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.

INITIAL BRIEF OF APPELLANT

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Appellant, *Pro Se* litigant
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STATEMENT OF ISSUES ON APPEAL

I **Did the Circuit Court judge err and abuse his discretion in refusing to entry default against Rucker and Gresham pursuant to Stark Truss Co. v. Superior Const. Corp ?**

II **Did the Circuit Court judge incorrectly held in his Order dated June 7, 2019, that service of the Summons and Complaint on Rucker and Gresham was ineffective and, erred and abused his discretion in dismissing them from the Complaint for lack of personal jurisdiction?**

III **Did the circuit court judge err and abuse his discretion in denying Appellant's Rule 59(e) Motion?**

STATEMENT OF THE CASE

Appellant Ronald I. Paul filed a Summons and Complaint on October 26, 2018 seeking payment for his property taken pursuant to the South Carolina Eminent Domain Procedures Act, Section 28-2-10, *et seq.*,(R pp _____) without payment of just compensation, in other words to be clearly, zero $0.00. dollars and cents. (R pp 00-00)

Appellant asserted a civil right cause of action under Section 1983 for declaratory judgment and civil conspiracy under 42 U.S.C. 1983 against all Respondents. (R pp _____)

The Complaint shows that the source of Paul injury is the defendants' conduct (R pp _____) that the defendants' conduct caused the adverse state court orders and their conduct is an independent claim. The complaint did not seek to have the state court judgments voided or reversed. (R pp _____)

The Summons and Complaint was served upon Respondent Oscar K. Rucker, in his individual capacity (hereinafter, "Rucker") pursuant to Rule 4 (d)(8), SCRCP, by certified mail, return receipt requested, restricted delivery to Oscar K. Rucker, in his individual capacity as Director, Rights of Way South Carolina Department of Transportation (R pp _____) at his last known address (R pp _____)

The Summons and Complaint was served upon Respondent Macie M. Gresham, in her individual capacity (hereinafter, "Gresham") as Eastern Region Right of Way Program Manager South Carolina Department of Transportation pursuant to Rule 4 (d)(8), SCRCP, by certified mail, return

receipt requested, in her individual capacity as Eastern Region Right of Way Program Manager South Carolina Department of Transportation (R pp _____) at her last known address (R pp _____)

In addition, the Summons and Complaint was served upon Respondent South Carolina Department of Transportation (hereinafter "SCDOT") office (R pp 00-00)

The documents were placed in the US Mail on or about October 27,2018. (R pp _____) Return receipts were later received by Appellant indicating that the documents had been received. (R pp _____)

The documents mailed to Rucker, Gresham and SCDOT were signed for by John Furgess who is a SCDOT Postal Specialist (hereinafter "Furgess") Furgess signed the return receipts on October 28 , 2018, however, USPS tracking show October 29, 2018 (R pp _____) on November 26, 2018, SCDOT attorney Mr. Andrew F. Lindemann filed a Notice of Appearance on behalf of SCDOT (R pp _____)

More than 35 days passed after October 29, 2018, therefore, on December 31, 2018, Plaintiff filed an Affidavit of Default explaining the basis for entry of default against Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity (R pp _____) the default Motion Package was mailed to Linda C. McDonald and Andrew F. Lindemann SCDOT lawyers (R. pp 00-00)

On January 31, 2019, Rucker and Gresham filed a Motion to set aside entry of default and Motion to dismiss. (R pp _____)

Rucker and Gresham arguments in their Motion to set aside entry of default was solely based on alleged improper service (R pp _____) asserted in affidavits of Rucker and Morey that the individual who signed the return receipts for the certified mail, restricted delivery was" unauthorized" under Rule 4(d)(8), SCRCP. (R pp _____)

Rucker, Morey and Furgess did not appear at the hearing in person and could not be cross-examined (R pp _____) therefore, appellant motion the court for a continuation to conduct discovery and cross – examination of witnesses (R pp 00-00) because Respondents would not cooperate with discovery requests and cross-examination of their witnesses. (R pp 00-00)

Following the hearing held on April 16, 2019 the Honorable L. Casey Manning, granted Rucker and Gresham Motion to set aside entry of default and Motion to dismiss by Order filed on June 7, 2019 (R pp _____)

Appellant filed a Rule 59(e) Motion on June 14, 2019 (R pp _____) Judge Manning denied the motion by Order filed on June 28, 2019 (R pp _____)

Appellant timely served and filed his Notice of Appeal on July 23, 2019. (R pp _____)

ARGUMENTS

I The Circuit Court judge erred and abused his discretion in refusing to entry default against Rucker and Gresham pursuant to Stark Truss Co. v. Superior Const. Corp

Appellant served Rucker, Gresham and SCDOT with the Summons and Complaint pursuant to Rule 4 (d)(8), SCRCP, which provides in relevant part as follows: (R pp 00-00)

Service by Certified Mail. Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

On November 26, 2018, on behalf of SCDOT Mr. Andrew F. Lindemann filed a Notice of Appearance (R pp 00-00)

On December 31, 2018, Appellant filed an Affidavit of Default explaining the basis for entry of default against the Respondents Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity (R pp 00-00)

Entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. (R pp 00-00) Stark Truss Co. v. Superior Const. Corp., 360 S.C. 503, 509, 602

S.E.2d 99, 102 (Ct. App. 2004) (citing Thynes v. Lloyd, 294 S.C. 152, 153–54, 363 S.E.2d 122, 123 (Ct. App. 1987), which held that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party). (R pp 00-00)

Consequently, the Circuit Court judge erred and abused his discretion in not entering default against Rucker and Gresham in their individual capacities pursuant to authoritative precedent and binding authority in Stark Truss Co. v. Superior Const. Corp

II The Circuit Court judge incorrectly held in his order dated June 7, 2019, that service of the Summons and Complaint on Rucker and Gresham was ineffective and, erred and abused his discretion in dismissing them from the Complaint for lack of personal jurisdiction.

On January 31, 2019, Rucker and Gresham filed a Motion to set aside entry of default and Motion to dismiss. (R pp _____)

The motion to set aside includes the affidavit of Rucker who testified "that he retired from SCDOT in 2010 and, at no time have he authorized SCDOT or anyone employed by SCDOT to accept service on any legal documents on his behalf, including this lawsuit filed by Ronald Paul against me and others".[1] (R pp _____)

[1] This statement made by Rucker was disputed by evidence submitted by Paul, because in the past on May 18, 2012 Rucker had retired at this point and time also and, the SCDOT Postal Specialist signed the receipts for the documents sent to Rucker at his former employer address in his individual capacity, in other words there is express or implied authority conferred on SCDOT Postal Specialists and there is apparent authority created by PS Form 1093. (R pp 00-00)

The motion also includes the affidavit of Morey who testified, she is employed by SCDOT in the Rights of Way Director's Office, that the return receipts were signed by an SCDOT postal employee Furgess (R pp 00-00) and the certified letters were provided to her [2] (R pp 00-00) that after ""consulting with the SCDOT legal office, she handwrote "Return to Sender" on both envelopes and placed them back in the U.S. Mail to be returned to the Plaintiff""[3]

This Court has established the standard for evaluating the effectiveness of service of process See, Bage v Southeastern Roofing. 373 SC 457,646 SE 2d 153 (Ct App 2001), *vacated* 383 SC 489, 681 SE 2d 867 (2009) The Court explained "When the civil rules on service are followed, there is a presumption of proper service " Id at 158. The court elaborated, noting that" inquiry must only be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction over the defendant and the defendant has notice of the proceedings " Id.

Despite Rucker and Gresham assertions "(t)he rules simply does not require the specific addressee to sign the return receipt" Roche v Young Brothers, Inc. 318 SC 207, 211, 456 SE 2d 897(SC 1995) (holding that the rules for service

[2] Rucker and Morey testified in their affidavits that the person (Furgess) who signed for the certified mail was not authorized to accept service of any legal documents or papers on behalf of Rucker or Gresham, but neither affidavit testified that Furgess was unauthorized to receive and sign for their certified mail. Rucker and Gresham failed to present any credible evidence to meet their burden of proof that SCDOT Postal Specialist Furgess who signed for restricted delivery, certified mail was unauthorized. (R pp 00-00)

[3] The Plaintiff presented evidence to dispute that testimony, in other words the USPS Tracking shows the Certified Mail was not placed back in the U.S. Mail to be return to the Plaintiff, the USPS Tracking dispute that testimony. (R pp 00-00) In addition, see Paul affidavit that disputed, that testimony. (R pp 00-00)

were satisfied although an individual other than the addressee and registered agent signed for the restricted delivery documents when that individual was found to be the agent for the defendant and routinely picked up mail for the defendant)

Rule 4, SCRCP serves at least two purposes. "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995) Exacting compliance with the rules is not required to effect service of process. *Id.* at 209-10, 456 S.E.2d at 899 "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." *Id.* at 210, 456 S.E.2d at 899. (Emphasis added)

By Order dated and filed on June 7, 2019, the circuit court incorrectly granted Rucker and Gresham Motion to set aside entry of default and Motion to dismiss (R pp 5-10) there were five causes to denied the Motion:

First, the record shows Appellant served Rucker with the Summons and Complaint in strict accordance with Rule 4(d)(8),SCRCP, selecting and paying for certified mail, return receipt requested and delivery restricted to the addressee option as to Rucker last known address (R pp 00-00) the record shows Appellant served Gresham with the Summons and Complaint in accordance with Rule 4 (d)(8),SCRCP, selecting and paying for certified mail, return receipt requested option as to Gresham last known address (R pp 00-00) the record

shows SCDOT was served and filed an Appearance on November 26, 2018. (R pp 00-00)

Second, under Roche v. Young Bros., Inc. of Florence; Bage v Southeastern Roofing when the civil rules on service are followed, there is a presumption of proper service (R pp _____)

Third, Rucker and Gresham failed to present any credible evidence to meet their burden of proof that the person who signed for restricted delivery, certified mail was "unauthorized" (R pp _____)

Fourth, the factual support pro offered in Rucker and Gresham Motion to set aside entry of default and Motion to dismiss was the affidavits of Rucker and Morey, which Appellant submitted evidence to the court that showed the affidavits to be unworthy of belief in multiple respects (R pp _____)

Fifth, even if Rucker and Morey would have had any credibility, they testified in the affidavits that the persons who signed for the restricted delivery, certified mail (Furgess) was not authorized to accept service, they did not testified Furgess was unauthorized to receive and sign for Rucker and Gresham restricted delivery, certified mail. (R p 00-00)

Lastly, the court obtain personal jurisdiction over Rucker and Gresham in this matter, through statements, actions and pleading filed by Rucker, Gresham and SCDOT that constitute a "voluntary appearance" such that personal jurisdiction over them would be conferred on the court. Steams Bank Nat Ass'n v Glenwood Falls, LP, 373 SC 331,644 SE 2d

793 (Ct App 2007) *reh'g denied* (May 17,2007) *cert denied* (Nov I5, 2007) (R pp 00-00)

For all of the above reasons, the court below ruled incorrectly in granting Rucker and Gresham Motion to set aside entry of default and Motion to dismiss in its Order filed on June 7, 2019.[4]

III The Circuit Court judge erred and abuse his discretion in denying Appellant's 59(e) Motion.

Appellant filed a Rule 59(e) Motion, since the issue is not whether Appellant can prove John Furgess, who is a SCDOT Postal Specialist was "authorized," but whether Rucker and Gresham had met their burden of proof that John Furgess was "unauthorized" under Rule 4 (d)(8), SCRCP,.

A The Circuit Court judge erred and abused his discretion in refusing Appellant's request for an opportunity to depose Rucker, Gresham, Furgess and Morey and other material fact witnesses before the judge's final ruling.

On January 31, 2019 Respondents Rucker and Gresham filed a Motion to Set Aside Entry of Default with two attached affidavits from Rucker and Morey. At the hearing on April 16, 2019, under Rule 7(b)(1), SCRCP, in open court plaintiff motion the court for a continuation/ continuance of said Respondent's Motion to Set Aside Entry of Default to conduct discovery,

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[4] In a footnote in the June 7, 2019 order, the Court stated Rucker and Gresham as former employees of SCDOT, under rule 55 (e) SCRCP, the rule does not permit a default judgment to be entered against them. However, this is a 42 USC 1983 case filed in state court, at this time or point federal law applies. According to the four corners of the Complaint, on page 3 paragraph 6 this action is brought pursuant to 42 U.S.C. Sections 1983 for Rucker and Gresham violating Plaintiff's rights while acting under color of state law in their individual capacities.(R. pp 00-00)

because Respondents would not cooperate with discovery requests and cross-examination of their witnesses. (R pp 00-00)

"Where important decisions turn on questions of fact, due process often requires an opportunity to confront and cross-examine adverse witnesses." Graham Law Firm, P.A. v. Makawi (2012); Brown v. South Carolina State Board of Education, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) (citing Goldberg v. Kelly, 397 U.S. 254 (1970)); *see* South Carolina Department of Social Services v. Holder, 319 S.C. 72, 459 S.E.2d 846 (1995) (right to confrontation applies in civil context).

In the present case, Paul's claim of personal jurisdiction over Rucker in his individual capacity and Gresham in her individual capacity is not conclusory, frivolous, or attenuated. Furgess, who signed the receipts for the summons and complaint sent to Rucker in his individual capacity and Gresham in her individual capacity, had express and implied authority conferred on SCDOT Postal Specialists and apparent authority created by PS Form 1093 to sign for restricted delivery, certified mail as an SCDOT Postal Specialist.

Paul presented evidence at the hearing that this was SCDOT practice. (R pp 00-00) In other words, SCDOT Postal Specialist signed the receipts for the summons and complaint sent to former employees Rucker in his individual capacity and Gresham in her individual capacity, on May 18, 2012. (R pp 00-00)

Morey affidavit further testified that after consulting with the SCDOT legal office, she handwrote "Return to Sender" on both envelopes and placed them back in the U.S. Mail to be returned to the Plaintiff.[5] (R pp 00-00)

Paul is entitled to discovery on the issue of jurisdiction, entitled to receive a full and fair opportunity to be heard on the matter, where, as here findings with regard to service of process may determine the merits of the case in chief. *See* Wetzel v. Woodside Development Limited Partnership, 364 S.C. 589, 615 S.E.2d 437 (2005) (finding that an order granting a motion to set aside an entry of default for improper service effectively dismisses an improperly served party from the action); Archangel Diamond Corp. v. Lukoil, 123 P.3d 1187 (Colo. 2005) (holding that a trial court's findings related to personal jurisdiction could later be preclusive). Because a finding that a party was not properly served for purposes of a motion to set aside an entry of default judgment is binding with regard to the remainder of the litigation, such a ruling may "in effect determine[] the action" or "strike[] out . . . [a] pleading in [an] action." S.C. Code Ann. § 14-3-330(a), (c).

Appellant provided compelling evidence of efforts by Rucker and Morey to perpetrate a fraud on the Court (R pp 00-00) Therefore, Appellant requested the court to allow time for deposition and other key discovery before issuing a final Order, if the court was not inclined to grant Appellant's Motion immediately. (R pp 00-00) In refusing that request the circuit court unfairly prejudiced

[5] The Plaintiff presented evidence to dispute that testimony, in other words the USPS Tracking shows the Certified Mail was not placed back in the U.S. Mail to be return to the Plaintiff, the USPS Tracking dispute that testimony. (R p 00-00) In addition, see Paul affidavit that dispute, that testimony. (R pp 00-00)

Appellant and permitted a fraud to be perpetrated on the Court.

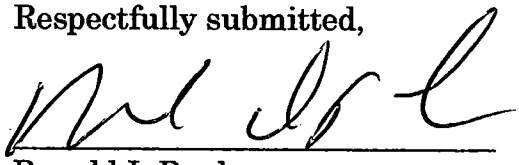
In most instances, there is a significant difference between extrinsic fraud and intrinsic See, Ray v Ray, 374 SC 79, 647 SE 2d 237 (2007) That is because extrinsic fraud, taking place in secret outside of litigation, cannot be illuminated by discovery and cross-examination, and intrinsic fraud, perpetrated in litigation, may hopefully be revealed during litigation through vigorous cross-examination and discovery. However, the logical rationale for that distinction evaporates where, as here, a fraud is perpetrated upon the court through Rucker and Morey affidavits, containing false factual assertions, not subject to discovery or cross-exanimation of any kind. It is fundamental to our system of justice that all parties should be afforded basic rights to discovery and cross- exanimation. That is especially true where the party from whom discovery and cross-exanimation is sought is unworthy of belief, and where compelling evidence exists that such party is attempting to perpetrate a fraud upon the court.

Appellant respectfully submits that denial of an opportunity to engage in discovery under these circumstances is a miscarriage of justice which demands immediate correction by this Court.

CONCLUSION

Based on the foregoing, this Court should reverse the trial Court's Order and remand this matter for further proceedings or Appellant requests the Court to reverse the trial court's findings of ineffective service in the Order dated and filed June 7, 2019 and rule that service of the Summons and Complaint on Defendants Oscar K. Rucker in his individual capacity and Macie M. Gresham in her individual capacity was valid and effective. In the alternative, Plaintiff requests the Court to permit deposition on John Furgess, Sherrie S. Morey, Oscar K. Rucker, Macie M. Gresham and other material discovery before finally determining whether service on Rucker and Gresham was ineffective, and to hold the June 7, 2019 Order in suspense pending such discovery.

Respectfully submitted,



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October 7, 2019

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

I, Ronald I. Paul hereby certify that I have served the Appellant **Initial Brief and Designation of Matter to be Included in the Record** 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

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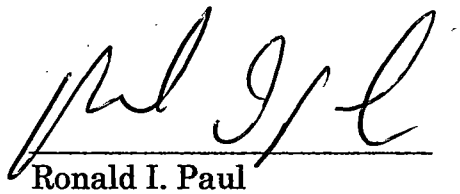

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