for the finder of fact. *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 415 S.E.2d 384 (1992). Furthermore, waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Id.* at 342-44, 415 S.E.2d at 387. A party's waiver may be expressed or implied by a party's conduct, and it may be applied to bar a party from relying on a statute of limitations defense in a dispositive motion. *See Mende v. Conway Hosp., Inc.*, 304 S.C. 313, 404 S.E.2d 33 (1991) (“[w]aiver of [the statute of] limitations may be shown by words or conduct. Thus, waiver may result from express agreement, ... from failure to claim the defense, *or by any action or inaction manifestly inconsistent with an intention to insist on the statute.*” *Id.* at 315, 404 S.E.2d at 34 (quoting 54 C.J.S. Limitation of Actions § 22 at 52 (1987)) (emphasis in original). The burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. *Brown v. Finger*, 240 S.C. 102, 124 S.E.2d 781 (1962).

Here, Plaintiff stands by his assertion that Defendant was properly served by publication and his cause of action was properly commenced within the statute of limitation period, as is more fully set forth in this memorandum. Irrespective of that assertion, Defendant's appearance and untimely conduct in this case rises to the level of waiver. Defendant's counsel first appeared in July 2016 and appeared at Defendant's damages hearing in August 2016. Shortly thereafter, Defendant's counsel requested a continuance, which the Court granted. In September 2016, Defendant filed a Motion to Set Aside Order for Entry of Default and Order for Publication, nine months after the publication had run and more than a month after counsel had appeared on Defendant's behalf. It was ultimately determined by the Court that Plaintiff's published Summons lacked a filing date and that Defendant's default was removed; however, Defendant's

counsel did accept service on behalf of Defendant and thereafter Defendant filed his Answer. Moreover, Defendant's counsel expressly admitted to the Court that it had jurisdiction over Defendant. Certainly, such conduct rises to the level of waiver and Defendant should be barred from relying on a statute of limitations defense in this instance. As such, this Court should reconsider its April 19, 2017, ruling on Defendant's Motion for Summary Judgment, and allow this case to proceed to trial.

II. Plaintiff's Service of Defendant by Publication Was Proper and Effective, Rendering Plaintiff's Cause of Action Timely Under Applicable Law.

The service of the summons and complaint, as well as notice of the pendency of a cause action, is based upon statutory law and has constitutional implications. To that end, both the United States Constitution and the South Carolina Constitution mandate that persons who may lose their rights should be informed of the risk of such loss. The United States Constitution provides that a state may not "deprive any person of life, liberty, or property, without due process of law." U.S. Const. amend. XIV, § 1. Similarly, the South Carolina Constitution provides that "[n]o person shall be finally bound by a judicial or quasi judicial decision affecting private rights except on due notice and an opportunity to be heard." S.C. Const. art. I, § 22. It has been recognized that, where a person upon whom service is sought, "employment of an indirect and even a probably futile means of notification is all that the situation permits and creates no constitutional bar to a final decree foreclosing their rights." *Caldwell v. Wiquist*, 402 S.C. 565, 576, 741 S.E.2d 583, 589 (Ct. App. 2013) (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 317 (1950)).

What constitutes proper service is governed by statute, and by the South Carolina Rules of Civil Procedure. Specifically, Rule 4(d)(1), SCRPC, requires that, in those instances in which the defendant in an action is an individual, service shall be made "by delivering a copy of the

summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein....”

Rule 4 of the South Carolina Rules of Civil Procedure, as well as Title 15, Chapter 9 of the South Carolina Code of Laws, provides for alternative means of service in the event personal service cannot be had on an individual. First, Rule 4(d)(8) allows for service to be made by the USPS, certified mail restricted delivery with return receipt requested Rule 4(e) provides further that “[w]hen a statute or an order of court provides for service of a summons and complaint or of a notice ... service shall be made under the circumstances and in the manner prescribed by the statute, rule, or order.” Thus, effective service may be accomplished under S.C. Code § 15-9-710 *et seq.*, which allows for service to be made by publication, providing certain criteria have been met. By statute, service of the summons and complaint may be had by publication “[w]hen the person on whom the service of the summons cannot, after due diligence, be found within the State...” S.C. Code § 15-9-710.

Here, Plaintiff followed the necessary procedures for serving Defendant by publication after a thorough, diligent effort to serve Defendant at his last known address by both certified, restricted mail and the Horry County Sheriff’s Department. This was sufficiently shown to the Clerk of Court of Horry County whose decision to grant service of Defendant by publication was both just and proper under the laws of the State of South Carolina, and should not be disturbed. Consequently, summary judgment is not proper in this case and this Court should reconsider its April 19, 2017, ruling and allow this case to proceed to trial on its merits.

A. Plaintiff Met His Burden to the Clerk of Court of Horry County in Establishing the Appropriateness of Defendant’s Service by Publication, and the Clerk of Court’s Decision is Unreviewable Absent Evidence of Fraud or Collusion.

When the person on whom the service of the summons is to be made cannot be found

within the state after due diligence to locate him has occurred, and where the clerk of court for common pleas is satisfied that the person cannot be found, and where it appears to the clerk of court that a cause of action exists against the person on whom service is to be made, the clerk of court may grant an order that the service be made by publication. S.C. Code § 15-9-710. The existence of the factual basis necessary to satisfy the requirements of S.C. Code § 15-9-710 make an order for service by publication unreviewable absent fraud or collusion. *Caldwell*, 402 S.C. at 574, 741 S.E.2d at 588. In *Caldwell*, the judgment debtor moved to set aside two default judgments that arose out of personal injury complaints filed by two individuals whose vehicles were struck by a vehicle operated by the judgment debtor. *Id.* The Beaufort County Court of Common Pleas denied the judgment debtor's motions, and the South Carolina Court of Appeals held that the affidavits requesting service of process by publication were deficient on their face. *Id.*

As stated, the clerk of court, or other issuing officer, may authorize publication when, upon reviewing the petition and supporting affidavit, the clerk is satisfied that a cause of action exists against the defendant and that the defendant cannot be located after due diligence. South Carolina courts have routinely noted that service by publication is in derogation of the common law and the statutes allowing it must consequently be strictly construed. *See, e.g., Brown v. Malloy*, 345 S.C. 113, 546 S.E.2d 195 (Ct. App. 2001); *Tenney v. Am. Pipe Mfg. Co.*, 96 F. 919 (D.S.C. 1899). Consequently, the decision of the officer ordering service by publication is final in the absence of a showing of fraud or collusion. *Yarbrough v. Collins*, 293 S.C. 290, 292-93, 360 S.E.2d 300, 301 (1987) (citing *Yates v. Gridley*, 16 S.C. 496 (1882)). In the absence of such a showing of fraud or collusion, the trial court is without authority to overrule the findings of a clerk of court regarding due diligence. *Montgomery v. Mullins*, 325 S.C. 500, 506, 480 S.E.2d

467, 470 (Ct. App. 1997). When neither allegations nor proof of fraud or collusion are presented to the trial court, it must correctly refuse to set aside service. *Wachovia Bank of S.C. v. Player*, 341 S.C. 424, 429, 535 S.E.2d 128, 130 (2000). It is difficult to challenge the validity of an order granting leave to effectuate service via publication, as an affidavit in support of a petition for publication is, under most circumstances, unassailable; however, it can be effectively challenged if the moving party can demonstrate that the order was procured through fraud or collusion. See, e.g., *Montgomery*, 325 S.C. 500, 480 S.E.2d 467; *Wachovia*, 341 S.C. 424, 535 S.E.2d 128. Neither fraud nor collusion can, however, be proven without having the opportunity to present evidence. *Id.*

In *Montgomery*, an issue before our State's Court of Appeals was the determination of whether the order of publication was valid based on Montgomery's lack of diligence in attempting to locate the Mullinses. The *Montgomery* Court held that the trial court was "*without authority* to overrule the finding of the clerk of court that the Mullinses could not, after due diligence, be found in the County and State of their last known residence." *Montgomery*, 325 S.C. at 505-06, 480 S.E.2d at 470 (emphasis added). In reaching its conclusion, the *Montgomery* Court looked to the then decade old precedent set by the South Carolina Supreme Court that, in the absence of fraud or collusion, the decision of the officer ordering service by publication is final. *Id.* (citing *Yarbrough* at 293 S.C. 292-293, 360 S.E.2d at 301).

Here, Defendant has neither alleged nor proved fraud or collusion, therefore the Order of Publication should be final and fatal to Defendant's Motion for Summary Judgment. The signed Order on Defendant's Motion to Set Aside states that Defendant did not use "reasonable diligence" to locate Defendant because he did not call Defendant's cell phone. Such argument exceedingly fails to rise to the level of fraud or collusion. As set forth in *Montgomery*, the law

on this issue is clear that, in the absence of fraud or collusion, the decision of the officer ordering service by publication is final and unassailable. Plaintiff rightfully and lawfully employed the Horry County Sheriff's Department to locate and serve Defendant at his last known address after certified, restricted delivery at Defendant's 186 Williamsburg Road failed. Ultimately, the sheriff's department, the law enforcement authority for Horry County, returned an affidavit of non-service despite their respective due diligence to locate and serve Defendant. The use of the sheriff's department was sufficient for the Clerk of Court to order service by publication.

Still, the Court's Order on Defendant's Motion to Set Aside states that Plaintiff could have obtained his address by simply calling Defendant's cell phone. But, it is unlikely that an individual would be forthcoming with his current or even accurate address knowing that a law firm is attempting to track him down for the purpose of bringing a cause of action against him. The record is devoid of any evidence of fraud or collusion, and, to wit, there is no law, statutory or otherwise, which provides that not calling a defendant's cell phone to obtain his address rises to the level of fraud or collusion, or that such falls short of due diligence. As to the latter, Plaintiff employed two proper avenues of service prior to publication (certified mail and the sheriff's department), and nowhere in the rules does it require a plaintiff to call a cell phone to ascertain the whereabouts of a defendant. Defendant's argument is also puzzling on this issue, as he simultaneously argues that it was somehow improper for Plaintiff to look to the collision report for the Defendant's correct address for service, but proper to look to the same report to easily determine Defendant's by calling the number listed as Defendant's cell phone. Thus, Plaintiff used reasonable due diligence, the Clerk of Court's determination as to service by publication was proper and final on the issue of service. For this reason, the Court should

reconsider its granting of summary judgment and allow this properly-commenced case to proceed to a trial by jury.

B. Plaintiff's Publication in the *North Myrtle Beach Times* Met the Requirements of the Clerk of Court's Order and the Requirements of S.C. Code Ann. § 15-9-740.

Service by publication is generally governed by South Carolina Code Sections 15-9-710, *et seq.* The South Carolina Supreme Court has ruled with certainty that the service by publication statutes may be applied to actions *in personam* so long as the due process minimum contacts requirement is satisfied. *Hendrix v. Hendrix*, 296 S.C. 200, 371 S.E.2d 528 (1988) (citing *Int'l Shoe Co. v. Washington*, 326 U.S. 310 (1945) (approving *in personam* jurisdiction over nonresidents who maintain minimum contacts within the forum state)). Moreover, any service of process must be "reasonably calculated to reach interested parties." *Aetna Cas. and Surety Co. v. Jenkins*, 282 S.C. 107, 112, 317 S.E.2d 460, 464 (Ct. App. 1984) (quoting *Mullane*, 339 U.S. 306).

Section 15-9-740 of the South Carolina Code sets forth the requirements for service by publication as follows:

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him. In case of minors, persons imprisoned outside of this State, lunatics confined outside of this State or in like cases, a similar order shall be made and like proceedings be had as in case of adults not under disabilities.

In all cases in which publication is made the complaint must first

be filed and the summons, as published, must state the time and place of such filing. When service is made by publication the ten days' notice of application for judgment to be made at chambers as required in contested cases of certain kinds as provided by law may be inserted in the first or any subsequent publication mailed to the last known residence of the defendant....

S.C. Code Ann. § 15-9-740.

The cardinal rule of statutory interpretation is to ascertain and effectuate the legislative intent whenever possible. *State v. Morgan*, 352 S.C. 359, 574 S.E.2d 203 (Ct. App. 2002) (citing *State v. Baucom*, 340 S.C. 339, 531 S.E.2d 922 (2000)). In order to be a “newspaper of general circulation within a community,” a newspaper should contain news of general interest to the community and it must reach a diverse readership. *Moore v. State*, 553 P.2d 8, 21 (Alaska 1976). Additionally, a newspaper of general circulation has been defined as one that has a content appealing to the general public and having more than a *de minimis* number of actual paid subscribers. *Great Southern Media v. McDowell Cty.*, 304 N.C. 427, 284 S.E.2d 457 (1981).

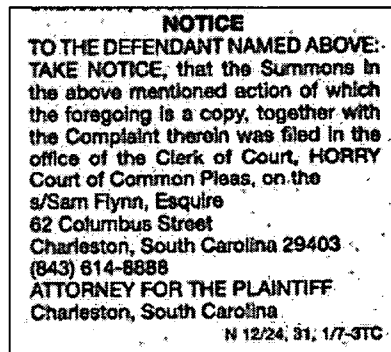
In *Brown v. Malloy*, 345 S.C.113, 546 S.E.2d 195 (Ct. App. 2001), the Court of Appeals addressed the question of the sufficiency of notice pursuant to publication in a case involving termination of parental rights and adoption. The *Brown* Court referenced an order of publication which required that notice be published in a newspaper of general circulation in the county where the minor defendant was conceived and where the biological father is last known to reside. 345 S.C. at 126, 546 S.E.2d at 201-02 (noting that the requirements of the order of publication is the mandate of section 15-9-740, which requires publication in a newspaper “most likely to give notice to the person to be served”).

Precise compliance “with the rules is not required to effect service of process.” *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010). Instead, a court reviewing notice compliance must analyze “whether the plaintiff has *sufficiently complied with*

the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” *Id.* (internal citations omitted) (emphasis added). The Supreme Court of the United States has routinely held that “notice [must be] reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” *Mullane*, 339 U.S. at 314.

South Carolina courts have never required exacting compliance with the rules to effect service of process. *See Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5 (1900) (noting that when an officer’s return is defective as to time and place of service, such defective return can be amended to state facts); *see also Saunders v. Bobo*, 2 Bailey 492 (1831) (sheriff’s incomplete, unsworn return may be amended). Rather, the courts of this state are to inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 209 (1995).

Here, Plaintiff’s notice in the *North Myrtle Beach Times* stated that Plaintiff’s Complaint was “filed in the office of the Clerk of Court, HORRY Court of Common Pleas, on the [sic]”. (See Ex. 11.) Clearly, this is a scrivener’s error in Plaintiff’s notice, as it did not include the date of filing. Yet, and most notably, this error is *not* fatal to the information



conveyed by Plaintiff’s Notice. The notice very clearly informed readers that a Summons and Complaint had been filed against Defendant, and provided the name, address, and telephone number of Plaintiff’s counsel. Paramount in Plaintiff’s notice is the inclusion of, and direction to, the Horry County Court of Common Pleas where a copy of Plaintiff’s Summons and

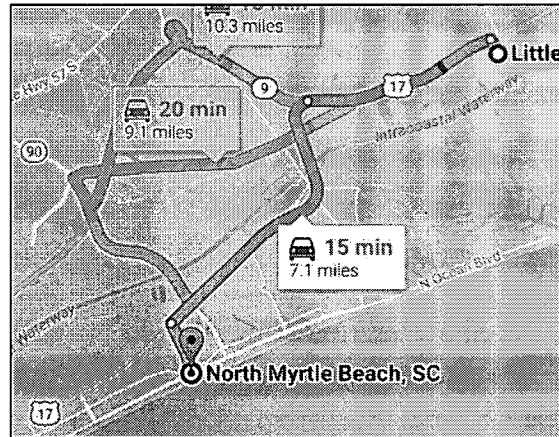
Complaint could be easily accessed via the filed case number present at the top of the notice. Such reference implicitly provided all readers the precise office at which the public filing could be accessed, and conferred upon readers the information necessary to obtain the date and time of Plaintiff's filing although the same is extraneous as Defendant's Answer would be due 30 days after service - the running of the publication, not filing. The Clerk of Court for Horry County has long since provided information on filing not only at its physical office, but also via its website which was and is publically accessible at all times relevant to this cause of action.

Accordingly, the date of filing, or lack thereof, is implicitly contained in Plaintiff's notice and in any event is inconsequential to this matter. To be sure, there are circumstances where a lawsuit's date of filing is relevant to due process notice requirements. Dates of filing are relevant in divorce proceedings, mortgage foreclosures, or even probate actions. With all three of these examples, the date of filing is relevant to the matter because statutes provide specific timelines for interested parties to appear and take part in the litigation through hearings or public filings; however, this matter is different as it is a personal injury civil lawsuit based on a motor vehicle accident which is known to have occurred on April 8, 2013. Defendant, who was unable to be located until his counsel appeared, did not lose any constitutional right to object by being unaware of this lawsuit's filing date. In this circumstance, the only dates that are germane to this analysis are the dates on which the publication ran in the *North Myrtle Beach Times*, which ran December 24 and 31, 2015, and January 7, 2016. Therefore, the thirty days for Defendant to respond to Plaintiff's Complaint began running on January 7, 2016, the last day of publication.

Plaintiff sufficiently complied with the statute controlling notice via publication. Yet, the Court decided that, after the appearance of Defendant's counsel, the case would be best served by allowing Defendant's counsel to accept service, which Defendant's did without objection, and

to submit an Answer because the notice did not, on its face contain the Complaint's filing date. Plaintiff's notice must only *substantially* comply with the statute, and the lack of filing date on the face of the notice does not deprive the court of jurisdiction over Defendant even though the Court found it appropriate to let the Defendant out of default.

As to Plaintiff's use of the *North Myrtle Beach Times*, the signed Order on Defendant's Motion to Set Aside cites S.C. Code Ann. § 15-9-740 for the proposition that notice by publication must be made in "the one newspaper . . . most likely to give notice to the person to be served" and that "the summons, as published, must state the time and place of such filing." The Order provides that Plaintiff's publication in



the *North Myrtle Beach Times* was improper because it is not a paper of "general circulation in Horry County" and because Defendant lived in Little River, not North Myrtle Beach. However, Little River is a community in Horry County, South Carolina with a population of nearly 9,000. Little River is approximately seven miles from North Myrtle Beach and is considered to be among the communities in Horry County's Grand Strand. The *North Myrtle Beach Times* is a weekly news publication that is distributed to Little River and Loris, South Carolina, which has been the case for four decades. (See Ex. 10.) Contrary to Defendant's assertion, the *North Myrtle Beach Times* is, in fact, the newspaper published closest to Little River. Therefore, the *North Myrtle Beach Times* was the only realistic option for publication given its proximity to Little River, which Defendant admits is the community in which he lived before, at the time of, and after the subject collision.

Furthermore, the weekly nature of publication, and the information provided within the *North Myrtle Beach Times* make it the most likely newspaper to provide notice to Defendant. Given that Plaintiff's notice in the *North Myrtle Beach Times* contained the necessary information under the law, and that the *North Myrtle Beach Times* is a statutorily compliant "newspaper," this Court should find that Plaintiff's notice was proper, thus precluding Defendant's argument that this cause of action was not commenced and served within the statute of limitations period. Consequently, the Court should reconsider its grant of summary judgment in favor of Defendant and find that Plaintiff's service by publication was proper, thus allowing Plaintiff's case to proceed to trial on its merits.

C. Plaintiff's Filed and Published Summons Complied with Rule 4, SCRPC, Because Both Provided Defendant Must Respond Within Thirty Days.

Rule 4 of the South Carolina Rules of Civil Procedure requires that the summons in a civil matter contain a statement detailing the "time within which these rules require the defendant to appear and defend, and shall notify him that in case of his failure to do so judgment by default will be rendered against him for the relief demanded in the complaint." Rule 4(b), SCRPC. Here, the signed Order on Defendant's Motion to Set Aside provides that "the Summons filed in this action does not notify the Defendant that if he fails to appear and defend a judgment by default will be rendered against him." This statement is factually incorrect because Plaintiff's filed Summons explicitly states that the Defendant must answer Plaintiff's Complaint within thirty days or Plaintiff will apply for the relief demanded in his Complaint. Specifically, Plaintiff's Summons (filed with his Complaint and excerpted below) clearly indicates that Defendant is "required to Answer the Complaint . . . within 30 days . . . and if you fail to Answer

the Complaint . . . Plaintiff will apply to the court for the relief demanded. . . .” (See Ex. 2 and excerpted below.)

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or his attorney, Sam Flynn, at his office, 62 Columbus Street Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at Charleston, South Carolina on the 22nd day of July, 2015.

It is very evident that Plaintiff’s filed Summons complies with Rule 4(b) because it notifies the Defendant that he must respond within thirty days and that failure to do so will have consequences. The filed Summons is not ambiguous and conforms with Rule 4(b).

Likewise, Plaintiff’s published Summons (excerpted right) states that Defendant must respond within thirty days, or Plaintiff will “apply to the Court for judgment by default for the relief demanded in the Complaint.” (See Ex.11.) In both the filed Summons and the published Summons, Plaintiff fully complied with Rule 4(b) because he notified Defendant that he would apply for relief in thirty days absent Defendant’s Answer. Both the filed and published Summons warn Defendant about the consequences of his failure to appear, namely judgment by default; however, the signed Order on this issue states that the Summons, presumably the filed

**STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS
CASE NUMBER: 2015-CP-26-5633
BOBBY FOSTER,
PLAINTIFF
VS.
JULIAN NEIL ARMSTRONG,
DEFENDANT**

SUMMONS

TO THE DEFENDANT NAMED ABOVE:
YOU ARE HEREBY SUMMONED, and required to answer the Complaint in this action, a copy of which is available from the Clerk of Court for HORRY County, South Carolina, herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff, or his attorneys, Anastopoulos Law Firm, LLC, Sam Flynn, at their office located at 2557 Ashley Phosphate Road, North Charleston, South Carolina 29418, within thirty (30) days after the serve hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the amount of time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

s/Sam Flynn, Esquire
62 Columbus Street
Charleston, South Carolina 29403
(843) 614-8888
ATTORNEY FOR PLAINTIFF
Charleston, South Carolina
NOTICE

Summons, does not comply with Rule 4(b). On this basis, Court's respective rulings on October 21, 2016, and March 16, 2017, are overly broad in stating that the Court has no personal jurisdiction over Defendant. As was previously argued to before the Court, and germane to Defendant's Motion for Summary Judgment, Plaintiff's Summons does, in fact, satisfy the requirements of Rule 4, SCRCP, which precludes Defendant's assertion of the statute of limitations as an affirmative defense here. This is underlined by Defendant's acceptance of service and admission that the Court has jurisdiction over Defendant. Thus, Defendant's Motion for Summary Judgment should have been denied, and this Court should revise its April 19, 2017, ruling accordingly.

II. Defendant Has Submitted Himself to the Personal Jurisdiction of the Court.

Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance. *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007) (noting that, under Rule 4(d), SCRCP, voluntary appearance by a defendant is equivalent to personal service, and that it is immaterial whether the defendant invokes the term "appearance" to demonstrate sufficient intent to submit to the court's jurisdiction). The *Stearns* Court additionally set forth that, although Rule 5(b), SCRCP, generally provides less stringent standards for serving pleadings subsequent to the original summons and complaint, Rule 5(a), SCRCP, requires service pursuant to Rule 4, SCRCP, when a party makes new or additional claims against another party that has been held in default for failure to appear. *Id.* at n. 2.

Long-standing precedent sets forth that a defendant may waive any complaints he may have regarding personal jurisdiction by failing to object to the lack of personal jurisdiction and by appearing to defend his case. *State v. Dudley*, 354 S.C. 514, 542, 581 S.E.2d 171, 186 (Ct.

App. 2003); *see also Cheraw Motor Sales Co. v. Rainwater*, 125 S.C. 509, 513 119 S.E. 237, 239 (1923). An appearance may be expressly made by formal written or oral declaration, or record entry, or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction." *Dudley*, 354 S.C. at 542, 581 S.E.2d at 186. No specific act constitutes an appearance, as "a defendant may choose to come into court with trumpets, or quietly by the back door." *Stephens v. Ringling*, 102 S.C. 333, 342, 86 S.E. 683, 685 (1915). Accordingly, courts decide on a case-by-case basis whether a defendant's act demonstrates an intent to submit to the court's jurisdiction. On many occasions, the South Carolina Supreme Court has found that a party can make a voluntary appearance without formally announcing same. *See, e.g., Triangle Auto Spring Co. v. Gromlovitz*, 270 S.C. 386, 389–90, 242 S.E.2d 430, 431 (1978) (holding that consenting to a confession of judgment constitutes a voluntary appearance); *Connell v. Connell*, 249 S.C. 162, 167, 153 S.E.2d 396, 399 (1967) (holding that raising the defense of *res judicata* constitutes a voluntary appearance); *Southeastern Equip. Co. v. One 1954 Autocar Diesel Tractor*, 234 S.C. 213, 218, 107 S.E.2d 340, 342 (1959) (holding that filing a motion to set aside an attachment constitutes a voluntary appearance).

Here, even if Defendant was not properly served with Plaintiff's Summons and Complaint, Defendant waived any objection to personal jurisdiction by appearing and defending this matter, as is also set forth and discussed in Section I of Plaintiff's Memorandum in Opposition to Defendant's Motion for Summary Judgment attached hereto as Exhibit A. memorandum. In particular, Defendant's counsel, in her Notice of Appearance on behalf of Defendant, states that that she "hereby provides the Court and counsel of notice that she is representing the Defendant in the above-captioned action." Additionally, Defendant's counsel states in her March 7, 2017, email that "[the Court] asked if I would accept service of the

Summons and Complaint and I indicated that I would.” Thus, summary judgment was not proper here, and this Court should reconsider its prior ruling, thereby allowing this case to proceed to trial.

III. Plaintiff’s Cause of Action Against Defendant Should Be Heard on Its Merits.

Public policy supports the overall premise that a lawsuit should be resolved on its merits. To avoid resolving litigation by default, strict compliance with the publication statutes is appropriate. *See Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 152, 169 S.E.2d 387, 390 (1969) (noting that the statute applicable to vacating a default judgment “should be liberally construed to see that justice is promoted and to strive for disposition of cases on their merits” (citation omitted)). Federal courts recognize the same policy. *See Colleton Preparatory Acad., Inc. v. Hoover Universal, Inc.*, 616 F.3d 413, 417 (4th Cir. 2010) (“[w]e have repeatedly expressed a strong preference that, as a general matter, defaults be avoided and that claims and defenses be disposed of on their merits.”); *see also Tazco, Inc. v. Dir., Office of Workers Comp. Programs, U.S. Dep’t of Labor*, 895 F.2d 949, 950 (4th Cir. 1990) (noting “[t]he law disfavors default judgments as a general matter....”)

Here, given that the action was properly commenced and served within the statute of limitations, and it would be against public policy to deny Plaintiff’s cause of action to be properly presented before the trier of fact. To grant summary judgment in favor of Defendant based on the facts presented here would effectively dispose of a case which presents questions of material fact which only a jury can properly decide. Thus, Defendant’s Motion for Summary Judgment should not have been granted, and Plaintiff’s case should be allowed to proceed before the trier of fact.

CONCLUSION

In determining whether any triable issues of fact exist, the Court must view the evidence, and all reasonable inferences that may be drawn from the evidence, in the light most favorable to the non-moving party. The non-moving party is only required to submit a scintilla of evidence in order to withstand a motion for summary judgment. Plaintiff in this case has not only presented a mere scintilla of evidence, but has established that Defendant was properly served, that Plaintiff's cause of action was properly commenced, and that, notably, that Defendant breached his duty of care to Plaintiff. For the reasons set forth herein, Defendant's Motion for Summary Judgment should have been denied, and this Court should reconsider its ruling accordingly. The applicable standard of care to be decided by the Court as a matter of law, but the burden of establishing the bar of the statute of limitations rests upon the one interposing it, and where the testimony is conflicting upon the question, it becomes an issue for the jury to decide. Therefore, summary judgment is not appropriate and this case should be allowed to proceed to trial.

Respectfully Submitted,

ANASTOPOULO LAW FIRM, LLC

/s/ Matthew L. Nall

Roy T. Willey, IV, Esquire

S.C. Bar Number: 101010

Eric M. Poulin, Esquire

S.C. Bar Number: 100209

Matthew L. Nall, Esquire

S.C. Bar Number: 102329

62 Columbus Street

Charleston, S.C. 29403

(843) 614-8888

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina

Dated: July 7, 2017

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2015-CP-26-05633

Bobby Foster,

Appellant,

v.

Julian Neil Armstrong,

Respondent.

NOTICE OF APPEAL

Plaintiff/Appellant, Bobby Foster, appeals the March 27, 2018, Order of The Honorable Larry B. Hyman, Jr., denying Plaintiff/Appellant's Motion to Reconsider the April 24, 2017, Order of The Honorable Larry B. Hyman, Jr., Granting Defendant/Respondent, Julian Neil Armstrong's, Motion for Summary Judgment. Plaintiff/Appellant received written notice of said Order on March 27, 2018.

[signature block on following page]

April 3, 2018

s/ Benjamin W. Lee

Benjamin W. Lee, Esquire

S.C. Bar No.: 103213

Eric M. Poulin, Esquire

S.C. Bar No.: 100209

Roy T. Willey, IV, Esquire

S.C. Bar No.: 101010

Anastopoulo Law Firm, LLC

32 Ann Street

Charleston, S.C. 29403

(843) 614-8888

Attorneys for Appellant

Other Counsel of Record:

Linda Weeks Gangi, Esquire

Thompson & Henry, P.A.

P.O. Box 1740

Conway, SC 29528

(843) 248-5741

Attorneys for Respondent

Certificate of Electronic Notification

Recipients

Samuel Flynn - Notification transmitted on 04-03-2018 03:29:57 PM.

Linda Gangi - Notification transmitted on 04-03-2018 03:29:57 PM.

Benjamin Lee - Notification transmitted on 04-03-2018 03:29:58 PM.

Eric Poulin - Notification transmitted on 04-03-2018 03:29:57 PM.

Matthew Nall - Notification transmitted on 04-03-2018 03:29:57 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP2605633

Official File Stamp: 04-03-2018 03:29:39 PM
Court: CIRCUIT COURT
Common Pleas
Horry
Case Caption: Bobby Foster VS Julian Neil Armstrong
Document(s) Submitted: Appeal/Notice of Appeal to Court of Appeals
Filed by or on behalf of: Benjamin Wayne Lee

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Matthew L. Nall for Bobby Foster
Linda Weeks Gangi for Julian Neil Armstrong
Eric Marc Poulin for Bobby Foster
Samuel R. Flynn for Bobby Foster
Benjamin Wayne Lee for Bobby Foster

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:

NOTICE OF APPEAL IN A CIVIL CASE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Larry B. Hyman, Jr., Circuit Court Judge

Case No. 2015-CP-26-05633

Bobby Foster,

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NOTICE OF APPEAL

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[signature block on following page]

April 3, 2018

s/ Benjamin W. Lee
Benjamin W. Lee, Esquire
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S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Anastopoulo Law Firm, LLC
32 Ann Street
Charleston, S.C. 29403
(843) 614-8888

Attorneys for Appellant

Other Counsel of Record:
Linda Weeks Gangi, Esquire
Thompson & Henry, P.A.
P.O. Box 1740
Conway, SC 29528
(843) 248-5741

Attorneys for Respondent

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
 FIFTEENTH JUDICIAL CIRCUIT
 CIVIL ACTION NO.: 2015-CP-26-05633

Bobby Foster,

Plaintiff,

vs.

Julian Neil Armstrong,

Defendant.

**ORDER DENYING PLAINTIFF'S MOTION FOR
 RECONSIDERATION OF THIS COURT'S
 ORDER GRANTING SUMMARY JUDGMENT
 AND DISMISSING THE ACTION WITH
 PREJUDICE**

PLAINTIFF'S ATTORNEY:	BENJAMIN W. LEE, ESQUIRE
DEFENDANT'S ATTORNEY:	LINDA WEEKS GANGI, ESQUIRE
HEARING DATE:	MARCH 26, 2018
PRESIDING JUDGE:	LARRY B. HYMAN, JR.

The Plaintiff represented by Benjamin W. Lee and the Defendant represented by Linda Weeks Gangi came before this Court on the Plaintiff's Motion to Reconsider this Court's Order Granting the Defendant's Motion for Summary Judgment. The Defendant asserts that this action is precluded by the Statute of Limitations. This Court heard the arguments of counsel as it deemed appropriate.

The automobile accident which is the subject matter of this action, occurred on April 8, 2013 in Horry County (See Complaint paragraphs 3, 5 and 6). Thereafter, the Plaintiff attempted to serve the Defendant by personal service through the Sheriff's Department but was unable to do so as more clearly reflected on the Affidavit of Service filed with the Court on November 23, 2015. Thereafter, Plaintiff's counsel obtained an Order for Publication which was filed on November 23, 2015. The Order states in pertinent part "the court finds that it is appropriate and necessary to serve the defendant via publication in the daily newspaper of the defendant's last known address, 186 Williamsburg Road, Little River, South Carolina." The Order of Publication goes on to state "service upon the defendant shall be effectuated by publishing the Summons, and a Notice of

Filing the Complaint in the above-referenced case in a local newspaper, once weekly for three consecutive weeks, and by forwarding a copy of the pleading to the defendant at the defendant's last known address." The Plaintiff then filed an Affidavit of Default and obtained an Order for Entry of Default and Referral for Hearing on Damages which was filed on March 8, 2016. Defense counsel filed a Notice of Appearance after having received notice that a damages hearing was scheduled. The Notice of Appearance filed on July 19, 2016 simply gives the Court and Counsel notice that she is representing the defendant and asks that all notices concerning this matter be sent to her. Thereafter, on September 16, 2016 the defendant filed a Motion to Set Aside the Order for Entry of Default and Order for Publication. After hearing the matter, Judge Culbertson issued an Order setting aside the Order for Publication and setting aside the Order for Entry of Default and Referral for Hearing on Damages and the Order was filed with the Court on October 26, 2016. Judge Culbertson found that 1) the Summons failed to comply with Rule 4(b) of the *South Carolina Rules of Civil Procedure*, 2) the Publication failed to include the date of the filing of the Summons and Complaint as required by the Order of Publication and S.C. Code Ann. §15-9-740, 3) the Plaintiff failed to properly publish the Summons in accordance with the Order for Publication which required that it be published in a daily newspaper of the defendant's last known address, and 4) the Plaintiff failed to use reasonable diligence in locating the Defendant as required by S.C. Code Ann. §15-9-740. See Court Order dated October 21, 2016 and filed October 26, 2016. Judge Culbertson further found that this Court had no personal jurisdiction over the Defendant. The Plaintiff filed a Motion to Reconsider which specifically states "Plaintiff respectfully requests this Court reconsider its October 21, 2016 Order on Defendant's Motion so that litigation is not precluded by the Statute of Limitations." The Motion for Reconsideration was denied.

The Order setting aside the Order for Publication and setting aside the Order for Entry of Default specifically required that the Plaintiff amend the Summons to comply with Rule 4(b). The Summons has never been amended. After the October 21, 2016 Order was issued by the Court, an Answer was filed on behalf of the Defendant raising the issue of the Statute of Limitations.

As stated previously, Judge Culbertson specifically found that this Court had no jurisdiction over the Defendant as of October 21, 2016, the date he issued the Order declaring the Order for Publication and the Order for Entry of Default null and void and of no force and effect. The Statute of Limitations ran on April 8, 2016, more than six months before Judge Culbertson's Order finding that the Court still had no personal jurisdiction over the Defendant as of October 21, 2016. Thus, there are no issues of facts in controversy and the Defendant is entitled to Summary Judgment on the basis that the Statute of Limitations expired prior to proper service of the Summons and Complaint on the Defendant. The Court hereby denies the Plaintiff's Motion for Reconsideration of its Order Granting Summary Judgment. This case is hereby dismissed with prejudice.

AND IT IS SO ORDERED this the _____ day of _____, 2018.

In Chambers

The Honorable Larry B. Hyman, Jr.
Presiding Judge of the Fifteenth Judicial
Circuit



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong

Case Number: 2015CP2605633

Type: Order/Other

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-04-09 11:58:40 page 4 of 4

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2015CP2605633

Bobby Foster

Julian Neil Armstrong

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Clerk Of Court

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

Plaintiff's Motion/Reconsideration Judge Hyman is bound by the Court's unappealed finding, the Motion is DENIED.

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	N/A

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

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

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge _____ Judge Code 2152 Date 3/26/2018

For Clerk of Court Office Use Only

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

Samuel R. Flynn 2375 Sir Barton Way Apt. 2320 Lexington,
KY 40509
Eric Marc Poulin 32 Ann Street Charleston, SC 29403
Matthew L. Nall 32 Ann Street Charleston, SC 29403

Linda Weeks Gangi Thompson & Henry, P.A. PO Box 1740
Conway, SC 29528

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter - Teresa Bautz

Renee N. Elvis - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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

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



Horry Common Pleas

Case Caption: Bobby Foster VS Julian Neil Armstrong
Case Number: 2015CP2605633
Type: Order/Form 4

So Ordered

s/ Larry B. Hyman 2152

Electronically signed on 2018-03-27 09:39:02 page 3 of 3

ELECTRONICALLY FILED - 2018 Mar 27 3:20 PM - HORRY - COMMON PLEAS - CASE#2015CP2605633

STATE OF SOUTH CAROLINA)

TRANSCRIPT OF RECORD

COUNTY OF GEORGETOWN)

CASE NO.: 2016-CP-22-00909

October 17, 2016

BEFORE: The Honorable Benjamin Culbertson

BOBBY FOSTER,

Plaintiff,

vs.

JULIAN NEIL ARMSTRONG,

Defendant.

 **ORIGINAL**

APPEARANCES:

Matthew Nall, Esq.
Attorneys for the Plaintiff.

Linda Gangi, Esq.
Attorneys for the Defendant.

1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: This is Bobby Foster versus Julian
3 Neil Armstrong, motion to set aside default. Give the
4 court reporter your names and who you represent.

5 MR. NALL: Matthew Nall, N-A-L-L. I represent
6 the plaintiff Bobby Foster.

7 MS. GANGI: I'm Linda Gangi. I represent Julian
8 Neil Armstrong, and it is my motion to set aside order
9 for entry of default and order for publication.

10 THE COURT: All right. Are there any other
11 attorneys that need to be here?

12 MS. GANGI: This is everyone.

13 THE COURT: Ms. Gangi, this is your motion?

14 MS. GANGI: Yes, Your Honor. Your Honor, I
15 appreciate you accommodating us this morning in
16 hearing this motion. In this regard, we are
17 attempting to set aside an order for entry of default
18 and an order for publication. In this particular
19 instance, if Your Honor will look at the summons that
20 is filed in this case, you will see that the summons
21 is defective. Rule 4(b), South Carolina Rules of
22 Civil Procedure, requires that the summons notify the
23 defendant that if he fails to answer, that a default
24 will be entered against him. The summons nowhere says
25 that. So the summons is defective that was filed with

1 the Court and that defect results in there being no
2 personal jurisdiction of the defendant.

3 The second defect is the summons that was
4 actually filed and published -- the summons that was
5 published in the North Myrtle Beach Times, the rule
6 requires, and it is SC Code Section 15-9-740 requires
7 that in the document filed publishing the summons,
8 that the time and place of filing the original summons
9 and complaint be contained in that notice. The time,
10 date of filing is -- there is actually a blank in the
11 publication that should have been filled in, but their
12 office didn't fill it in, whoever typed up what needed
13 to be done. It may have been the newspaper that did
14 it. I don't know who did it, but whoever did it,
15 there is a place for time and date of the file of the
16 summons and complaint that is left completely blank.
17 Once again, that creates an issue of personal
18 jurisdiction of my client, and on those bases it
19 should be set aside.

20 In addition, my client lived at 186 Williamsburg
21 Road in Little River, South Carolina. In August of
22 2015, his family moved to 4153 Horseshoe Road in
23 Little River. This is all shown on an affidavit that
24 I previously filed with the court. My client is a
25 college student, a young gentleman that lives with his

1 family and goes to school. The accident report shows
2 what his cell phone number is. That has been his cell
3 phone since before the accident, and it is his cell
4 phone number today. The reason that that is important
5 is that the plaintiff and plaintiff's counsel have to
6 use reasonable diligence to locate my client, and all
7 they had to do was call him. He never received any
8 notice of any lawsuit until I contacted him. Of
9 course at that point in time there had been the entry
10 of default that we are attempting to set aside.

11 Now, Your Honor, keep in mind that there is no
12 default judgment entered, so I'm not trying to set
13 aside a default judgment. There is just an entry of
14 default and an order for publication that I'm trying
15 to set aside. It is our position that -- my client
16 never received notice of this lawsuit. The summons is
17 defective that was filed with the court. The notice
18 of publication is defective that was published in the
19 North Myrtle Beach Times. So there is no personal
20 jurisdiction over my client.

21 In addition to that, the publication was done in
22 the North Myrtle Beach Times. My client has always
23 lived in Little River. He got no notice of it.

24 THE COURT: If this was to be a service by
25 publication, what should it have been in?

1 MS. GANGI: I believe the Sun News or some
2 newspaper of general circulation. I don't believe
3 that the North Myrtle Beach Times is a general
4 circulation. I believe the Horry County Independent
5 may constitute a newspaper of general circulation, but
6 the newspaper in North Myrtle Beach did not provide
7 with him any notice.

8 Above and beyond that, the notice itself is
9 defective. In our rules, the Statute 15-9-740 and SC
10 code -- I mean South Carolina Rules of Civil Procedure
11 4(b), there is two different deficiencies, so there is
12 no personal jurisdiction. So we would ask that Your
13 Honor, simply set it aside, you allow us to answer and
14 allow us to do discovery and have a jury trial. In
15 this particular instance, it is -- we're not asking
16 for a huge amount of time, but my client did not
17 receive notice that this suit was even filed until
18 August of this year.

19 THE COURT: Okay. Can you accept service on
20 behalf of your client?

21 MS. GANGI: I would be glad to.

22 THE COURT: I will hear from you.

23 MR. NALL: First of all, this suit began from an
24 accident that was a rear-end collision in April of
25 2013. If I may approach, I have a couple of things.

1 I prepared this for the damages hearing, so I believe
2 my response to Ms. Gangi's motion is on Tab 8. I
3 think it is relevant to look at because one of the
4 first arguments made was regarding the order for
5 publication based on the summons being defective.
6 First of all, an order for publication is only to be
7 vacated if there is fraud or collusion. Specifically
8 the argument was that our summons failed to notify the
9 defendant, that if he didn't answer within 30 days,
10 default would be rendered against him. The summons
11 itself actually says, You are hereby summoned and
12 required to answer this complaint of this action, a
13 copy that is served here with -- upon you and serve a
14 copy of your answers to said complaint upon the
15 plaintiff or his attorney Sam Flynn at his office 62
16 Columbus Street, Charleston, South Carolina within 30
17 days after the service hereof exclusive of the day of
18 service. If you fail to answer the complaint within
19 the time of aforesaid, plaintiff will apply to the
20 court for the relief demanded in the complaint.

21 Now, it does not use the word "default," that is
22 true; however, it notifies the defendant if he does
23 not answer within 30 days, we will apply for the
24 relief in the complaint. I think that is more than
25 enough to satisfy.

1 THE COURT: This is -- which one? Because what
2 you have on the affidavit of publication says, The
3 plaintiff in this action will apply to the court for
4 judgment by default.

5 MR. NALL: Right. So there are two different
6 summons. One was a summons that was included with the
7 complaint, and that is what I read from.

8 THE COURT: That was never served?

9 MR. NALL: Correct. And there is also a summons
10 contained within the newspaper that contains the
11 summons and the notice.

12 THE COURT: I got you.

13 MR. NALL: So what I just read from was the one
14 filed with the summons and complaint to begin with.

15 THE COURT: Okay.

16 MR. NALL: As far as the filed copy, it is more
17 than enough to comply with the rule to give personal
18 jurisdiction. Secondly, the notice that actually was
19 filed and published, now that, to be sure, did contain
20 an error because there is a blank spot where it says
21 the copy of the complaint was filed on this date, and
22 it says nothing. However, there is a very good case
23 on this matter, and it is -- I included it. It is the
24 Mull vs. Ridgeland Realty case, 387 S.C. 479, court of
25 appeals court from 2010. That case says that

1 compliance with the rules is not required to effect
2 service of the process; rather, the court must inquire
3 whether the plaintiff sufficiently complied with the
4 rules such that the court has personal jurisdiction of
5 the defendant and the defendant has notice of the
6 proceedings.

7 Now, the statute that defense counsel cited does
8 say that the notice must contain a statement of the
9 date in which the complaint was filed. I can
10 understand that in circumstances where, say, probate
11 court or family court action where there is a hearing
12 scheduled and somebody appeared. However, this is a
13 civil case where, you know, the exact date of filing
14 is really less important. It is when the defendant
15 receives notice of it. So here --

16 THE COURT: Is there a distinction in the statute
17 or the rule?

18 MR. NALL: The statute does not have a
19 distinction, but the case is informative because it
20 says exact compliance is not necessary.

21 THE COURT: What was the facts in that case?

22 MR. NALL: That was one where a gentleman
23 purchased an RV and he put a down payment on it. The
24 RV facility came in and said, well, you put a down
25 payment on it and we're going to enforce the sale. So

1 the gentleman ended up suing them to get out of the
2 sale.

3 THE COURT: I mean, was there a challenge as to
4 the effectiveness of the notice or failure to --

5 MR. NALL: In that case -- I'm sorry to
6 interrupt.

7 THE COURT: That's all right.

8 MR. NALL: It was an issue of the corporation was
9 actually -- the secretary of state said their address
10 as the registered agent was here in South Carolina,
11 but the individual actually lived in New York, and the
12 plaintiff was served in both locations and they said
13 it was defective for that reason.

14 THE COURT: Okay. Go ahead.

15 MR. NALL: With that in mind, I think the summons
16 and notice provided was sufficient to meet the rule
17 and the statute. I think something Your Honor hinted
18 on, they take issue with us publishing in the North
19 Myrtle Beach times because he lives in Little River,
20 and that is seven miles away. In my response, there
21 is an attorney general's opinion that really states
22 that in order to comply with whether or not a
23 newspaper is sufficient, it has to be published at
24 regular and short intervals, must contain intelligent
25 and current events, must be intended for general

1 circulation, but circulation to a limited specific
2 geographical area as well and it must be either sold
3 or distributed for free. North Myrtle Beach Times was
4 acceptable because it is only 7 miles away and
5 distributed to that area; in fact, I think it was one
6 of my exhibits. I looked at the website and they have
7 a Little River City of Commerce badge on there as
8 well, so they serve that area obviously.

9 I believe the only thing I haven't addressed yet
10 is whether or not we use reasonable diligence in
11 trying to find the defendant. His cell phone was
12 listed on the police report and, no, we did not call
13 it, but what we did do is we enlisted the services of
14 the Horry County Sheriff's Department to serve the
15 summons and complaint. They sent us an affidavit that
16 said after due diligence they weren't able to find him
17 and presumably they had his cell phone, and I think
18 they could have called him. I think they are in a
19 better position to do. I don't think that as a
20 plaintiff's firm they should call somebody up and say,
21 hey, your number appears on a police department and
22 we're trying to sue you. I don't think they would be
23 forthcoming with their address. So I don't know how
24 much help that would be in this matter.

25 With all of those considerations in mind, I think

1 that, you know, there is no fraud, no collusion and
2 the order of publication must stand and it is
3 appropriate and cannot be overturned. I also think we
4 used reasonable diligence by publishing in a paper for
5 three weeks as the statute requires. I believe it was
6 the last two weeks in December and first week of
7 January of this year. So for all of those reasons, I
8 think the order to vacate publication and default
9 should be denied.

10 THE COURT: All right. Anything in reply?

11 MS. GANGI: Your Honor, I would point out a
12 couple of things. The case that he referred to, Mull
13 versus Ridgeland Realty, in that case the LLC actually
14 received the summons and complaint in the mail by
15 service, so there was receipt of the summons and
16 complaint by service in that particular case, and then
17 there was a judgment entered before they collaterally
18 attacked it. So it was a totally different situation.

19 Also, Your Honor, they argue that they sent the
20 sheriff's department out. If Your Honor will look at
21 the affidavit, the last line of the affidavit says,
22 Unable to locate. Neighbor advised that subject has
23 moved. So they knew at the time that they sent the
24 sheriff out that he didn't live at that house, and all
25 they had to do was call him.

1 Above and beyond all of that, there is no
2 jurisdiction here. Rule 4 of the South Carolina Rules
3 of Civil Procedure and the statute that I cited to
4 Your Honor both indicate that there is no
5 jurisdiction, that is 15-9-740. If you don't
6 meticulously follow the rules, the summons that was
7 filed with the court does not follow Rule 4(b) as it
8 is required to and notify them of default.

9 THE COURT: So the summons run in the newspaper
10 was not filed with the clerk of court?

11 MS. GANGI: It was filed with the clerk of court
12 after it ran, but that is defective because 15-9-740
13 requires that if -- notify in the publication the
14 date, time and place that the summons was originally
15 filed and it --

16 THE COURT: Excuse me for interrupting. I
17 understand that on the notice, but I'm talking about
18 the summons portion. If I understand the argument,
19 the one that was filed with the complaint does not
20 state that a judgment by default will be obtained or
21 requested.

22 MS. GANGI: Correct.

23 THE COURT: But the one that ran in the
24 publication does say they will seek a judgment by
25 default?

1 MS. GANGI: Correct.

2 THE COURT: Was that ever filed with the clerk of
3 court, other than in the affidavit of publication?

4 MS. GANGI: It was filed in the affidavit of
5 publication.

6 THE COURT: But not -- the original summons to
7 the pleadings was never amended; is that correct?

8 MS. GANGI: That's correct. And that filing is
9 incorrect, just like there is a mistake on a mistake,
10 but that mistake creates a personal jurisdiction issue
11 in addition to the fact that they just didn't use due
12 diligence when they had his cell phone number.

13 THE COURT: Anything else?

14 MS. GANGI: That's it. Thank you, Your Honor.

15 THE COURT: Thank you. I'm not so sure about the
16 personal jurisdiction, but it is obvious that the
17 notice didn't contain -- and I think they may have
18 corrected the defect on the summons because the one in
19 the newspaper did say default would be -- judgment of
20 default would be obtained if not answered within 30
21 days; however, the notice does not give the date, time
22 of the filing. As to whether it was the newspaper's
23 fault or whose fault, I don't know. I'll allow them
24 to set aside default since judgment has not been
25 entered, but if you will prepare an order, Ms. Gangi,

1 that grants the motion to set aside default, but in
2 there say that you are representing the defendant --
3 and I'm assuming you will be representing the
4 defendant in the action?

5 MS. GANGI: Yes, Your Honor.

6 THE COURT: And that you have agreed to accept
7 service and you are authorized to accept service on
8 behalf of the defendant.

9 MS. GANGI: I'll do that. Thank you.

10 THE COURT: Thank you.

11 (The proceedings concluded.)
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CERTIFICATE OF REPORTER

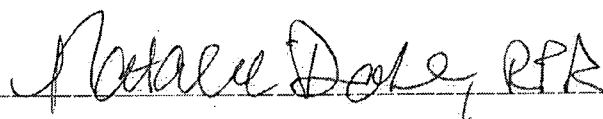
State of South Carolina)

County of Georgetown)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the evidence introduced in the hearing of the above-captioned case, relative to appeal, in the Court of Common Pleas for Georgetown County, South Carolina, on the 17th day of October, 2016.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

October 13, 2018



Natalie Dahl, RPR

Court Reporter

ORIGINAL

SOUTH CAROLINA DEPT OF TRANSPORTATION										SOUTH CAROLINA TRAFFIC COLLISION REPORT FORM										# Of Units		Armed / Assn. Code of Offense Report		Notified		Armed	
Page # 1										TR-310 (Rev. 7/2010)										02				1645		1645	
Date		Time of Collision		Day		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- PP		Collision Location (Rt. # / Name)		3- Man 2- Alternate 5- Spur		6- Connection 7- Business		Miles		Dir.		In (Near) City or Town of:							
04-08-2013		1600		26						SC 90 /						.08		N E		NORTH MYRTLE BEACH							
Lane # / Dir.		Distance		Direction		1- Interstate 2- US Primary 3- SC Primary		4- Secondary 5- County 6- Other		Base Intersection (Rt. # / Name)		1- Man 2- Alternate 5- Spur		6- Connection 7- Business 9- Other		GPS COORDINATES 00 00 00"											
1 / 2 S W		.05		S W						/ PINNACLE PL						DEGREES MINUTES SECONDS											
R.R. Id.		From		Ramp Only		To		1- Interstate 2- US Primary 3- SC Primary		Second Intersection (Rt. # / Name)		1- Man 2- Alternate 5- Spur		6- Connection 7- Business 9- Other		Latitude		33 51 46.78		Longitude							
		N E 1 - Entrance S W 2 - Exit		N E S W						/ GOLF AVE						78 38 53.50											
E-460503										E-460787																	
Driver/Pedestrian's Full Name ARMSTRONG JULIAN NEIL										Driver/Pedestrian's Full Name FOSTER BOBBY																	
Sex		Race		Street/R.F.D.		City, State, & Zip		Birth Date		State		Sex		Race		Street/R.F.D.		City, State, & Zip		Birth Date		State					
M		B		186 WILLIAMSBURG RD		LITTLE RIVER SC 295667812		08-05-1995		SC		M		W		3315 DREW ST		ASH NC 28420-3025		09-25-1950		NC					
Year		Body		Vehicle Make		VIN #		Class		Insurance Company		Year		Body		Vehicle Make		VIN #		Class		Insurance Company					
1995		4S		LEXS		JT8GK13T550090073		D		STATE FARM		2000		VN		DODG		2B4GP4430YR523493		C		NATIONWIDE					
State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #					
SC		2015		DWP624		UNKNOWN		NC		2013		YPM5186		23836037		NC		2013		YPM5186		23836037					
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name					
(843) 5040638		ARMSTRONG FRANCIS NEIL		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY					
Bus. Telephone		Street/R.F.D.		Bus. Telephone		Street/R.F.D.		Bus. Telephone		Street/R.F.D.		Bus. Telephone		Street/R.F.D.		Bus. Telephone		Street/R.F.D.		Bus. Telephone		Street/R.F.D.					
		186 WILLIAMSBURG RD				3315 DREW ST				3315 DREW ST				3315 DREW ST				3315 DREW ST				3315 DREW ST					
Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip		Contributed To Collision		City, State, & Zip					
Yes		LITTLE RIVER SC 295667812		Yes		ASH NC 28420-3025		Yes		ASH NC 28420-3025		Yes		ASH NC 28420-3025		Yes		ASH NC 28420-3025		Yes		ASH NC 28420-3025					
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20		40		G323875		21		Code Towed Yes (No)		0		40		G323875		21		Code Towed Yes (No)		0		40					
Driver/Pedestrian's Full Name										Driver/Pedestrian's Full Name																	
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State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #		State		Year		License Plate #		Owner's D.L. #					
SC		2015		DWP624		UNKNOWN		NC		2013		YPM5186		23836037		NC		2013		YPM5186		23836037					
Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name		Home Telephone		Owner's Full Name					
(843) 5040638		ARMSTRONG FRANCIS NEIL		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY		(810) 3637403		FOSTER BOBBY					
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Unit	Date of Birth	Sex	Race	INJ.	Seat	R/S/D	A/B	E/ect	LAI	Trans	Name	Street Address	Zip Code																																																																																																																					
01	08-05-1995	M	B	0	01	13	4	1	1	2	ARMSTRON JULIAN NEIL	186 WILLIAMSBURG RD LITTLE SC	295667812																																																																																																																					
02	00-25-1950	M	W	1	01	13	4	1	1	8	FOSTER BOBBY	3315 DREW ST ASH NC	28420-3025																																																																																																																					
<table border="1"> <tr> <td>Race</td> <td>A - Asian/Pacific Islander</td> <td>W - Caucasian</td> <td>a) Injury Status</td> <td>2 - Non-incapacitating</td> <td>Seating Loc.</td> <td>20 - Pedestrian</td> <td>60 - Sleeper at Cab</td> <td>Restraint/Safety Device</td> </tr> <tr> <td>B - African American</td> <td>H - Hispanic</td> <td>O - Other</td> <td>3 - Not Injured</td> <td>3 - Incapacitating</td> <td>01 02 03</td> <td>30 - Trailing Unit</td> <td>70 - Riding on Unit Exterior</td> <td>00 - None Used</td> </tr> <tr> <td>I - Asian Native or American Indian</td> <td>U - Unknown</td> <td>U - Unknown</td> <td>4 - Possible Injury</td> <td>4 - Fatal</td> <td>04 05 06</td> <td>40 - Bus or Van (4th row or Higher)</td> <td>80 - Laps</td> <td>11 - Shoulder belt</td> </tr> <tr> <td colspan="3">Air Bag Deployment / Switch</td> <td colspan="3">b) 2 or 3 Wheel Motorized Vehicle</td> <td colspan="3">50 - Other Enclosed Area (nonhauling)</td> </tr> <tr> <td colspan="3">1 - Deployed Front 4 - Not Deployed</td> <td colspan="3">Head Injury</td> <td colspan="3">51 - Other Unenclosed Area (nonhauling)</td> </tr> <tr> <td colspan="3">2 - Deployed Side 7 - Not Applicable</td> <td colspan="3">Location After Impact</td> <td colspan="3">R) Transported to Medical Facility</td> </tr> <tr> <td colspan="3">3 - Deployed Both 9 - Deployment Link</td> <td colspan="3">1 - Not Trapped</td> <td colspan="3">1 - Yes 2 - No 3 - Unknown</td> </tr> <tr> <td colspan="3">4 - Switch On Position 3 - No Switch</td> <td colspan="3">2 - Exhausted (Mechanical Means)</td> <td colspan="3">B) By: 1 - EMS 2 - Police 8 - Other 9 - Unknown</td> </tr> <tr> <td colspan="3">5 - Switch Off Position 9 - Unknown</td> <td colspan="3">3 - Not Applicable</td> <td colspan="3">41 - Protective Pads 61 - Lighting</td> </tr> </table>														Race	A - Asian/Pacific Islander	W - Caucasian	a) Injury Status	2 - Non-incapacitating	Seating Loc.	20 - Pedestrian	60 - Sleeper at Cab	Restraint/Safety Device	B - African American	H - Hispanic	O - Other	3 - Not Injured	3 - Incapacitating	01 02 03	30 - Trailing Unit	70 - Riding on Unit Exterior	00 - None Used	I - Asian Native or American Indian	U - Unknown	U - Unknown	4 - Possible Injury	4 - Fatal	04 05 06	40 - Bus or Van (4th row or Higher)	80 - Laps	11 - Shoulder belt	Air Bag Deployment / Switch			b) 2 or 3 Wheel Motorized Vehicle			50 - Other Enclosed Area (nonhauling)			1 - Deployed Front 4 - Not Deployed			Head Injury			51 - Other Unenclosed Area (nonhauling)			2 - Deployed Side 7 - Not Applicable			Location After Impact			R) Transported to Medical Facility			3 - Deployed Both 9 - Deployment Link			1 - Not Trapped			1 - Yes 2 - No 3 - Unknown			4 - Switch On Position 3 - No Switch			2 - Exhausted (Mechanical Means)			B) By: 1 - EMS 2 - Police 8 - Other 9 - Unknown			5 - Switch Off Position 9 - Unknown			3 - Not Applicable			41 - Protective Pads 61 - Lighting																																						
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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complied to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."



Kenneth T. David, Esquire
S.C. Bar No.: 103434
Lane D. Jefferies, Esquire
S.C. Bar No.: 101764
Eric M. Poulin, Esquire
S.C. Bar No.: 100209
Roy T. Willey, IV, Esquire
S.C. Bar No.: 101010
Anastopoulos Law Firm, LLC
32 Ann Street
Charleston, SC 29403
(843) 614-8888

Attorney for Appellant

Dated: April 18, 2019

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