

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE L. CASEY MANNING
Circuit Court Judge
Fifth Judicial Circuit

CASE NO: 2018-CP-400-5641

RONALD I. PAUL.....Appellant,

V.

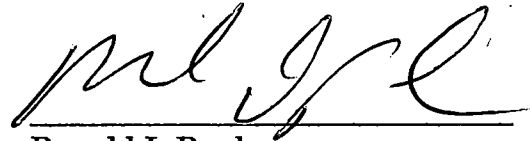
SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION; PAUL D. DE HOLCZER, individually and as a partner of the law Firm of Moses, Koon & Brackett, PC; MICHAEL H. QUINN, individually and as senior lawyer of Quinn Law Firm, LLC; J. CHARLES ORMOND, JR., individually and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plant & 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..... Respondents.

Appellant

RESPONSE in opposition to Moses, Koon & Brackett, PC, Motion for untimeliness of Appeal

The order of the Honorable L. Casey Manning was dated May 7, 2019 and filed on June 7, 2019. (Exhibit A) Appellant received receipt of written notice of entry of the order on June 11, 2019. Appellant filed a Rule 59 (e)

Motion on June 14, 2019. The Rule 59 (e) order was dated June 27, 2019 and filed on June 28, 2019, that referred to, raised and discussed both orders filed on June 7, 2019. (Exhibit B) The Notice of Appeal was filed on all three orders on July 23, 2019, the Appeal is timely. Therefore, the Respondent Moses, Koon & Brackett, PC, Motion should be DENIED.



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Appellant, *Pro Se* litigant

Other Counsel of Record:

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EXHIBIT

A

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 &
Gamer; 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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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).

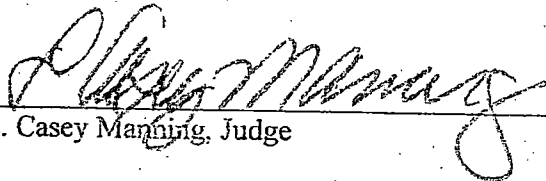
Naming de Holczer as a defendant in his capacity as a shareholder of a professional corporation does not, standing alone, make the corporation a defendant. A corporation is an entity separate and distinct from its officers and stockholders. Mid-South Mgt. Co., Inc. v. Sherwood Dev. Corp., 649 S.E.2d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

EXHIBIT

B

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Ronald I. Paul,

Plaintiff,

v.

South Carolina Department of
Transportations; 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, Ormond, 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.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO: 2018-CP-400-5641

**ORDER DENYING DEFENDANT'S
MOTION TO RECONSIDER**

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THIS MATTER came before the Court on April 16, 2019 on several Motions of the Plaintiff and Defendants including the following:

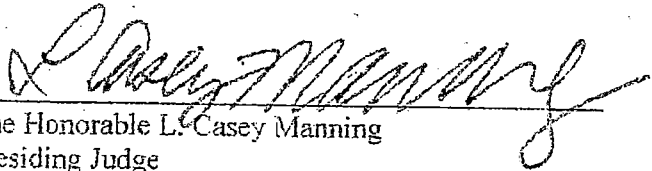
- (1) Motion for Entry of Default and Default Judgment by the Plaintiff filed December 31, 2018;
- (2) Motion to Set Aside Entry of Default and Motion to Dismiss by the Defendants Rucker and Gresham filed January 31, 2019;

- (3) Motion for Stay of Discovery and/or Motion for Protective Order by the Defendants SCDOT, de Holczer, and Moore filed December 17, 2018;
- (4) Motion for Rule 26(c) Protective Order to Stay Discovery by Defendant Quinn filed December 19, 2018;
- (5) Motion to Compel Discovery against the Defendants SCDOT, de Holczer, and Moore by the Plaintiff filed December 18, 2018; and
- (6) Motion to Compel Discovery against the Defendant Quinn by the Plaintiff filed December 20, 2018.

Following the hearing and review of arguments and pleadings submitted by the parties, this Court denied Plaintiff's Motions for Entry of Default and Default Judgment and found Plaintiff's Motions to Compel Discovery moot. The court further granted Defendants Motion to Set Aside Entry of Default, Motion to Dismiss and Motions to Stay Discovery detailed in two Orders filed June 7, 2019. Plaintiff filed a Motion to Reconsider on June 14, 2019, which was timely under Rule 59(e). After a review of the pleadings, the motion and arguments therein, and all the testimony including this Court's previous ruling, this Court denies Plaintiff's Motion to Reconsider without oral arguments presented.

Therefore, after reviewing Plaintiff's Motion and the arguments within being duly noted, Plaintiff's Motion to Reconsider this Court's ruling on Plaintiff's Motions for Entry of Default and Default Judgment, and Motions to Compel is DENIED.

IT IS SO ORDERED this 27 day of June 2019


The Honorable L. Casey Manning
Presiding Judge

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
THE HONORABLE L. CASEY MANNING
Circuit Court Judge
Fifth Judicial Circuit

CASE NO: 2018-CP-400-5641

RONALD I. PAUL.....Appellant,

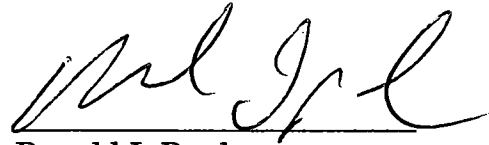
V.

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 a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plant & 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..... Respondents.

PROOF OF SERVICE

I, Ronald I. Paul hereby certify that I have served the Appellant RESPONSE in opposition to Moses, Koon & Brackett, PC, Motion for untimeliness of Appeal, on all Respondents South Carolina Department of Transportation; Paul D. de Holczer individually, and as a partner of the law Firm of Moses, Koon & Brackett, P.C; Michael H. Quinn, individually and as senior lawyer of Quinn Law Firm, LLC; J. Charles Ormond, Jr., individually

and as a partner of the Law Firm of Holler, Dennis, Corbett, Ormond, Plant & 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 by depositing a copy of it in the United State Mail, postage prepaid, on this date, August 9, 2019, addressed to the attorney of record or *Pro Se* Litigants and others as listed below.



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