

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

2018CP4005641

RONALD I. PAUL

Plaintiff,

v.

SOUTH CAROLINA DEPARTMENT OF
TRANSPORTATION; PAUL D. DE HOLCZER,
individually and as a partner of the law firm of
Moses, Koon & Brackett, PC; MICHAEL H.
QUINN, individually and as senior lawyer of
Quinn Law Firm, LLC; J. CHARLES ORMOND,
JR., individually and as partner of the Law Firm
Of Holler, Dennis, Corbett, Ormand, Plante &
Garner; OSCAR K. RUCKER, in his individual
capacity as Director, Rights of Way South Carolina
Department of Transportation; MACIE M. GRESHAM,
in her individual capacity as Eastern Region
Right of Way Program Manager South Carolina
Department of Transportation; NATALIE J. MOORE,
In her individual capacity as Assistant Chief Counsel
South Carolina Department of Transportation.

Defendants.

Order Denying Plaintiff's
Motion for Entry of Default
and for Default Judgment
Against Moses, Koon &
Brackett, PC, now known as
Moses & Brackett, PC

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JUL 23 2019
SC Court of Appeals

Before the court is the Plaintiff's Motion for Entry of Default and for Default Judgment against Moses, Koon & Brackett, PC. Moses & Brackett, PC, formerly known as Moses, Koon & Brackett, PC, made a special appearance challenging jurisdiction on the ground that it is not a party-defendant in the case and, as a consequence, the court lacks jurisdiction over it, and judgment cannot be entered against it.

The court finds, solely from the content of the Complaint, that Moses & Brackett, PC's position is well taken because the Complaint does not identify Moses & Brackett, PC (or Moses, Koon & Brackett, PC) as a defendant. In particular:

1. The case caption does not identify either corporate entity as a defendant. The only mention of Moses, Koon & Brackett, PC is where defendant Paul de Holczer is identified as a defendant “individually and as a partner (should be shareholder) of the law firm of Moses, Koon & Brackett, PC.”
2. In the body of his Complaint (¶ 1) Plaintiff identifies the various defendants. The entity of Moses, Koon & Brackett, PC is not named.
3. In ¶ 6 of the Complaint, Plaintiff alleges the statutory basis of his action, including that named defendants violated his statutory rights. The entity of Moses, Koon & Brackett, PC is not named.
4. In the “Parties” section of the Complaint (¶ 10-19) Plaintiff makes particular allegations regarding the various parties-defendant. The entity of Moses, Koon & Brackett, PC is not specifically named, only referred to in the allegation regarding defendant de Holczer, again alleging only that de Holczer is being sued “individually and as a partner (should be shareholder) of the law firm of Moses, Koon & Brackett, PC.” (Complaint, ¶ 14-15).
5. No damages or declaratory relief are sought against either Moses, Koon & Brackett, PC or Moses & Brackett, PC. (Complaint, ¶102-110).
6. The Prayer for Relief does not identify either corporate entity as a subject of the sought-after judgment. (Complaint, pages 26-27).

Naming de Holczer as a defendant in his capacity as a shareholder of a professional corporation does not, standing alone, make the corporation a defendant. A corporation is an entity separate and distinct from its officers and stockholders. Mid-South Mgt. Co., Inc. v. Sherwood Dev. Corp., 649 S.E.2d 135 (S.C. App. 2007), rehearing denied and certiorari denied;

Mangum v. Maryland Cas. Co., 500 S.E.2d 125 (S.C. App. 1998) (a corporation is not a natural person and maintains a separate and distinct identity apart from its shareholders.)

A court may enter judgment only against a party to the action. 46 Am.Jur. 2d Judgments (2017) §78. In Holt v. Calhoun, 179 S.E. 501 (S.C. 1935) the South Carolina Supreme Court ruled that a court has no jurisdiction to pass on rights of persons who are not parties to the suit. Accordingly, the court finds and concludes that Moses, Koon & Brackett, PC, now known as Moses & Brackett, PC, is not a party-defendant in this action, and the court does not have the requisite jurisdiction to enter either a default or a default judgment against a non-party.

Accordingly, it is ORDERED that Moses & Brackett, PC, formerly known as Moses, Koon & Brackett, PC, is not a party to this action and that Plaintiff's Motion for Entry of Default and for Default Judgment against Moses, Koon & Brackett, PC, now known as Moses & Brackett, PC, is denied.

IT IS SO ORDERED.



L. Casey Manning, Judge

May 7, 2019
Columbia, South Carolina