

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Larry Wayne Knox, Special Referee

Appellate Case No. 2019-000674

Griffin Chrysler Jeep Dodge, Inc..... Plaintiff

v.

Tonny Edward Sipe..... Defendant

and

Tonny Edward Sipe..... Respondent

v.

Jason S. King Appellant.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)
 COUNTY OF CHESTERFIELD)
)
 Griffin Chrysler Dodge Jeep, Inc)
 Plaintiff,)
 vs.)
)
 Tonny Edward Sipe,)
 Defendant.)
)
 _____)
 Tony Edward Sipe,)
 Third Party Plaintiff,)
)
 vs.)
)
 Jason S. King,)
 Third Party Defendant.)
 _____)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT

Case No. 2016-CP-13-681

**ORDER DENYING MOTION
TO SET ASIDE DEFAULT JUDGMENT**

This Motion for Relief From Default Judgement, filed by Third Party Defendant Jason S. King, came before me for a hearing on October 29, 2018. A representative of the Plaintiff appeared at this hearing with their attorney of record, Kevin M. Barth, Esquire. Defendant Tony Sipe also appeared at the hearing with his attorney of record, M.W. Cockrell III., Esquire. Third Party Defendant Jason S. King appeared with his attorney, Robert T. King, Esquire.

BACKGROUND

This is a debt collection action by the Plaintiff Griffin Chrysler Jeep Dodge, Inc. (hereinafter "Griffin") against Sipe, as the result of allegations that Sipe failed to turn over title to a 2011 Ford F150 that Sipe traded in to Griffin in a transaction wherein Sipe purchased a Ram Laramie Longhorn Vehicle from Griffin. Griffin alleges damages based on their inability to recoup funds from this trade in by selling the Ford F150 vehicle without the title. The action was initiated by Griffin on September 12, 2016 by filing a Summons and Complaint, which was later served on Sipe on September 27, 2016 via personal service. Sipe filed a timely Answer and Third

Party Complaint on October 28, 2017, naming Jason S. King as Third-Party Defendant. The Answer and Third Party Complaint was personally served on King November 2, 2016.

More than 30 days passed from the service of the Answer and Third Party Complaint on King without receiving any sort of responsive pleading or appearance. On January 17, 2017, Sipe filed a Motion for Entry of Default and Order of Reference. The matter was referred to Larry W. Knox, Esquire as Special Referee. A hearing was set before Mr. Knox on January 30, 2017, after proper service on Griffin and King. King did not appear at the hearing and an Order of Judgement was entered in the amount of \$135,000.00. The Order of Judgement was filed on February 2, 2017 and served on King February 14, 2017.

On August 21, 2017, more than six months after service of the Order of Judgement on King, King filed and served his Third-Party Defendant's Notice of Motion and Motion for Relief from Default Judgement. No affidavit about the facts of the case from King or any witness, or any other factually based material that might have anything to do with the allegations of the complaint was served with the motion. The motion simply asserts the default judgement entered against King is inequitable and void based on alleged violations of Rule 14(a), *SCRCP* and other case law cited. The motion offers no explanation for why King did not contact an attorney about the Summons and Complaint or why he did not respond to the Summons on Third-Party Complaint, Answer, and Third-Party Complaint in any way until more than nine months after service of until the time for an Answer had expired.

King has still failed to file an Answer to Sipe's Summons on Third-Party Complaint, Answer, and Third-Party Complaint, and has only filed his Motion for Relief from Default Judgement and a Notice of Motion and Motion to Dismiss Third-Party Complaint, which was not

served until January 3, 2018, well over a year after personal service of Sipe's Third-Party Summons, Answer, and Third Party Complaint. These motions fail to acknowledge the lack of effort, i.e. the lack of any excuse for not taking steps to address the matter in either motion or any correspondence to Counsel for Sipe.

King brings his motion for Relief from Default Judgement pursuant to Rule 60(b)(1), *SCRCP*.

ANALYSIS

Rule 60(b)(1), *SCRCP* provides that "on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect[.]" Rule 60(b)(1), *SCRCP* provides that "on motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (4) the judgment is void[.]"

Relief from judgment or order under Rule 60, *SCRCP*, rests within the sound discretion of the trial court. *Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (1989). Rule 60(b)(4), *SCRCP*, allows relief from an order to be granted on the grounds that the order is void. A void order is one rendered in the absence of proper due process or jurisdiction. *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002). "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice 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. Central*

Hanover Bank & Trust Co., 339 U.S. 306, 70 S. Ct. 652 (1950). Such notice must give the parties a reasonable time to make their appearance and "[t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Id.*

King asserts that the judgement is void based on Rule 14(a), *SCRCP* in that Sipe lacks a claim under derivative liability and so the judgement is void based on Sipe's failure to state a claim upon which relief can be granted. King makes no argument pursuant to Rule 60(b)(1), *SCRCP*, as to why the judgement should be set aside.

The Courts have long defined a void judgment as "one so affected by a fundamental infirmity that the infirmity may be raised even after the judgement becomes final. Rather, it must be "premised . . . on a certain type of jurisdictional error. Further, a motion under Rule 60(b)(4) is not a substitute for a timely appeal." *United Student Aid Funds, Inc.*, 559 U.S. 260 (2010). The Court then noted that ". . . courts considering Rule 60(b)(4) motions that assert a judgment is void because of a jurisdictional defect generally have reserved relief only for the exceptional case in which the court that rendered judgment lacked even an 'arguable basis' for jurisdiction." *Id.*

Here, King brings as grounds for his motion, that pursuant to Rule 60(b)(4), *SCRCP*, the judgement against him is void based upon the requirement in Rule 14(a), *SCRCP*, that Sipe does not have a substantive claim arising under derivative liability against King and so, in turn, Sipe has failed to state a claim against King under which relief may be granted, or, that the Court lacks subject matter jurisdiction over King, and so the judgment must be void and the judgement must be set aside pursuant to Rule 60(b)(4), *SCRCP*.

King's motion asserts that he has a meritorious defense pursuant to Rule 14(a), *SCRCP*, in that he claims Sipe has no substantive claim against him founded upon derivative liability and so in turn, the third-party complaint failed to state a proper claim against King and should be dismissed. That counsel for King *believes* King has a meritorious defense is not relevant to the issue before the Court, nor can that belief substitute for a presentation of facts that would show a meritorious defense. *See Dawkins v. Fields*, 354 S.C. 58, 68, 580 S.E.2d 433 (2003).

Relief under Rule 60(b)(4), *SCRCP* premised on lack of subject-matter jurisdiction is only appropriate where there was not even an arguable basis for jurisdiction. Here, King argues that upon a presentation to the trial court, the trial court may have found that Sipe lacked a substantive claim against King founded upon derivative liability and so King is an improper party to this action. However, this is where King misses the mark. The South Carolina Court of Appeals found in *Williams v. Working Benevolent State Grand Lodge of S.C.* 109 S.C. 233, (1918), that defect of parties is waived unless raised by answer or demurrer. Thus, King's default waves any objection to any pleading defect that could be made because of his failure to file an answer or otherwise plead within the time frame allowed. Based on the foregoing, King's motion to set aside the default judgement should be denied because not only has he waived an assertion as to being named an improper party, but he also failed to raise his argument under Rule 14(a), *SCRCP* in a timely manner and his failure to do so does not automatically render the judgement void. *See, Id.* Even if the argument were valid, it follows that subject matter jurisdiction cannot be the basis of a 60(b)(4), motion solely because King could have argued it in an answer or other filing had it been presented within the time allotted by the *South Carolina Rules of Civil Procedure*. *See Id.*

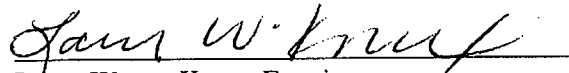
CONCLUSION

Defendant claims that this judgment should be set aside due to excusable neglect and misrepresentations by counsel. Defendant has failed provide any credible evidence as to this excusable neglect or misrepresentation. Accordingly, Defendant has failed to make a *prima facie* showing of a meritorious defense. As such, this Court is not moved to set aside the Defendant's default judgment.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion to Set Aside the Default Judgment is **DENIED**.

IT IS FURTHER ORDERED that Third Party Defendant King is adjudged to be in default in the amount of \$135,000.00, as previously adjudicated by the Court.

AND IT IS SO ORDERED!


Larry Wayne Knox, Esquire
Special Referee of Chesterfield County

April 11, 2019
Chesterfield, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)
))
Griffin Chrysler Dodge Jeep, Inc.)
Plaintiff,)
))
verses)
))
Tonny Edward Sipe,)
Defendant,)
))

Tonny Edward Sipe,)
Third Party Plaintiff,)
))
verses)
))
Jason S. King,)
Third Party Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE No. 2016-CP-13-681

ORDER OF REFERENCE

2017 JAN 17 PM 4: 25
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

It appearing from Plaintiff's *Motion for Entry of Default and Order of Reference, Affidavit of Default* and the *Affidavits of Service*, filed with the Chesterfield County Clerk of Court, that the *Third Party Summons and Answer and Third Party Complaint* were served upon the Third Party Defendant personally, and that more than thirty (30) days transpired after the service thereof prior to a responsive pleading having been filed and served by said Third Party Defendant.

Additionally, Counsel for the Third Party Plaintiff is seeking that the above entitled action be referred to a Special Referee.

It appears that Case Number 2016-CP-13-681 has been filed in the Office of the Clerk of Chesterfield County and is an action for Debt Collection pending in the Court of Common Pleas in the County of Chesterfield, State of South Carolina, and that this matter should properly be referred to Larry W. Knox, Esquire, as Special Referee.

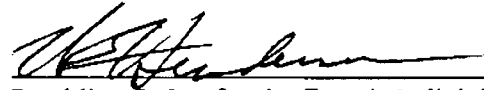
IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Third Party Defendant, Jason King, is in default.

It appearing from the Third Party Complaint that all of the damages claimed therein are not liquidated, it is therefore, ordered that a hearing shall be set to determine the damages awarded to the Third Party Plaintiff.

This action shall be and is hereby referred to Larry W. Knox, Esquire, as Special Referee for Chesterfield County, for the purpose of hearing any and all motions, taking the testimony offered, and reporting his findings of fact and conclusions of law together with any special

matters, and with the authority to enter the final ruling herein upon all motions necessary to dispose of this matter. Further, any appeal from the Special Referee's Order shall be to the South Carolina Supreme Court.

AND IT IS SO ORDERED!



Presiding Judge for the Fourth Judicial Circuit

Chesterfield, South Carolina

January 13, 2017

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

) IN THE COURT OF COMMON PLEAS
) FOURTH JUDICIAL CIRCUIT
) CASE NO: 2016-CP-13- 681

Griffin Chrysler Dodge Jeep. Inc,

Plaintiff,

v.

Tonny Edward Sipe,

Defendant.

ORDER of JUDGMENT

Tonny Edward Sipe,

Third Party Plaintiff,

v.

Jason S. King

Third Party Defendant.

2017 FEB - 2 PM 12: 30
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter came before me on January 30, 2017, for a damages hearing. The Parties were properly noticed of this hearing, but did not appear. The Third-Party Plaintiff, Tonny Edward Sipe appeared with his attorney, M. W. Cockrell, III. Prior to the hearing, no motions were made by either party.

This matter concerns conversion, constructive fraud and other tortious actions of the Third-Party Defendant, Jason S. King; and relates to a motor vehicle that was physically possessed (pursuant to a purchase agreement) by the Third-Party Plaintiff, Tonny Edward Sipe. The Plaintiff, Griffin Chrysler Dodge Jeep, Lnc., afforded Mr. Sipe

a concession on the purchase price of another vehicle, for the trade value of the vehicle (that is the subject of this controversy). The action was commenced with the filing of a Summons and Complaint in the Circuit Court of Chesterfield County on September 12, 2016. Defendant/Third-Party Plaintiff, Tonny Edward Sipe, filed an Answer and Third-Party Complaint having properly served the Summons and Third-Party Complaint upon Third-Party Defendant, Jason S. King, personally, on November 2, 2016. The affidavit of service on the Third-Party Defendant was filed with the Court on November 3, 2016. An Affidavit of Default, Motion for Entry of Default and Order of Reference and Order of Default were issued and filed with the Court on January 17, 2017. A Notice of Hearing was served upon the Third-Party Defendant via United States Postal Service, along with the aforementioned default pleadings on January 19, 2017. I find service and notice is proper.

Third-Party Plaintiff, Tonny Edward Sipe, brought evidence and testified as to the agreement he entered into with Mr. Jason S. King. Mr. Sipe was placed under oath and testified about the payments made pursuant to the contract, as well as, evidence of his (Mr. Sipe) intention to trade the vehicle with the Plaintiff (Griffin Chrysler Dodge Jeep, Ins.) and Mr. King's allowance of the same. Mr. Sipe offered evidence showing Mr. Jason S. King intentionally interfered with the transaction between himself (Mr. Sipe) and the Plaintiff (Griffin Chrysler Dodge Jeep, Ins.), and Mr. Sipe, in reliance of the assurances given, proceeded with the transaction with the Plaintiff (Griffin Chrysler Dodge Jeep, Inc.). Mr. Jason S. King did not and has not followed through with his obligations under the contract of the parties (Jason S. King and Tonny Edward Sipe) and

the Plaintiff (Griffin Chrysler Dodge Jeep, Ins.) and Third-Party Plaintiff (Tonny Edward Sipe) have relied on the assurances to their own detriment. Mr. Sipe testified that he has incurred damage to his reputation, financial credit, personal humiliation and personal turmoil associated with this situation and the related legal processes. Plaintiff further testified that he continues to experience emotional distress as a result of the abuses he sustained from the fraudulent actions of the Third-Party Defendant, and he will likely experience some level of emotional distress as a result of the actions of the Third-Party Defendant into the distant future.

I find that the Third-Party Defendant entered into a valid contract with the Third-Party Plaintiff for the sale of a vehicle (VIN # 1FTFWIETXBFA99265), and the Third-Party Defendant breached his duties under the contract; this breach was accompanied by fraudulent intent and dishonesty, as he was made aware, allowed and encouraged negotiations with the trading of the vehicle. Additionally, the actions of Mr. King, showed material misrepresentations to the transactions being made and Mr. King knew that Mr. Sipe would rely on his misrepresentation. Finally, it is clear that Mr. King's actions and omissions directly interfered with the contractual relations of Mr. Sipe and the Plaintiff and the purchase/sale of another vehicle (VIN # 1C6RR6WT1FSS21858). This action of Mr. King was without justification and in bad faith.

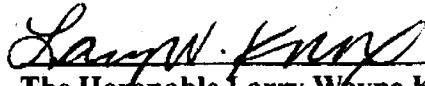
I find from the testimony and evidence presented that Mr. Sipe did incur substantial damages as a result of the acts and/or omissions of the Third-Party Defendant and that Mr. Sipe has endured much from the breach, constructive fraud and fraudulent actions of the Third-Party Defendant, for which Mr. Sipe has yet to be compensated for. I

further find that Mr. Sipe will continue to incur difficulties in business and personal life as a direct result of the actions of the Third-Party Defendant. I find that the Third-Party Plaintiff, Tonny Edward Sipe, is entitled to actual and/or compensatory damages in the amount of \$100,000.00.

I further find that the distress suffered by the Third-Party Plaintiff at the hands of the Third-Party Defendant is the result of those certain acts and/or omissions of the Third-Party Defendant. Defendant's acts coupled with his obvious disregard for the Court system, as evidenced by the failure to appear in any form or fashion before the Court along with the disregard of today's hearing is burdensome on all Parties (Plaintiff, Defendant/Third-Party Plaintiff). Third-Party Plaintiff, Mr. Sipe, continues to be without the paperwork to resolve the obligation he committed to and the Plaintiff (Griffin Chrysler Dodge Jeep, Ins.) is without the necessary paperwork to proceed with preparing the trade in vehicle for sale and recoup the funds allowed in the transaction with Mr. Sipe. I find Third-Party Defendant's misconduct to be willful, wanton, and in reckless disregard to the rights of the Third-Party Plaintiff. The Third-Party Defendant's actions have displaced the security and peace of mind of Third-Party Plaintiff (and all parties), and has cause great emotional pain to the Third-Party Plaintiff. As such, I find that punitive damages are appropriate. I find the amount of \$35,000.00 to be a reasonable and appropriate sum.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Third-Party Plaintiff, Tonny Edward Sipe, be awarded a judgment in the total amount of \$135,000.00 against the Third-Party Defendant, Jason S. King.

AND IT IS SO ORDERED!


The Honorable Larry Wayne Knox
Special Referee

February 2, 2017
Chesterfield, South Carolina

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-13-681

Griffin Chrysler Dodge Jeep, Inc.,

Tonny Edward Sipe, Third-Party Plaintiff

Jason S. King, Third-Party Defendant

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: M.W. Cockrell, III	Attorney for : <input type="checkbox"/> Plaintiff	<input checked="" type="checkbox"/> Defendant
	or <input type="checkbox"/> 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, 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

This order ends does not end the case.

Additional Information for the Clerk : Claim of Plaintiff Griffin Chrysler Dodge Jeep, Inc. Pending.

7:07 FEB - 2 PM 12:30
Banda C. Miller
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

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)
Tonny Edward Sipe	Jason S. King	\$ 135,000.00
		\$
		\$

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	Date
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STATE OF SOUTH CAROLINA
 COUNTY OF CHESTERFIELD
 IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-13-00681

Griffin Chrysler Dodge Jeep, Inc.

Tonny Edward Sipe

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Special Referee	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> 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

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)
Griffin Chrysler Dodge Jeep, Inc.	Tonny Edward Sipe	\$28,521.00
		\$
		\$

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.

Sally W. Jones
 Circuit Court Judge Special Referee

A True Copy
 8249
 Judge Code
 SC BAR #
 CLERK OF COURT
 CHESTERFIELD COUNTY, SC

10/29/18
 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTEFIELD)
)
 Griffin Chrysler Dodge)
 Jeep, Inc.)
)
 Plaintiff,)
)
 v.)
)
 Tonny Edward Sipe)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 CASE NO. 16-CP-13-681

SPECIAL REFEREE ORDER

JUDICIAL CIRCUIT
 16-CP-13-681
 MAY 5 11 05 AM '17

This matter was initially commenced by the Plaintiff against the Defendant with the filing of a Summons and Complaint on September 12, 2016. In its Complaint, Plaintiff is requesting a judgment against the Defendant in the sum of \$30,000.00 plus pre-judgment interest. The Defendant timely filed his Answer in which he admits owing the Plaintiff, but contends the money is owed because Jason King (Third Party Defendant in this action, but not involved in this cause of action) failed to produce the title to a vehicle being traded in by the Defendant to the Plaintiff.

This matter is before the undersigned by virtue of an Order of Reference signed and filed by Honorable Roger Henderson on January 17, 2017. A representative of the Plaintiff appeared at this hearing with their attorney of record, Kevin M. Barth,

A True Copy Attest
Wanda C. Miles
 CLERK OF COURT R.S.S.
 CHESTERFIELD COUNTY, SC

Esquire. The Defendant also appeared at the hearing with his attorney of record, M.W. Cockrell, III, Esquire.

Based on the evidence and testimony provided, I find that the Plaintiff sold Defendant a 2015 Dodge Ram truck on August 3, 2015 (VIN # 1FTFW1ETXBFA99265) for a total price of \$45,538.00. Defendant made a down payment of \$3,500.00, and traded in a 2011 Ford F150 truck, which was valued at \$30,171.00. The remaining balance of \$25,217.00 was financed.

At the time of this sale, Defendant represented to the Plaintiff that he owned the vehicle that was being traded and that Jason King had a lien on that vehicle in the sum of \$13,650.00. As a result of these representations, the sale was consummated, and Defendant took possession of the new truck.

After numerous conversations between representatives of Plaintiff and Jason King, Mr. King would not produce the title to the vehicle. As a result, Plaintiff has had possession of the truck since 2015 but cannot sell it or otherwise dispose of it because Plaintiff does not have the title to it. Plaintiff is therefore claiming damages of \$28,521.00, which represents \$16,521.00 in equity that Plaintiff has lost and \$12,000.00 due to the depreciation in value of this vehicle between the time of the sale and now.

Defendant admits that the Plaintiff has suffered these damages and agrees that he is responsible for that amount.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED
that the Plaintiff is entitled to a judgment against the
Defendant in the sum of \$28,521.00, actual damages.

AND IT IS SO ORDERED.

Larry W. Knox
LARRY WAYNE KNOX, SPECIAL REFEREE
FOURTH JUDICIAL CIRCUIT

Charleston South Carolina
October 29, 2018

FILED
CLERK OF COURT
FOURTH JUDICIAL CIRCUIT
SOUTH CAROLINA

FILED - 5 29 18 53

A True Copy Attest

Wanda C. Miller


CLERK OF COURT C.R. & S.
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTEFIELD)	CASE NO. 16-CP-13-681
Griffin Chrysler Dodge Jeep, Inc.,)	
)	
Plaintiff,)	
)	
v.)	CERTIFICATE OF MAILING
)	
Tonny Edward Sipe,)	
)	
Defendant.)	

I, the undersigned, of the law offices of Barth, Ballenger, & Lewis, LLP, do hereby certify that I have served all counsel in this action with a copy of the foregoing pleading by causing a copy of the same to be mailed by United States mail, postage prepaid, to the following address(es):


PLEADING: (Special Referee Order

COUNSEL SERVED: M.W. Cockrell, III Robert T. King
 Barrister Building P.O. Box 1764
 159 Main St. Florence, SC 29503
 Chesterfield, SC 29709



 CHRISTY GRAVES
 POST OFFICE BOX 107
 FLORENCE, SOUTH CAROLINA 29503
 (843) 662-6301

Sworn to and subscribed before me
 this 20th day of November, 2018



 Notary in and for South Carolina
 My Commission Expires: Aug 31, 2020

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas
Larry Wayne Knox, Special Referee

Case No. 2016-CP-13-00681

Griffin Chrysler Jeep Dodge, Inc.

v.

Tonny Edward Sipe.....Respondent

v.

Jason S. King.....Appellant.

NOTICE OF APPEAL

Jason S. King appeals the Order Denying Motion to Set Aside Default Judgment of the Honorable Larry Wayne Knox, Special Referee, filed April 11, 2019. Appellant received written notice of the entry of the Order via the electronic filing system on April 11, 2019.

s/Robert T. King
ROBERT T. KING #66237
KING, LOVE, HUPFER & NANCE, LLC
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Florence, SC 29503-1764
(843) 407-5525 - Tel
(843) 407-5782 – Fax
Attorney for Appellant

April 17, 2019

Other Counsel of Record:

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mwc@cockrelllawfirm.com
Attorney for Tonny Edward Sipe

STATE OF SOUTH CAROLINA

COUNTY OF CHESTERFIELD

Griffin Chrysler Dodge Jeep, Inc.

Plaintiff(s)

vs.

Tonny Edward Sipe

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2016-CP - 13- 681

2016 SEP 12 PM 11:08
FAYE L. SMITH
CLERK
CHESTERFIELD

Submitted By: Kevin M. Barth
Address: P.O. Box 107
Florence, SC 29503

SC Bar #: 00559
Telephone #: 843-662-6301
Fax #: 843-664-8384
Other:
E-mail: kbarth@hbbh.net

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

- Contracts: Debt Collection (110)
Torts - Professional Malpractice: Dental Malpractice (200)
Torts - Personal Injury: Conversion (310)
Real Property: Claim & Delivery (400)
Inmate Petitions: PCR (500)
Administrative Law/Relief: Reinstatement License (800)
Judgments/Settlements: Death Settlement (700)
Appeals: Arbitration (900)
Special/Complex/Other: Environmental (600)
Pharmaceuticals (630)
Unfair Trade Practices (640)
Out-of State Depositions (650)
Motion to Quash Subpoena in an Out-of-County Action (660)
Pre-Suit Discovery (670)
Permanent Restraining Order (680)

Submitting Party Signature: [Handwritten Signature]

Date: September 7, 2016

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.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

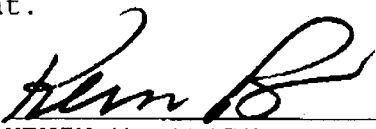
Griffin Chrysler Dodge)
Jeep, Inc.,)
)
Plaintiff,)
)
v.)
)
Tonny Edward Sipe,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 16-CP-13- 681

SUMMONS
CHESTERFIELD COUNTY
FAYE L. GRIFFIN
CLERK
2016 SEP 12 AM 11 03

TO DEFENDANT 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 on the subscriber at 205 N. Irby Street, Florence, South Carolina, within thirty (30) days from the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



KEVIN M. BARTH
ATTORNEY FOR PLAINTIFF
POST OFFICE BOX 107
FLORENCE, SOUTH CAROLINA 29503
(843) 662-6301
kbarth@hbbh.net

Florence, South Carolina
September 7, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

Griffin Chrysler Dodge)
Jeep, Inc.,)
)
Plaintiff,)
)
v.)
)
Tonny Edward Sipe,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE NO. 16-CP-13- 681

COMPLAINT

2016 SEP 12 AM 11 03
FAYE H. ...
CLERK
CHESTERFIELD

The above-named Plaintiff, complaining of the Defendants herein, would respectfully allege and show that:

1. The Plaintiff is a corporation organized and existing pursuant to the laws of a state other than South Carolina, which deals with customers in the State of South Carolina.
2. The Defendant, upon information and belief, is a citizen and resident of the County of Chesterfield, State of South Carolina.
3. That at all times relevant hereto, the Defendant was the owner of a 2011 Ford F150 pickup, VIN 1FTFW1ETXBFA99265.
4. On or about August 3, 2015 Defendant purchased from the Plaintiff a 2015 Ram Laramie Longhorn vehicle, VIN 1C6RR6WT1FS521858. As part of the purchase price of the vehicle, the Defendant traded in the vehicle referenced in paragraph three (3). Copies of the purchase documents are attached hereto and incorporated herein by reference.

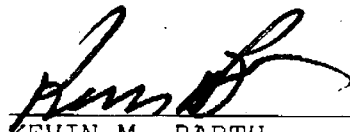
#1
MB

5. As part and parcel of the purchase agreement, Defendant delivered the vehicle to the Plaintiff but has failed and refused to provide the Plaintiff with title to the 2011 Ford F150. Failing to produce this title prevents the Plaintiff from recouping funds by selling the traded in vehicle.

6. Plaintiff is informed and believes that because the Defendant has not produced the vehicle title, Plaintiff has been damaged in the approximate sum of \$30,000.00, and Plaintiff is demanding judgment against the Defendant in an appropriate sum.

7. Plaintiff is also informed and believes that it is entitled to recover pre judgment interest in an appropriate sum as well as attorney's fees, costs and disbursements.

WHEREFORE, the Plaintiff prays for judgment against the Defendant in a sum of actual damages, pre judgment interest and attorney's fees costs and disbursements, plus the costs of this action and such other and further relief as the court deems just and proper.



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Florence, South Carolina

September 7, 2016

#2

000027

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

COUNTY OF CHESTERFIELD)

TONNY EDWARD SIPE)

Plaintiff(s))

vs.)

JASON S. KING)

Defendant(s))

CIVIL ACTION COVERSHEET

2016 -CP - 13 - 681

Submitted By: M.W. Cockrell, III

Address: 159 Main Street Chesterfield, SC 29709

SC Bar #: 69417

Telephone #: (843) 623-5911

Fax #: (843) 623-5700

Other: _____

E-mail: mwcocrelllawfirm.com

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

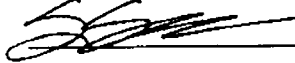
DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

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

NATURE OF ACTION (Check One Box Below)

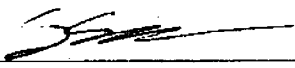
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|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> General (130) <input checked="" type="checkbox"/> Breach of Contract (140) <input checked="" type="checkbox"/> Fraud/Bad Faith (150) <input type="checkbox"/> Failure to Deliver/Warranty (160) <input type="checkbox"/> Employment Discrim (170) <input type="checkbox"/> Employment (180) <input type="checkbox"/> Other (199) _____ | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20 <u>-NI-</u> <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) _____ | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input type="checkbox"/> Assault/Battery (370) <input type="checkbox"/> Slander/Libel (380) <input type="checkbox"/> Other (399) _____ | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claims & Delivery (400) <input type="checkbox"/> Condominium (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Licn (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) _____ |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) _____ | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Drv. License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) _____ | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Confession of Judgment (770) <input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780) <input type="checkbox"/> Other (799) _____ | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Comm. (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) _____ |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) _____ <input type="checkbox"/> Sexual Predator (510) <input type="checkbox"/> Permanent Restraining Order (680) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Pre-Suit Discovery (670) | | | |

Submitting Party Signature: 

Date: 10/26/2016

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COCKRELL LAW FIRM, PC



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Facsimile: (843) 623-5700
Attorneys for Defendant and Third Party Plaintiff

October 26, 2016
Chesterfield, South Carolina

FOR A SECOND DEFENSE

2. Defendant repeats the paragraph above fully as if repeated verbatim.
3. Defendant admits Paragraphs 1 and 2.
4. Defendant admits Paragraph 3 to the extent that Defendant possessed the 2011 Ford F150 pickup, VIN 1FTFW1ETXBFA99265 (hereinafter referred to as "the vehicle") during the relevant times alleged in the Complaint. However, Defendant entered into a lease agreement with Jason King for the vehicle. (Attached hereto as Exhibit A) Mr. King held the title to said vehicle until the satisfaction of this lease and thus legally owned the vehicle.
5. Defendant admits Paragraph 4.
6. As for Paragraph 5, Defendant admits to the delivery of the vehicle but denies that he refused to provide title as he had no means of providing said title to the vehicle.
7. Defendant denies Paragraphs 6 and 7.

FOR A THIRD DEFENSE AND BY WAY OF FIRST AFFIRMATIVE DEFENSE
(Failure to State a Claim)

8. Defendant repeats the paragraphs above fully as if repeated verbatim.
9. Plaintiff has failed to state facts sufficient to constitute a cause of action as to Defendant, thereby entitling Defendant to a dismissal of this action.

FOR A FOURTH DEFENSE AND BY WAY OF SECOND AFFIRMATIVE
DEFENSE
(Failure to Join a Necessary Party)

10. Defendant repeats the paragraphs above fully as if repeated verbatim.

11. Plaintiff has failed to join an indispensable party to this action whose absence denies complete relief of this matter. The Defendant is informed and believes this action should be dismissed for failure to join a necessary party under Rule 19 of the South Carolina Rules of Civil Procedure.

FOR A FIFTH DEFENSE AND BY WAY OF THIRD AFFIRMATIVE DEFENSE
(laches, unclean hands, waiver, and estoppel)

12. Defendant repeats the paragraphs above fully as if repeated verbatim.
13. Plaintiff's claims are barred by the doctrines of laches, unclean hands, waiver and/or estoppel.

FOR A SIXTH DEFENSE AND FIRST THIRD PARTY CLAIM BY WAY OF
THIRD PARTY COMPLAINT
(Breach of Contract)

1. Defendant/Third Party Plaintiff repeats the paragraphs about full as if repeated verbatim.
2. Third Party Defendant, Jason S. King, ("hereinafter referred to as "King") is, upon information and belief a citizen and resident of the County of Chesterfield, State of South Carolina.
3. Third Party Plaintiff and King entered into a valid and enforceable contract for sale of the 2011 Ford F150 pickup, VIN 1FTFW1ETXBFA99265.
4. King breached his contractual duty by not accepting the full and final payoff amount for this contract.
5. The above mentioned breach was unjustifiable.

6. As a direct and proximate result of King's breach, Third Party Plaintiff suffered damages.
7. Third Party Plaintiff believes he is entitled to actual, special, and consequential damages as a result of King's breach.

**FOR A SECOND THIRD PARTY CLAIM BY WAY OF THIRD PARTY
COMPLAINT**

(Breach of Contract Accompanied by a Fraudulent Act)

1. Defendant/Third Party Plaintiff repeats the paragraphs about full as if repeated verbatim.
2. Third Party Plaintiff and King entered into a valid and enforceable contract for sale of the 2011 Ford F150 pickup, VIN 1FTFW1ETXBFA99265.
3. King breached his contractual duty by not accepting the full and final payoff amount for this contract.
4. King had fraudulent intent to breach the contract when Third Party Plaintiff requested to make a full and final payoff amount for the contract by trading the vehicle.
5. King committed fraudulent act of dishonesty by allowing Third Party Plaintiff to pursue the trade of the vehicle and not accepting the payoff amount when presented.
6. As a direct and proximate result of Defendants' breach, Plaintiff suffered damages.
7. Third Party Plaintiff believes he is entitled to actual and punitive damages as a result of King's breach.

**FOR A SECOND THIRD PARTY CLAIM BY WAY OF THIRD PARTY
COMPLAINT**
(Constructive Fraud)

1. Defendant/Third Party Plaintiff repeats the paragraphs about full as if repeated verbatim.
2. King's conduct and omissions regarding the acceptance of the payoff amount of the truck was a misrepresentation that the contract would be completed and that Third Party Plaintiff would received the title of the vehicle.
3. This misrepresentation was material to Third Party Plaintiff as it had a contractual effect on his transaction with Plaintiff.
4. King intended on Third Party Plaintiff to rely on this misrepresentation.
5. Third Party Plaintiff was ignorant to the fact that King would not accept the payoff amount for the vehicle.
6. Third Party Plaintiff reasonably relied on the misrepresentation and attempted to trade the vehicle with the Plaintiff.
7. Third Party Plaintiff's injury was a consequential and proximate result of King's fraudulent misrepresentation.
8. Third Party Plaintiff believes he is entitled to actual and punitive damages as a result of King's fraudulent misrepresentation.

**FOR A THIRD THIRD PARTY CLAIM BY WAY OF THIRD PARTY
COMPLAINT**
(Fraud)

1. Defendant/Third Party Plaintiff repeats the paragraphs about full as if repeated verbatim.
2. King's conduct and omissions regarding the acceptance of the payoff amount of the truck was a misrepresentation that the contract would be completed and that Third Party Plaintiff would received the title of the vehicle.
3. This misrepresentation was material to Third Party Plaintiff as it had a contractual effect on his transaction with Plaintiff.
4. King intended on Third Party Plaintiff to rely on this misrepresentation.
5. Third Party Plaintiff was ignorant to the fact that King would not accept the payoff amount for the vehicle.
6. Third Party Plaintiff reasonably relied on the misrepresentation and attempted to trade the vehicle with the Plaintiff.
7. Third Party Plaintiff's injury was a consequential and proximate result of King's fraudulent misrepresentation.
8. Third Party Plaintiff believes he is entitled to actual and punitive damages as a result of King's fraudulent misrepresentation.

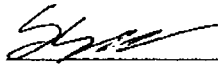
**FOR A FOURTH THIRD PARTY CLAIM BY WAY OF THIRD PARTY
COMPLAINT**

(Interference with a Contractual Relationship)

1. Defendant/Third Party Plaintiff repeats the paragraphs about full as if repeated verbatim.
2. Third Party Plaintiff had entered into a contract with the Plaintiff to purchase a 2015 Ram Laramie Longhorn vehicle, VIN IC6RR6WT1FS521858, trading in the vehicle alleged herewith.
3. King, as titleholder to the vehicle, had knowledge of this contract and the attempts to payoff the remaining balance of the vehicle.
4. King intentionally interfered with this contract by not accepting the payoff amount and delivering the title to the vehicle to the parties of the contract.
5. King's intentional rejection of the payoff amount and refusal to deliver title was unjustifiable.
6. Third Party Plaintiff believes he is entitled to actual and punitive damages as result of King's unjustified interference.

WHEREFORE, Defendant/ Third Party Plaintiff prays for dismissal of Plaintiff's action, judgment against the Third Party Defendant as to all causes of action for actual and punitive damages. Defendant/ Third Party Plaintiff also seeks the costs of this action, attorney's fees and any other relief the Court may deem just and proper under the circumstances.

COCKRELL LAW FIRM, PC



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Telephone: (843) 623-5911
Facsimile: (843) 623-5700
Attorneys for Defendant and Third Party Plaintiff

October 26, 2016
Chesterfield, South Carolina

Special Referee Hearing

STATE OF SOUTH CAROLINA
COUNTY OF CHESTERFIELD

COURT OF COMMON PLEAS

GRIFFIN CHRYSLER JEEP DODGE, INC.,

Plaintiff,
vs.

TONNY EDWARD SIPE,

Defendant.

CIVIL ACTION NO.:

2016-CP-13-00681

TONNY EDWARD SIPE,

Plaintiff,
vs.

JASON S. KING,

Defendant.

SPECIAL REFEREE HEARING

DATE TAKEN: Thursday, October 18, 2018

TIME BEGAN: 11:00 a.m.

TIME ENDED: 12:12 p.m.

LOCATION: Cockrell Law Firm, PC
159 Main Street
Chesterfield, South Carolina

REPORTED BY: Deidre Osborne
Everyword, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
803-212-0012

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7 Special Referee

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843-407-5525
rking@kingandlove.com
Attorney for Defendant Jason S. King

26 ALSO PRESENT:

27 Tonny Edward Sipe
28 Richard Jacobs

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I N D E X

MOTION TO SET ASIDE DEFAULT JUDGMENT

BY MR. KING 6
BY MR. COCKRELL 15

RULING OF THE COURT 26

HEARING 29

EXAMINATION OF:
RICHARD SCOTT JACOBS, JR. 33
BY MR. BARTH 33
BY MR. COCKRELL 40

TONNY EDWARD SIPE 44
BY MR. COCKRELL 44
BY MR. BARTH 48
BY MR. COCKRELL 52
BY MR. KNOX 53

RULING OF THE COURT 55

CERTIFICATE OF REPORTER 56

E X H I B I T S

PLAINTIFF'S DESCRIPTION MARKED

1 Griffin Chrysler Dodge Packet of Documents 35
2 Lease Purchase Agreement 38

DEFENDANT'S

1 Text Messages 47

1 MR. KNOX: Okay. This is the special
2 referee hearing in the matter of -- and you all
3 are going to have to correct me if I misstate
4 what this reports, but I think it's Griffin
5 Chrysler Jeep, plaintiff, versus Tony Edward
6 Sipe, and then you have third-party plaintiff,
7 Tony Edward Sipe versus third-party defendant
8 Jason King.

9 MR. KING: That's correct, sir.

10 MR. KNOX: And before we start, I would like
11 each party to identify themselves and who they
12 represent.

13 MR. BARTH: May it please the Court. I'm
14 Kevin Barth, and I'm here on behalf of Griffin
15 Chrysler Jeep Dodge, the plaintiff, in the action
16 against Tony Sipe, and we have no part in the
17 third-party claim.

18 MR. KNOX: Okay.

19 You, sir?

20 MR. KING: Thank you, Your Honor. Rob King
21 on behalf of Jason King, no relation, third-party
22 defendant. And it's -- it's my client's motion
23 for relief from the entry of default judgment
24 which Your Honor entered, I believe, last August
25 if I'm not mistaken.

1 MR. KNOX: All right.

2 And, Trey?

3 MR. COCKRELL: Trey Cockrell. I represent
4 Tonny Edward Sipe who's the defendant and
5 third-party plaintiff in this matter, and I think
6 there's, I guess, two motions filed by
7 Third-Party Defendant Jason King, and then I
8 believe the actual damages are at trial related
9 to Griffin Chrysler Jeep's claim against my
10 client.

11 MR. KNOX: All right. And these two
12 gentlemen are the plaintiffs and defendants or --

13 MR. BARTH: Yes, sir. This is the
14 representative on behalf --

15 MR. JACOBS: Richard Jacobs.

16 MR. BARTH: -- of Griffin --

17 MR. COCKRELL: Yes.

18 MR. SIPE: Tonny Sipe.

19 MR. KNOX: Okay. Now, I think the way I'm
20 going to handle this, the motion to set aside the
21 default judgment, I think we'll deal with that
22 first because if we reach a conclusion on that,
23 it will determine whether or not we can proceed
24 to the other one. I think we're going to proceed
25 to the other one, one way or the other.

1 MR. BARTH: Yes, sir.

2 MR. KNOX: So you're the plaintiff or you're
3 the -- are you the moving party in the motion?

4 MR. KING: I am, Your Honor.

5 MR. KNOX: Okay. You can state your case.

6 - - -

7 MOTION TO SET ASIDE DEFAULT JUDGMENT

8 - - -

9 MR. KING: Thank you very much, Your Honor.
10 As I -- as I mentioned, I represent Jason King
11 with regard to Mr. Sipe's third-party complaint.

12 MR. KNOX: May I just interrupt you for a
13 moment?

14 MR. KING: Sure.

15 MR. KNOX: If you're going to refer to your
16 memorandums or anything, state that so I can read
17 along with you.

18 MR. KING: Certainly. I will, Your Honor.
19 And I'll keep it brief. I know Your Honor's
20 familiar with the facts, and you're probably
21 about to hear a lot more about the facts than --
22 than is necessary with -- with regard to -- to my
23 motion.

24 Mr. Cockrell spoke as to two motions that
25 were pending from Jason King, and I think the

1 second one is a motion to dismiss the third-party
2 complaint. I do think that that motion is
3 more -- obviously it depends on what Your Honor
4 wants to do with the motion for relief of entry
5 of default because if Your Honor's not inclined
6 to grant that relief, then the motion to dismiss
7 can't go forward.

8 Essentially what happened, Your Honor, is
9 that it was a relationship between Mr. Sipe and
10 my client, Mr. King, and -- and Mr. King was --
11 according to the third-party complaint, entered
12 into a lease agreement with Mr. Sipe where
13 Mr. King leased Mr. Sipe a 2011 Ford pickup truck
14 which was -- was owned by Mr. King.

15 Mr. Sipe took that truck to Griffin Chrysler
16 and traded it in for a newer and nicer Dodge
17 pickup truck as I understand it, and as part of
18 that -- as part of that whole purchase price --
19 purchase agreement, Mr. Sipe was supposed to turn
20 over title of the truck obviously to Griffin
21 Chrysler.

22 Title at the time was owned by Mr. King and
23 was actually in the possession of a lienholder of
24 Mr. King's because the truck had not been paid
25 off. When Mr. Sipe was able to deliver

1 physically the truck to Griffin but not the
2 title, Griffin ultimately brought this lawsuit
3 against Mr. Sipe for breach of contract. In
4 turn, Mr. Sipe filed an answer and a third-party
5 complaint against Mr. King.

6 And in that third-part complaint, Mr. Sipe
7 raised claims for breach of contract, for breach
8 of contract of company by fraudulent intent,
9 fraud, constructive fraud and interference with a
10 contractual relationship, all direct claims for
11 damages by Mr. Sipe against Mr. King. There was
12 no claim asserted for indemnification, for
13 contribution, for subrogation, for any derivative
14 liability claim against -- from Mr. Sipe against
15 Mr. King, and that's important under Rule 14.

16 Mr. King went into default, and ultimately
17 Your Honor entered -- the matter was referred to
18 you, and Your Honor entered a \$135,000 default
19 judgment against Mr. King. Subsequently, we
20 filed this motion for relief. Obviously the
21 claims of Griffin Chrysler have yet to be
22 adjudicated and remain pending, and, again,
23 that's also an important point to note.

24 MR. KNOX: Okay. I have a question for you.

25 MR. KING: Sure.

1 MR. KNOX: I don't like interrupting you,
2 but --

3 MR. KING: Yeah.

4 MR. KNOX: -- when I was referred to handle
5 this matter I think back in 2017, I got a order
6 from the circuit court issued by Judge Henderson,
7 and if my memory is correct -- and I believe it
8 is -- that Judge Henderson issued the default
9 judgment. I did not issue the default judgment.
10 It was referred to me for damages --

11 MR. KING: Right.

12 MR. KNOX: -- if I'm correct. Now, I may be
13 wrong in my interpretation of it.

14 MR. KING: Sure. I -- I think -- my
15 understanding of it, Your Honor, is that -- that
16 the Court entered the default, circuit court
17 entered the default, and then referred it to Your
18 Honor for a damages determination, and it was
19 those damages that became the default judgment.
20 The default judgment was not entered prior to
21 Your Honor's declaration of damages.

22 And as I understand it, Your Honor, what
23 Your Honor signed and entered was an order of
24 judgment, and that's -- this is the judgment,
25 Your Honor. Well, I mean, the -- the active

1 judgment was done by the clerk of court, but what
2 Your Honor signed was an order of judgment. So
3 you're right. Judge Henderson entered the
4 default, referred the matter to you for a damages
5 determination and an entry of judgment on that
6 damages determination.

7 MR. KNOX: So are you arguing that the
8 default judgment should not be set aside --

9 MR. KING: No.

10 MR. KNOX: -- or that the judgment should be
11 set aside? The judgment -- damages judgment
12 should be set aside?

13 MR. KING: Correct, Your Honor. The default
14 judgment, which is the damage, which is a
15 \$135,000 judgment, should be set aside, Your
16 Honor.

17 MR. KNOX: Okay. All right.

18 MR. KING: And, Your Honor, our basis for
19 this is -- is twofold. I've looked at -- I've
20 looked at the -- as I anticipated, but I've
21 looked at the -- the memorandum that plaintiff --
22 that Mr. Sipe's counsel just -- it looks like he
23 just filed it this morning and handed it around.

24 And I -- Mr. Sipe's position is that this
25 motion comes too late essentially, that we're not

1 in a position to challenge -- Mr. King is not in
2 a position to challenge what we -- what we want
3 to challenge and that the -- that this should
4 have been handled either up front or in a direct
5 appeal.

6 Your Honor -- and the cases I cite in my
7 memorandum largely stand for the proposition
8 that -- that the legal sufficiency of a complaint
9 upon which a default judgment is entered is not
10 waived in the event of a default or a default
11 judgment and that if a complaint -- and in this
12 case it's a third-party complaint -- has no legal
13 foundation or is legally insufficient, the
14 defaulting party can still -- has the right to
15 challenge that as well that there is no legal
16 authority upon which the Court can enter a
17 default judgment.

18 So that's the crux of the matter here, Your
19 Honor. What we're dealing with is a third-party
20 complaint that was interposed under Rule 14.
21 That governs third-party practice in South
22 Carolina as well as in the federal courts.

23 And third-party practice under our Rule 14
24 requires that a plaintiff -- a third-party
25 plaintiff, the only basis upon which they can

1 assert a third-party claim and interpose a
2 third-party complaint is a claim for derivative
3 liability, and that is that the third-party
4 plaintiff has a claim to pass all or part of his
5 liability to the plaintiff. In this case,
6 Mr. Sipe's liability to Griffin, that Mr. Sipe
7 has a claim to pass all or part of that liability
8 to Mr. King.

9 It can't be a direct claim for damages. It
10 has to be a claim that, "Look, I may be liable to
11 Griffin, but if I'm liable to Griffin, you're
12 liable to me." It's got to be a dependent
13 liability. And the -- and the liability under
14 Rule 14 under our authorities, Your Honor, is
15 that -- that the third party's -- defendant's
16 liability has to be dependent upon the
17 third-party plaintiff's liability to the
18 plaintiff. Okay?

19 And obviously that's not what happened here
20 because if -- if Mr. King's liability -- if
21 Mr. Sipe's claims against Mr. King's liability
22 were permissible under Rule 14 and were
23 outcome-determinative, then there couldn't be a
24 default judgment for damages entered until
25 Griffin has established its claim because

1 Mr. Sipe's liability claim against Mr. King would
2 have been to be dependent on Griffin's claim
3 against Mr. Sipe.

4 And we don't have that in this case, Your
5 Honor. What we have is a direct claim for
6 damages by Mr. Sipe against Mr. King, and that is
7 not proper under Rule 14. The third-party
8 complaint in this case is without legal
9 foundation, and, therefore, the Court was without
10 authority to enter it.

11 It seems to me that there are four
12 alternatives that could have happened in this
13 case or that should have happened in this case,
14 any of which or all of which or some of which
15 would have given Mr. Sipe the relief that he
16 would be entitled to or potentially entitled to.

17 One is he could have asserted a proper
18 third-party claim in this case. Claim for
19 indemnification. I suspect it would have been a
20 claim for equitable indemnification, potentially
21 a claim for contribution if -- once he makes
22 payment that he shouldn't have to make, or
23 something along those lines.

24 The second is he could have filed a separate
25 action, paid his filing fee, filed a separate

1 action, and then let that separate action move
2 forward. The third is that he could have
3 potentially caused -- and I think this is
4 probably what Mr. Cockrell was really trying to
5 do in this case but jumped ahead several steps
6 that he shouldn't have, and that is he could have
7 caused Mr. King to be impleaded as a necessary
8 party -- and he raised that as a defense in his
9 answer -- but as a necessary party and had him
10 brought in as a first-party defendant, not in the
11 position of a third-party.

12 And then the last is if he, indeed, is
13 liable to Griffin, he could have then brought a
14 subsequent action for contribution. Any of those
15 would have given him the relief. What he can't
16 do is exactly what they did in this case and
17 that's bring a third-party claim for damages.
18 Can't have a direct claim for damages, and it's
19 clear.

20 And, Your Honor, I've cited the case, the
21 Smith vs. Tiffany case, which came out last year
22 which I happened to be a part of, and the Supreme
23 Court held that the only claim under Rule 14 that
24 a third-party plaintiff has is one for derivative
25 liability. It's not one for direct liability.

1 The first general case which is -- which is
2 sited in my brief, and there's some -- several
3 others that stand for that proposition, Your
4 Honor. And so we think that the default judgment
5 has to be set aside because the Court was without
6 legal authority to enter it. The judgment's
7 void, and we should be entitled to proceed with a
8 motion to dismiss or an answer in this case, Your
9 Honor, as a third-party defendant.

10 MR. KNOX: Okay.

11 Mr. Cockrell?

12 MR. COCKRELL: Thank you, Your Honor. Your
13 Honor, I'll -- and I'll be -- I'll be brief.
14 Reviewing the motions filed by the third-party
15 defendant, they are only seeking the actual
16 judgment that you issued to be set aside.
17 There's no -- no request to set aside the
18 default, the entry of default, that Judge
19 Henderson issued.

20 As such, any arguments related to setting
21 aside the entry of default I don't believe are
22 appropriately heard today. There can --
23 technically I guess they can subsequently file a
24 motion on that basis if -- if they so desire.
25 However, by -- by way of background, this

1 matter -- and it's relayed in -- in the
2 memorandum of the third-party plaintiff. A
3 judgment -- an actual order of judgment was
4 executed by Your Honor on February the 2nd and
5 served on Jason King on February 14th.

6 But if you'll walk back a little bit, the
7 answer to the third-party complaint was served
8 back in November, November the 2nd, meaning, as
9 we're almost a -- two years out from when -- when
10 an answer was due in this matter, that being
11 December 3rd, December 2nd of 2016, an entry of
12 default wasn't even requested or made apparent
13 until January 17th.

14 There was a big gap of time for Mr. King to
15 do something. He doesn't do something. He gets
16 noticed of the hearing before Your Honor and
17 doesn't do anything. And then in August 21st of
18 2017, almost a full year from when he was served
19 with the action, he files a motion to set aside
20 based on some confusing points about -- initially
21 it sounds like he's saying, you know, mistake,
22 inadvertence, excusable neglect. But obviously
23 that's not what -- what Mr. King, attorney for
24 Mr. King is asking today.

25 The points he's trying to make is this is a

1 third-party action that is somehow void because
2 of derivative liability, and if -- if Your Honor
3 will recall the damages hearing in your -- in
4 your -- your judgment outlines this -- the whole
5 situation, Griffin's claim against my client,
6 this whole case, is all derived from Mr. Jason
7 King's actions.

8 Jason King asserts that he turned the title
9 over, and he didn't. He told Griffin that he did
10 that. He told my client, gave assurances of
11 that. All of this stemmed from that. Now, Jason
12 King didn't appear at the purchase of the
13 vehicle. He was not there, but they had copies
14 of the lease agreements and -- between Jason
15 King. They had commun- -- their agents had
16 communications with Jason King about all of that.

17 And as such, Your Honor's case -- order
18 outlines all the aspects that have frustrated the
19 situation between Griffin and my client. But --
20 but taking a step further, Mr. Rob King wants to
21 ask you to set this aside to then allow him to
22 answer a complaint. He hasn't even proposed a
23 proposed answer. There's no basis to set this
24 judgment aside.

25 And as outlined in -- in the memorandum

1 specifically, the parties to a matter are laid to
2 the sound discretion of the Court, and more --
3 on -- to take it a step further, the fundamental
4 aspects of objections to the parties, which is
5 what they're trying to make here, is waived if
6 not raised in an answer.

7 And that's in -- that's in -- that's in the
8 case cited in the memorandum that is still good
9 law. It's an old case, but it's an old case
10 because it's so conclusive and so obvious the law
11 of South Carolina that it doesn't need to be
12 brought back up to the -- to the Supreme Court to
13 be re-addressed, and it has not been overruled,
14 and it has been cited in treatises as recent as
15 last year. As such, I think the motion should be
16 denied and we should move forward on the matter
17 between Griffin and Mr. Sipe. Thank you.

18 MR. KNOX: Okay. I have a question. In
19 that order it says that any further litigation
20 should be appealed directly to the appeals court.
21 What is your view on that?

22 MR. KING: My view, Your Honor, is that if
23 Your Honor denies my motion, then my next step is
24 to go up to the Supreme Court, court of appeals.
25 I mean, that's -- that's how I understand

1 references to proceed, Your Honor, that --

2 MR. KNOX: Right.

3 MR. KING: -- we're not going back before
4 the circuit court on this matter.

5 MR. KNOX: Right. And I understand that you
6 guys tried to mediate this --

7 MR. KING: We did.

8 MR. KNOX: -- to no avail.

9 MR. KING: That's correct, Your Honor.

10 MR. KNOX: Were you close or just --

11 MR. KING: Not particularly.

12 MR. KNOX: -- far apart?

13 MR. KING: Not particularly.

14 MR. KNOX: Okay. Now, when this matter --
15 again, I say when this matter was referred to me,
16 it was already in default.

17 MR. KING: That's right.

18 MR. KNOX: Judge Henderson signed an order
19 of default, and my understanding of what I was
20 appointed to do here, the damages issues, and I
21 heard that.

22 And I don't believe you appeared or anybody
23 appeared on your behalf. Or were you here? I
24 think it was just Mr. Cockrell that was here.

25 And I think he submitted for the record that

1 all parties were notified -- and correct me if
2 I'm wrong -- that all parties were notified.

3 And were you notified of the default
4 judgment?

5 MR. KING: I was not involved at that point,
6 so Mr. Cockrell, I mean, he was under no
7 obligation to notify me, Your Honor. I --

8 MR. KNOX: Okay. So when did you join in
9 this? How late after the default did you join
10 in?

11 MR. KING: Whatever -- the date of my motion
12 is the date that I joined in this fray.

13 MR. COCKRELL: Yeah. Your Honor, as -- as I
14 was referrencing in my memorandum, I believe the
15 hearing before you where me and Mr. Sipe appeared
16 was February the 2nd of --

17 MR. KNOX: '17.

18 MR. COCKRELL: -- 2017, and then I believe
19 Mr. Rob King filed a motion in August of --

20 MR. KING: 2017.

21 MR. COCKRELL: -- 2017. August 21st I
22 believe is what I --

23 MR. KNOX: I think you were in your
24 statutory right to do that because it was within
25 a year of the default judgment.

1 MR. KING: Yes, Your Honor. I -- there's
2 not a specific time limit on a -- on a 60(b)(4)
3 motion, that the motion is void. In fact, that
4 could be a separate action, basis for a separate
5 action, but we elected to -- to proceed in this.
6 Frankly, I did it that way because I knew that
7 Griffin Chrysler -- that this matter was still
8 ongoing, and I thought it would be more
9 appropriate to do that than a separate lawsuit.
10 But I do think you're correct, Your Honor. It
11 was within our right to file the motion, and we
12 did it in a timely fashion.

13 One thing I want to address, Your Honor, is
14 the way -- my understanding of the way it
15 proceeds is, if you're dealing with the entry of
16 a default, if you're at that state and a default
17 judgment has not been entered, then you file your
18 motion to set it aside under Rule 59. Once a
19 default judgment has been entered, then you've
20 got to file your motion under Rule 60. You're no
21 longer operating under Rule 59. It's got to
22 be --

23 MR. KNOX: So you're saying that the default
24 judgment of Judge Henderson issued was never
25 filed or it had not ripened?

1 MR. KING: Judge Henderson never entered a
2 default judgment is my understanding, Your Honor.
3 The judgment was entered when Your Honor found
4 the damages and signed and filed the order of
5 judgment. What Judge Henderson did was refer the
6 matter to you for the entry of the default
7 judgment. The default was entered effectively
8 when Mr. Cockrell filed his affidavit of default.
9 That's technically what happened. And then -- so
10 when it comes to you for a damages hearing, you
11 find your damages, Your Honor, and you sign your
12 order. Then that becomes the judgment.

13 MR. KNOX: So when this matter was referred
14 to me, it was not in default. Is that what
15 you're arguing?

16 MR. KING: It was in default, but there was
17 not a default judgment.

18 MR. KNOX: Okay. And the circuit court
19 issued that default?

20 MR. KING: The entry of default, that's
21 correct, Your Honor.

22 MR. KNOX: And you -- did you attack the
23 entry of default in the circuit court?

24 MR. KING: That is what we are doing now.
25 We have to do it through a Rule 60 motion to you

1 is my -- is my position, Your Honor.

2 MR. KNOX: I think the circuit court just
3 punted.

4 MR. KING: Right. I think -- I think
5 what -- I mean, Mr. Cockrell was within his
6 rights to ask for this matter to be referred to a
7 special referee, and that's, as you know, common
8 practice and -- but that does. That takes the
9 ownness off of the circuit court judge and puts
10 it on the special referee.

11 MR. KNOX: Right.

12 MR. KING: So...

13 MR. KNOX: Anything further from anybody?

14 MR. KING: No, Your Honor.

15 MR. KNOX: well, I've read your memorandum.
16 I read it yesterday when I received it via email.

17 MR. KING: Yes, sir.

18 MR. KNOX: I've read Mr. Cockrell's just
19 briefly because it was just handed to me. I
20 will -- if we could break for a while, give me a
21 chance to read that, and then I think I can make
22 a decision so we can go ahead to the next stage.

23 MR. KING: Okay. Thank you, Your Honor.

24 MR. BARTH: Thank you, Your Honor. We're
25 going to -- we'll take a break.

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MR. KNOX: Okay.

- - -

(There was a recess from 11:25 to 11:41.)

- - -

MR. KNOX: Okay. We're back on the record. I have a couple of questions I would like to put forth.

First of all, Mr. Cockrell, in your memorandum you said that this is a debt collection action.

MR. COCKRELL: Uh-huh.

MR. KNOX: Why is it a debt collection action?

MR. COCKRELL: Well, that's just how I -- I couched it. The -- it was -- this initiated from an obligation from -- Griffin initiated this action against Mr. Tonny Sipe in regards to a trade-in of a vehicle that was titled in Jason King's name, but under the lease-to-purchase agreement between Mr. Sipe and Mr. King, the title was not delivered to Griffin.

And that's where, from their perspective in their claim, there is a debt and an obligation that -- again, if you will recall from the damages hearing previously before you where we

1 discussed the aspects of the -- of the case, this
2 is -- we recognize that Griffin, in reliance on
3 some assurances from Mr. Jason King and Mr. Tonny
4 Sipe, they gave a concession in the price on the
5 trade-in of the truck. So for lack of -- to
6 elaborate in totality, the -- it was initiated as
7 a debt collection.

8 MR. BARTH: Yeah. That's correct, Your
9 Honor. We -- we're not involved in their
10 lawsuit, but ours against Mr. Sipe is a debt
11 collection, breach of contract debt collection
12 action.

13 MR. KNOX: And, Mr. King, your view of the
14 case is that it's a breach of contract case.

15 MR. KING: My view of the third-party
16 complaint is that it is one for breach of
17 contract and related towards.

18 MR. KNOX: The contract was between who and
19 who?

20 MR. KING: I'm not -- well, I think that
21 Mr. Sipe is asserting that it was a contract
22 between Mr. Sipe and Mr. King that was
23 breached --

24 MR. KNOX: Okay. Okay.

25 MR. KING: -- in the third-party complaint.

1 And that's -- that's -- sort of the crux of the
2 problem under Rule 14 is that it's -- that's a
3 direct action for damages. That's not a
4 derivative liability claim.

5 MR. KNOX: And you're seeking relief under
6 which statute, 14 or 60?

7 MR. KING: I'm seeking relief under Rule 60,
8 Your Honor.

9 MR. KNOX: Rule 60.

10 MR. KING: Rule 60 --

11 MR. KNOX: Uh-huh.

12 MR. KING: -- to set aside the default
13 judgment, Your Honor, and allow us to proceed
14 under merits.

15 MR. KNOX: And you both argue that Rule 60
16 is favorable to your clients.

17 MR. KING: That's --

18 MR. KNOX: That's what the memorandum says.

19 MR. KING: Certainly, Your Honor.

20 - - -

21 RULING OF THE COURT

22 - - -

23 MR. KNOX: The approach that I'm going to
24 take is that the matter was referred to me. It
25 was already in default. The record clearly shows

1 that all the parties were notified of the
2 default. No one attacked the default when I
3 was -- when it was referred to me back in
4 January. Later on it was but not when I heard
5 it. And that it came to me to give a decision
6 based on damages. And that's what I did based on
7 the parties that were before me and the testimony
8 and evidence that I received.

9 As to what I'm hearing today for the first
10 time is that I think there is relief, but I don't
11 think it's in the special referee's court. I
12 think the relief would be to attack my decision
13 via the appeals court because there are some
14 issues here that -- I think that should have been
15 addressed in common pleas before it even got to
16 me.

17 And I don't think I can retroactively go
18 back and make decisions based on information that
19 I didn't have at the time nor did I have
20 authority to do. I think my authority was
21 limited in giving a decision on damages, and that
22 was before me, and that's what I did, and I think
23 that -- I think there are compelling arguments on
24 both sides to -- to -- to keep the damages and to
25 set the damages aside.

1 But I'm not going to second-guess myself
2 based on what I did back last January. Or was it
3 February? January. And I'm going to stand by my
4 decision and keep those damages in place. Okay?

5 And, Mr. Cockrell, would you write an order?

6 MR. COCKRELL: Be glad to, Your Honor.

7 MR. KNOX: Now, as to the second part. What
8 is -- what were you seeking in the second part?

9 MR. BARTH: We're seeking a judgment against
10 Mr. Tonny Sipe, Your Honor.

11 MR. KNOX: And are you ready to go forward
12 with that?

13 MR. BARTH: Yes, sir.

14 MR. COCKRELL: Yes, Your Honor.

15 MR. KNOX: And, Mr. King, do you have a dog
16 in this fight?

17 MR. KING: Not as it stands, Your Honor. I
18 think I would have a little bit of a dog in the
19 fight at least as -- on the side issue of
20 derivative liability, but that's not before the
21 Court as I understand the Court's ruling.

22 MR. KNOX: Right.

23 MR. KING: So I do appreciate it and --

24 MR. KING: I appreciate your time, Your
25 Honor.

1 MR. KNOX: Thank you for being here.

2 THE COURT REPORTER: Did you want to order a
3 copy of this?

4 MR. KING: Can you send me an eTran? I
5 guess I need the original too.

6 Thank you, Your Honor.

7 It was good to see all of you.

8 - - -

9 (Mr. King left the deposition, and a short
10 discussion was held off the record.)

11 - - -

12 HEARING

13 - - -

14 MR. KNOX: Okay. Did you have a memorandum?
15 Did you hand it to me?

16 MR. BARTH: No, sir, Your Honor, I didn't.

17 MR. KNOX: Do you have a memorandum?

18 MR. COCKRELL: Not on this. And we can kind
19 of streamline some of this, and your -- I'm sure
20 Kevin's seen it, but the order from the damages
21 hearing back in February or January 30th,
22 we're -- we're not -- Your Honor, we're not
23 denying that we got a benefit of the trade-in
24 here.

25 You know, what -- what -- what is

1 Okay.

2 MR. COCKRELL: Yeah. No follow-up from us.

3 MR. KNOX: Okay.

4 MR. BARTH: None from me.

5 - - -

6 RULING OF THE COURT

7 - - -

8 MR. KNOX: Okay. Both parties have rested.
9 I rule that there's a judgment against Mr. Sipe
10 in the amount of \$28,521.

11 MR. BARTH: Thank you, Your Honor. I --
12 want me to prepare an order for Your Honor?

13 MR. KNOX: Sure. We can go off the record.

14 MR. COCKRELL: Yeah, I'm going to want a
15 copy --

16 THE COURT REPORTER: Okay.

17 MR. COCKRELL: -- please.

18 MR. KNOX: I'm going to pass the exhibits
19 back for the final.

20 THE COURT REPORTER: And, Mr. Barth, did you
21 want a copy?

22 MR. BARTH: Yes, I do please. eTran is fine
23 with me.

24 - - -

25 (Special Referee hearing concluded at 12:12 p.m.)

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CERTIFICATE OF REPORTER

I, Deidre Osborne, Court Reporter and Notary Public for the State of South Carolina at Large, do hereby certify:

That the proceedings and evidence are contained fully and accurately in the notes taken by me in the above cause and that it is a correct transcript of the same.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof. Witness my hand, I have hereunto affixed my official seal this 24th day of Octoberr, 2018, at Lexington County, South Carolina.

Deidre Osborne

Deidre Osborne,
Court Reporter
Notary Public
State of South Carolina at Large
My Commission Expires:
June 12, 2019

STATE OF SOUTH CAROLINA,)
)
COUNTY OF CHESTERFIELD)
)
TONY EDWARD SIPE)
Third Party Plaintiff(s))
vs.)
)
JASON S. KING)
Third Party Defendant(s).)

IN THE COURT OF COMMON PLEAS

FOURTH JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

FILE NO: 2016-CP-13-681

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn

says that (s)he served the THIRD PARTY SUMMONS, ANSWER AND THRID in this action
PARTY COMPLAINT
(Describe document(s) served)

on JASON S KING, by delivery to
(Name of party served)

JASON S. KING personally;
(Name of party served)

_____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

_____ the _____ of _____
(Name of person served) (Title) (Name of corporate party served)

and leaving with (him) (her) a copy at 411 MARKET STREET
(Street address)

in CHERAW CHESTERFIELD County, South Carolina,
(City or Town) County

on NOVEMBER 2, 2016 at 12:45 o'clock PM

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Unable to locate and serve the above process on the defendant after diligent efforts to do so. The process is returned unexecuted.

Sworn to and Subscribed before me
this 3rd day of November 2016.

W. D. C. M.
Notary Public for South Carolina

My Commission expires 11/13/2023

Henry D.
Signature of Deponent

2016 NOV 3 PM 4 19
FAYE L. SELLERS
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTERFIELD)
))
Griffin Chrysler Dodge Jeep, Inc.)
Plaintiff,)
))
verses)
))
Tonny Edward Sipe,)
Defendant,)
))
_____))
Tonny Edward Sipe,)
Third Party Plaintiff,)
))
verses)
))
Jason S. King,)
Third Party Defendant.))
_____))

IN THE COURT OF COMMON PLEAS
FOURTH JUDICIAL CIRCUIT
CASE No. 2016-CP-13-681

**MOTION FOR ENTRY OF DEFAULT
AND ORDER OF REFERENCE**

2017 JAN 17 PM 4:25
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

NOW COMES Third Party Plaintiff, Tonny Edward Sipe, by and through his undersigned attorneys, pursuant to Rule 55(a) of the *South Carolina Rules of Civil Procedure*, and moves the Court for Entry of Default against the Third Party Defendant, Jason S. King.

In support of this Motion, counsel for the Plaintiff shows unto the Court, as evidenced by the Affidavit of Service, attached hereto as Exhibit A, that the Third Party Defendant, Jason S. King, was personally served with the Summons and Complaint on September 26, 2016 and said Defendant has failed to file an Answer or otherwise plead to the claims of the Plaintiff within the time provided for in the *South Carolina Rules of Civil Procedure*, as more fully detailed in the accompanying Affidavit of Default, attached hereto as Exhibit B.

Plaintiff further moves this Court to Order a hearing be set to determine the damages awarded to Plaintiff, said damages not being liquidated, and that said hearing be referred to Larry W. Knox, Esquire as the Special Referee for Chesterfield County, for the purpose of hearing any and all motions, taking the testimony offered, and reporting his findings of fact and conclusions of law together with any special matters, and with the authority to enter the final ruling herein upon all motions necessary to dispose of this matter.



[SIGNATURE BLOCK TO FOLLOW]

COCKRELL LAW FIRM, PC

M. W. Cockrell, III, SC Bar # 69417
Sarah C. Campbell, SC Bar # 100581
BARRISTER BUILDING
Olde Towne Centre
159 Main Street
Chesterfield, South Carolina 29709
Phone: (843) 623-5911
Facsimile: (843) 623-5700
ATTORNEYS FOR PLAINTIFF

Chesterfield, South Carolina
January 9, 2017

#2

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHESTERFIELD)
)
 Griffin Chrysler Dodge Jeep, Inc.,)
)
)
 vs.)
)
 Tonny Edward Sipe,)
)
 _____)
)
 Tonny Edward Sipe,)
)
)
 vs.)
)
 Jason S. King,)
)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTH JUDICIAL CIRCUIT
 CASE NO.: 2016-CP-13-681

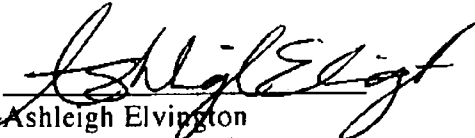
2017 JAN 19 PM 12:29
 Wanda C. Miles
 CLERK OF COURT
 CHESTERFIELD COUNTY, S.C.

CERTIFICATE OF SERVICE

I, Ashleigh Elvington, the undersigned paralegal of the law offices of Cockrell Law Firm, PC, attorney for Defendant Sipe, do hereby certify that I have served a copy of the foregoing, **NOTICE of HEARING**, in connection with the above-captioned case by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

Kevin M. Barth, Esquire
 Barth, Ballenger and Lewis, LLP
 Post Office Box 107
 Florence, South Carolina 29503

Jason S. King
 8 King Drive
 Chesterfield, South Carolina 29709


 Ashleigh Elvington

Chesterfield, South Carolina
 January 19, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF CHESTERFIELD)

[] TONNY EDWARD SIPE,)

Third-Party Plaintiff,)

vs.)

[X] JASON S. KING,)

Third-Party Defendant,)

IN THE [X] COURT OF COMMON PLEAS
[] FAMILY COURT

C/A No. 16-CP-13-00681

MOTION INFORMATION FORM
AND COVER SHEET

<u>Name, S.C. Bar # and Address of 3rd Party Plaintiff's attorney</u> M W Cockrell III, 159 Main Street, Chesterfield, SC 29709 telephone: (843) 623-5911 fax: (843) 623-5700 e-mail: mwc@cockrelllawfirm.com other:	<u>Name, S.C. Bar # and Address of 3rd Party Defendant Attorney</u> Robert T. King, #66237, PO Box 1764, Florence SC 29503 telephone: (843) 407-5525 fax: (843) 407-5782 e-mail: rking@kingandlove.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 for Relief from Entry of Default Judgment
Estimated Time Needed: 20 minutes
Court Reporter Needed: YES / NO

Section II: Motion Type

Written motion attached
 Form Motion--
I hereby move for relief or action by the court as set forth in the attached *Order*.

Signature of Attorney

Date submitted

Section III: Motion Fee

PAID-AMOUNT \$25.00
 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: _____

2017 AUG 21 AM 10:45
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

Judge's Section

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

Judge

CODE: _____ Date: _____

Clerk's Verification

Collected by: A. Johnson Date Filed: _____

MOTION FEE COLLECTED: 25.00 **FEE PAID**
 CONTESTED - AMOUNT DUE: _____

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
C/A No. 16-CP-13-00681

GRIFFIN CHRYSLER JEEP DODGE,)
INC.,)

Plaintiff,)

vs.)

TONNY EDWARD SIPE,)

Defendant.)

THIRD-PARTY DEFENDANT'S NOTICE
OF MOTION & MOTION FOR RELIEF
FROM DEFAULT JUDGMENT

TONNY EDWARD SIPE,)

Third-Party Plaintiff,)

vs.)

JASON S. KING,)

Third-Party Defendant.)

2017 AUG 21 AM 10:45
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

PLEASE TAKE NOTICE that that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, the Third-Party Defendant, by and through its undersigned counsel, will move this Honorable Court for an order setting aside the default judgment, entered February 2, 2017, pursuant to Rule 60(b)(1) and (4) of the South Carolina Rules of Civil Procedure.

The basis of this motion is that the default judgment is inequitable and is void. The Third-Party Complaint asserted against the Third-Party Defendant was improper and violated Rule 14(a) of the South Carolina Rules of Civil Procedure. *See First General Services of Charleston, Inc. v. Miller, First Gen'l Servs.*, 314 S.C. 439, 445 S.E.2d 446, 447 (1994) ("The third-party plaintiff must have a substantive claim against the third-party defendant *founded upon derivative liability*"

A True Copy Attest

Wanda C. Miles

CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

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(emphasis added)); *see also* 6 C. Wright & A. Miller, Federal Practice and Procedure § 1460 at 246 (1971) (“[a] third-party claim may be asserted under Rule 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant”). In that the Third-Party Plaintiff asserted claims for direct liability, not derivative liability, against the Third-Party Defendant, the Third-Party Complaint failed to state a proper claim under Rule 14(a) and provided an insufficient basis for the entry of a default judgment. *See Gadsden v. Home Fertilizer & Chemical Co.*, 89 S.C. 483, 72 S.E. 15, 17 (1911) (“if the complaint fails to state facts sufficient to constitute a cause of action, any judgment thereon, except one of dismissal, goes beyond the allegations of the complaint; and so, if the complaint states facts which entitle plaintiff only to a certain kind of relief, or to relief only to a certain extent, a judgment by default which gives a different kind of relief, or relief to a greater extent, is without authority of law and cannot be sustained”); *Masters v. Rodgers*, 283 S.C. 251, 321 S.E.2d 194, 196 (Ct. App. 1984) (“A party seeking a default judgment is entitled to only such relief as is framed by his pleading...It follows that if a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error....An objection that the complaint does not state facts sufficient to constitute a cause of action is not waived by a default.”); *Mutual Savings and Loan Assoc. v. McKenzie*, 274 S.C. 630, 266 S.E. 2d 423, 424 (1980) (“A party seeking a default judgment is entitled to only such relief as is framed by his pleading, and then only to the extent requested therein....If a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error.”).

As time is of the essence with filing this motion, the Third-Party Defendant reserves the

right to supplement this motion with affidavits, memoranda, briefs, and evidence which may be received and/or required by the Court.

Additionally or alternatively, the Third-Party Defendant moves this Court for an Order pursuant to Rule 6(b) of the South Carolina Rules of Civil Procedure granting it an enlargement of time in the amount of thirty (30) days to answer the Third-Party Complaint.

WHEREFORE, the Third-Party Defendant respectfully prays that the default judgment entered against him be set aside and that he be permitted to answer or otherwise respond to the Third-Party Complaint.

The undersigned certifies pursuant to Rule 11(a), SCRPC, that due to time constraints, consultation with opposing counsel could not be timely held and, further, that prior consultation would serve no useful purpose.

KING, LOVE & HUPFER, LLC

By:



ROBERT T. KING #066227

PO Box 1764

Florence, SC 29503-1764

(843) 407-5525 - Tel

(843) 407-5782 - Fax

rking@kingandlove.com

ATTORNEY FOR JASON S. KING

August 17, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS
C/A No. 16-CP-13-00681

GRIFFIN CHRYSLER JEEP DODGE,)
INC.,)

Plaintiff,)

vs.)

TONNY EDWARD SIPE,)

Defendant.)

CERTIFICATE OF SERVICE

TONNY EDWARD SIPE,)

Third-Party Plaintiff,)

vs.)

JASON S. KING,)

Third-Party Defendant.)

2017 AUG 21 AM 10:46
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

I, the undersigned, of the law office of King, Love & Hupfer, LLC, as attorneys for Jason S. King, do hereby certify that I have served the *Third-Party Defendant's Notice of Motion & Motion for Relief From Entry of Default* this August 17, 2017, upon the following by depositing the same in a U.S. Postal Box in envelopes, sufficient postage prepaid, properly addressed as follows:

KEVIN M BARTH ESQ
BARTH BALLENGER & LEWIS LLP
PO BOX 107
FLORENCE SC 29503-0107

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

M W COCKRELL III ESQ
COCKRELL LAW FIRM PC
159 MAIN ST
CHESTERFIELD SC 29709

LARRY WAYNE KNOX ESQ
SPECIAL REFEREE
5349 SHANNAMARA DR
MATTHEWS NC 28104

A handwritten signature in black ink, appearing to read "Robert T. King", written over a horizontal line.

ROBERT T. KING

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTERFIELD)

IN THE COURT OF COMMON PLEAS

C/A No. 16-CP-13-00681

GRIFFIN CHRYSLER JEEP DODGE,)
INC.,)
)
Plaintiff,)
)
vs.)
)
TONNY EDWARD SIPE,)
)
Defendant.)

MEMORANDUM OF LAW IN SUPPORT
OF THIRD-PARTY DEFENDANT'S
MOTION FOR RELIEF FROM DEFAULT
JUDGMENT

TONNY EDWARD SIPE,)
)
Third-Party Plaintiff,)
)
vs.)
)
JASON S. KING,)
)
Third-Party Defendant.)

2016 OCT 23 AM 10:33
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

FACTUAL BACKGROUND

On September 12, 2016, Griffin Chrysler Dodge Jeep, Inc. ("Griffin Chrysler"), filed suit against Tonny Edward Sipe ("Sipe") alleging a breach of contract in connection with Sipe's August 3, 2015 purchase of a Dodge pickup truck. (See Complaint ¶¶ 4-5.) In connection with that purchase, Sipe traded in a 2011 Ford pickup truck. (See *id.*) The trade-in Ford truck, however, was owned by Jason King ("King") from whom Sipe was leasing the truck. (See Answer and Third-Party Complaint ¶ 4.) Sipe delivered the Ford truck to Griffin Chrysler, but did not produce the

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Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

title to the truck as it was allegedly in King's possession.¹ (*Id.* ¶ 5; Complaint ¶ 5.) Griffin Chrysler seeks monetary damages from Sipe. (Complaint ¶¶ 6-7.)

In response to Griffin Chrysler's Complaint, Sipe filed an Answer and Third-Party Complaint, naming King as a Third-Party Defendant. In the Third-Party Complaint, Sipe does not assert derivative liability claims (e.g., indemnification, contribution, etc.) against King, but instead asserts that King is directly liable to him for alleged damages. (*See* Answer and Third-Party Complaint pp. 3-7.) Specifically, Sipe asserts claims against King for breach of contract, breach of contract accompanied by a fraudulent act, fraud, constructive fraud, and interference with a contractual relationship. (*See id.*)

King went into default, the matter was referred to Larry W. Knox as special referee, and a default judgment in the amount of \$135,000.00 was entered against King. (*See* Order of Judgment.) King filed the instant motion for relief from default judgment under Rule 60(b) of the South Carolina Rules of Civil Procedure on August 21, 2017.

ANALYSIS

A default judgment may be set aside upon a motion filed within a year for "(1) mistake, inadvertence, surprise, or excusable neglect...[and/or] (4) the judgment is void." Rule 60(a), SCRCP.

The entry of default against King does not obviate his right to challenge Sipe's entitlement to a default judgment on the grounds that the Third-Party Complaint is defective, fails to state a claim, or does not otherwise comply with the rules of civil procedure. An entry of "default is not

¹The title was actually in the possession of a lienholder, not King, as King still owed on the original loan at the time.

treated as an absolute confession by the defendant of his liability and of the plaintiff's right to recover." Ryan v. Homecomings Fin. Network, 253 F.3d 778, 780 (4th Cir. 2001). "A party seeking a default judgment is entitled to only such relief as is framed by his pleading, and then only to the extent requested therein." Mutual Savings and Loan Assoc. v. McKenzie, 274 S.C. 630, 266 S.E. 2d 423, 424 (1980); *see also* Gadsden v. Home Fertilizer & Chemical Co., 89 S.C. 483, 484, 72 S.E. 15, 17 (1911). Thus, a default does not preclude a defendant "from challenging the sufficiency of the complaint as a basis for judgment." Masters v. Rodgers, 283 S.C. 251, 321 S.E.2d 194, 196 (Ct. App. 1984).

Here, King's default is based upon Sipe's Third-Party Complaint which attempted to implead King into this action as a third-party defendant. A defendant to an action may join other parties as third-party defendants only in very limited circumstances. Rule 14(a) of the South Carolina Rules of Procedure provides that "a defending party, as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him *for all or part of the plaintiff's claim against him.*" (*Emphasis added.*) As our Supreme Court has repeatedly held, "a non-party is subject to impleader *only if there is a basis to assert he is liable to the named defendant(s) for all or part of the plaintiff's claim.*" Smith v. Tiffany, 419 S.C. 548, 799 S.E.2d 479, 486 (2017) (*emphasis added*). Thus, under Rule 14(a) in order to bring a third-party claim "the third-party plaintiff must have a substantive claim against the third-party defendant *founded upon derivative liability.*" First General Services of Charleston, Inc. v. Miller, 314 S.C. 439, 445 S.E.2d 446, 447 (1994) (*emphasis added*).

The third-party defendant's liability must depend upon the original action such that "[t]he outcome of the principal claim must impact the third-party defendant's liability." *Id.*; *see also* 6 C.

Wright & A. Miller, *Federal Practice and Procedure* § 1460 at 246 (1971) (“[a] third-party claim may be asserted under Rule 14(a) only when the third party's liability is in some way dependent on the outcome of the main claim or when the third party is secondarily liable to defendant”). A third-party claim, therefore, requires “a legal theory based on indemnification, contribution, express or implied warranty, subrogation, indemnity contract, or some other derivative liability theory that permits the defendant to shift some or all of his liability to the impleaded party.” James F. Flanagan, *South Carolina Civil Procedure* 122 (3d ed. 2010). Without a right to shift liability to the third-party defendant, impleader is not proper. *Id.*

Here, Sipe's Third-Party Complaint does not assert any claim for derivative liability against King, i.e., that King is liable to him for Griffin Chrysler's claims against him. He has not asserted a claim for indemnification, contribution, or some other such claim founded upon derivative liability. Sipe has, instead, attempted, improperly, to assert claims for damages based on direct liability which are not dependent upon Sipe's liability to Griffin Chrysler. Such claims are not properly asserted in a third-party complaint under Rule 14(a). As a third-party complaint which fails to assert a derivative liability claim is not a proper one, it cannot form the basis of a default judgment against King. Instead, such claims can only be dismissed.²

²There are four viable alternatives, any or all of which would provide Sipe with the protections and relief he seeks:

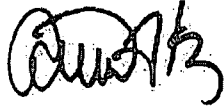
- (1) Sipe's claims for direct liability against King can be filed in a separate action.
- (2) Sipe can file a proper third-party complaint against King asserting any viable claims he has founded on derivative liability.
- (3) To the extent that King is a necessary and indispensable party to this action, he can be added as a first-party defendant under Rule 19.
- (4) If Sipe pays damages to Griffin Chrysler ultimately, and believes that King is liable to him for a portion or the whole thereof, he can assert a claim for contribution at the appropriate time.

CONCLUSION

Based on the foregoing, the Third-Party Defendant, Jason King, respectfully urges that the default judgment entered against him should be set aside pursuant to Rule 60(a)(1) and/or (4), and that he should be permitted to answer or otherwise respond to the Third-Party Complaint.

KING, LOVE, HUPFER & NANCE, LLC

By:



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(843) 407-5782 - Fax
rking@kingandlove.com
ATTORNEY FOR JASON S. KING

October 17, 2018

7:18 OCT 23 AM 10:33
Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.R. & G.S.
CHESTERFIELD COUNTY, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Larry Wayne Knox, Special Referee

C/A No. 2016-CP-13-00681
Appellate Case No. 2019-000674

Griffin Chrysler Jeep Dodge, Inc..... Plaintiff

v.

Tonny Edward Sipe..... Defendant

and


Tonny Edward Sipe..... Respondent

v.

Jason S. King Appellant.

CERTIFICATE OF COUNSEL

Pursuant to Rule 210(g), SCACR, the undersigned, hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



ROBERT T. KING #06237
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rking@kingandlove.com
Attorney for Appellant

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Larry Wayne Knox, Special Referee

C/A No. 2016-CP-13-00681
Appellate Case No. 2019-000674

RECEIVED
OCT 07 2019
SC Court of Appeals

Griffin Chrysler Jeep Dodge, Inc..... Plaintiff

v.

Tonny Edward Sipe..... Defendant

and

Tonny Edward Sipe..... Respondent

v.

Jason S. King Appellant.

CERTIFICATE OF COUNSEL

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Attorney for Appellant