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SC Court of Appeals

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
DEADRA L. JEFFERSON, Circuit Court Judge

Case No. 2015-CP-10-5000
Appellate Case No. 2019-000640

Jim Washington,.....Appellant,
v.
Trident Medical Center, LLC.....Respondent.

REQUEST TO REHEAR/CLARIFY THE ORDER DENYING PETITION FOR SUPERSEDEAS/STAY FOR DATES OF MOTIONS STATED BY THIS COURT ARE INCORRECT MATERIALLY AFFECTING THE OUTCOME OF THE PETITION/IN EFFECT DEPRIVE APPELLANT TO PRESENT HIS CLAIMS AND DEFENSES ON APPEAL

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FACTS AND ARGUMENTS

- i. **There are manifestly imperative reasons for Court to rehear its prior decisions to correct its own errors which it overlooked, misapprehended and failed to consider the correct dates of 2018 and 2019 and amount of post-remittitur motions which is four not two stand alone 2016 pre-remittitur motions being challenged in making its decision which affect the merits and the outcome of the petition for supersedeas/stay and appeal which in effect dismiss the appeal as lacking merits before it is heard and will prevent Appellant from presenting his claims and defenses on appeal and be heard conflicts with Ex Parte Carter and Narruhn.**

Appellant, request this Court to rehear/clarify and correct its order dated 12/9/19 under SCACR Rules 221 and 240(i) and SCACR Rule 241(a) lift of automatic stay by appellate court order of matters decided in the circuit court orders because this Court overlooked and misapprehended the dates and numbers of post-remittitur motions filed not just pre-remittitur motions filed in the circuit court for that court to have jurisdiction that are being challenged in this Court based on the record where the circuit court orders explicitly ruled that it "lacked jurisdiction over the issues decided by Judge Dennis and affirmed on appeal" which conflicts with this Courts' decision which materially affect the outcome of the petition/appeal and if not corrected will have the effect of dismissal of the appeal when it is heard and finally deciding the appeal before it is heard and the decision to deny petition to stay of appeal and remand. {petition for supersedeas/stay, filed on 10/28/19, pp. 19-24}. Quite simply this Court error stems from this Court overlooking, misapprehended and fail to consider Appellant petition for supersedeas/stay request for relief which is that the circuit court retained and acquired jurisdiction to hear Appellant's pending motions after the remittitur for all issues not decided in the original circuit court final order dated 2/5/16 and not determine on appeal of Judge Dennis post-remittitur decision dated 6/22/18 to contact his law clerk and the valid contract consent agreement issues. {order of the Court of Appeal, dated 12/9/19, Rp. _____}; petition for supersedeas/stay, filed on 10/28/19, p. 80-88; pp. 157-198}. See Martin v. Paradise Cove Marina, Inc., 348 S.C. 379, 382-387, 559 S.E.2d 348(Ct. App. 2001)(Same)(citations omitted)(quotations omitted); See also Muller v. Myrtle Beach

Golf And Yacht Club, 438 S.E.2d 248, 250(1993)(Same)(citations omitted)(quotations omitted); See Cox v. Fleetwood Homes of Georgia, Inc., 334 S.C. 55, 57-58, 512 S.E.2d 498(1999)(Same)(citations omitted)(quotations omitted); See also Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(Same)(citations omitted)(quotations omitted);See Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 536-540, 773 S.E.2d 144(2015)(Same)(citation omitted (quotations omitted)); See also Kennedy v. The S.C. Retirement System, 349 S.C. 531, 532-535, 564 S.E.2d 322(2001)); See also Garris v. Governing Board of S.C. Reinsurance Facility, 333 S.C. 423, 442-448, 511 S.E.2d 48(1998)(Same)(citations omitted)(quotations omitted); See Kizer v. Dorchester County Vocational Educational Board of Trustees, 287 S.C. 545, 551-554, 340 S.E.2d 144(1986)(Same)(citations omitted)(quotations omitted); See Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21-26, 602 S.E.2d 772(2004)(Same)(citations omitted)(quotations omitted); See Stokes-Craven Holding Corp. v. Robinson, 416 S.C. 517, 530-539(2016)(Same)(citations omitted)(quotations omitted); See also Tillman v. Oakes, 398 S.C. 245, 253-257, 728 S.E.2d 45(Ct. App. 2012)(Same)(citations omitted)(quotations omitted); See Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 387-401, 759 S.E.2d 727(2014)(Same)(citations omitted)(quotations omitted). Appellant, argues this Court overlooked and misapprehend his allegations which is supported by the record in the **petition for supersedeas/stay**, pp. 19-224 and **Appellant 's allegations in his initial brief**, filed on 7/29/19, pp. 8, argument I, line 1-p. 11, line 12; pp. 11, argument II, line 1-p. 15, line 4; p. 17, argument IV, line 1-p. 21, line 10 that Respondent attorneys deliberately set in motion a scheme to misrepresent the facts and allegations to this Court that are in issue for adjudication with intent to attempt to improperly influence this Courts' decision to present extrinsic fraud upon this court itself perpetrated by Respondent's attorneys as officers of the court did or attempt to subvert the integrity of this court so that the judicial machinery could not perform in the usual manner its impartial task of adjudging that Appellant filed **(4) four post-remittitur motions**, dated (7/6/18; 10/25/18; 2/4/19; 2/22/19) in the circuit court but the circuit court only ruling on **(2) two post-**

remittitur motions, dated 10/25/18 which the court found it lack jurisdiction but failed to rule on the 7/6/18 motion to reconsider conclusion which showed Judge Dennis post-remittitur decision to contact his law clerk. The circuit court also rule on the 2/22/19 motion which the court found the issues were untimely because they were not raise prior to the 2/14/19 judgment but also rule that Appellant did not raise any new facts, argument or theory and did show the court overlooked, misunderstood or perhaps fail to consider any portions of the record not ruled on which Appellant argues in this Court are the same issues the circuit court had ruled that it lack jurisdiction and issues were untimely raise after judgment which indicates that the 7/6/18 and 2/4/19 post-remittitur motions were not considered and ruled on by the circuit court. {petition for supersedeas/stay, pp. 19-24; pp. 68-133; pp. 134-156; pp. 157-198; pp. 199-224}. See Contis v. Contis, 422 S.C. 74, 76-78, 810 S.E.2d 253(2017)(Same)(citations omitted)(quotations omitted); See also Pruitt v. State of South Carolina, 310 S.C. 254, 255-256, 423 S.E.2d 127(1997)(Same)(citation omitted); See also Fishburne v. State of South Carolina, Opinion No. 27911(Appellate Case No. 2016-002385) filed on July 31, 2019(Same)(citations omitted)(quotations omitted); See Ex Parte Carter, 422 S.C. 623, 626-631, 813 S.E.2d 686(2018)(Same)(citations omitted)(quotations omitted).

Appellant, alleges Respondent's attorneys misconduct are extrinsic fraud upon the court s because there still remains (2) two pending post-remittitur motions not yet ruled on by the circuit court due to Respondent's attorneys repeated attempts in the circuit court and now in this court **to set in motion a scheme to deliberately misrepresent the facts to this Court that all motions have been addressed and ruled on to defraud this Court itself with intent to improperly influence this Courts' decision that all post-remittitur motions have been ruled on to justify denying supersedeas/stay and affirmance of the appeal** to prevent this Court from remanding this case to the circuit court for Appellant to be heard on the merits of the " invalid contract consent agreement/treated and release from Trident Hospital in stable condition with a prescription for refill of anticoagulation to prevent

future clots” issues presented at the original trial was a scheme designed to perpetrated a fraud upon the court by Respondent’s attorneys attempt to improperly influence the circuit court decision that the Court lacked subject matter jurisdiction over the accompanying documents in their **motion to dismiss** and striking the documents which effectively prevented Appellant to present his claims and defenses and be heard at the 1/7/16 hearing that **Respondent Trident was negligent in both diagnosis on MRI to fail to make an evidentiary finding of the source of injury and to treat with aspirin which is not an anticoagulation and does not require expert testimony.** Afterward, on 1/20/16 Respondent attorneys to further their scheme to procure the judgment deliberately misrepresented to the circuit court with intent to improperly influence the circuit court decision reference citation of authority in their **proposed order for final judgment** that the parties agreed to mediate their dispute at a later dated in a different jurisdiction knowing that the agreement was invalid to conceal from the court the 9/30/12 consent agreement which was valid to do a second MRI which effectively prevent Appellant to receive a full and fair final judgment decision on the merits of his claims and defenses. {petition for supersedeas/stay, filed on 10/28/19, pp. 105-132; pp. 134-156; pp. 181-198}. See Chewing v. Ford Motor Company, 346 S.C. 28, 33-37, 550 S.E.2d 584(Ct. App. 2001){Same}(citations omitted)(quotations omitted); See also Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239-251, 64 S. Ct. 997, 88 L.Ed. 1250(1944){Same}(citations omitted)(quotations omitted); See Ray v. Ray, 374 S.C. 79, 85-87, 647 S.E.2d 237(2007){Same}(citations omitted)(For example, concealing assets through a third-party not subject to discovery is extrinsic fraud in that it constitutes conduct outside of the court proceedings which deprives other party of the opportunity to fully exhibit and try his case); See Nelson v. QHG of South Carolina, 354 S.C. 290, 305-306, 580 S.E.2d 171(Ct. App. 2003){issued not preclude if not given opportunity to litigate the issue effectively in the prior action}(citations omitted) . Furthermore, Appellant argues that the post-remittitur filed motions/ jurisdiction of the court after remittitur issues are timely raised because of Judge Dennis post-remittitur decision to contact his law clerk for further question still not ruled on is

also a deliberate designed scheme by Respondent's attorneys to misrepresent the facts to this Court in **Respondent's Response in Opposition to Supersedeas/Stay, filed on 11/7/19** in an attempt to improperly influence this Court's decision that Appellant is **challenging a manifestly moot pre-remittitur motion** and that only (2) two post-remittitur motions were filed by Appellant so that the judicial machinery could not perform in the usual manner it's impartial task of adjudging the case presented for adjudication that **Appellant allegations challenges is that (4) four post-remittitur motions were filed and his challenge is based on Judge Dennis post-remittitur decision, dated 6/22/18 not just Appellant pre-remittitur motion, dated 1/27/16 standing alone allegation.**{petition for supersedeas/stay, filed on 10/28/19, pp. 68-88}. See Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21-26, 602 S.E.2d 772(2004){Same}(citations omitted)(quotations omitted); See also Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E.2d 686(2018){Same}(citations omitted)(quotations omitted). Furthermore, Appellant argues that the allegations of post-remittitur motion also includes the **memorandum on law in support of motion to vacate judgment/motion to amend the pleadings, filed on 2/4/19, of allegations challenge the invalid consent agreement as extrinsic fraud** which remains pending not ruled critical to the merits of extrinsic fraud upon this Court and jurisdiction of the court after Appellant followed Judge Dennis post-remittitur instruction dated 6/22/18 to contact his law clerk **which is not manifestly moot but is viable and remains pending** and is **evidence of extrinsic fraud upon this Court** as shown by Respondent's attorneys stating in their Response in Opposition to Supersedeas/Stay: **"After the remittitur issued, Appellant proceeded to filed a "motion to reconsider conclusion" and "motion to vacate the judgment" in the circuit court. As Respondent argued, these filings were primarily an attempt to reargue the merits (in addition to asserting a number of other nonmeritorious arguments). The circuit court denied the motions and Appellant appealed, bringing things to where they stand today" and "On appeal, a central argument advanced by Appellant was that after the circuit court's initial order of dismissal, he filed a motion to reconsider which the circuit court never ruled on. As**

Respondent noted, however, the time to raise this issue was prior to proceeding with the merit of his original appeal. In his most recent filing, Appellant appears to ask this Court to remand to permit a ruling on this now manifestly moot motion to reconsider. Quite simply, even if the Court were to remand, there would be nothing for the circuit court to rule on since all viable and pending motions were addressed by the circuit court. Furthermore, Judge Jefferson lacked jurisdiction to overrule or modify the order of Judge Dennis. Judge Jefferson fully and fairly considered the entirety of the arguments raised in Appellant's post-remittitur motions..... Appellant has not met his burden to showing that Judge Jefferson abused her discretion." {request to reply to Respondent Response Opposition to Supersedeas/Stay, filed on 11/12/19, p. 13, line 10-p. 15, line 2; petition for supersedeas/stay, filed on 10/28/19, pp. 1-24; 68-88; pp. 134-156; 157-198; pp. 199-224; request to petition for spersedeads/stay with the full appellate court and request to stay all time limit to the appeal filing process, filed on 12/2/19, pp. 5 argument 2, line 1-p. 10, line 16}. See Ex Parte Carter, 422 S.C. 623, 628-631, 813 S.E.2d 686(2018)(Same)(citations omitted)(quotations omitted); See also Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239-251, 64 S.Ct. 997, 88 L.Ed. 1250(1944)(Same)(citations omitted)(quotations omitted); See Hagy v. Pruitt, 339 S.C. 425, 431-434, 529 S.E.2d 714(2000)(Same)(citations omitted)(quotations omitted); See also Chewing v. Ford Motor Company, 346 S.C. 28, 33-37, 550 S.E.2d 584(Ct. App. 2001)(Same)(citations omitted)(quotations omitted). See Narruhn v. Alea London Limited, 404 S.C. 337, 340-341, 745 S.E.2d 90(2013)(deciding court err because court had jurisdiction over issue that was different decided on appeal and date of the challenged order control timeliness not date order was issued)(citations omitted); See Jackson v. Speed, 326 S.C. 289, 311, 486 S.E.2d 750(1997)(court retain jurisdiction over part of order no appealed)(citation omitted).

Accordingly, Appellant argues that supersedeas/stay and remand are manifestly warranted because a central material argument this Court overlooked and misapprehended in its orders denying supersedeas/stay affecting the merits of the entire case on appeal and petition for supersedeas/stay is

based on Respondent's attorneys deliberate misrepresentation in their **initial brief**, filed in this Court on 9/27/19, p. 8, argument III, line 1-p. 10, line 4 is also a repeated and deliberately planned scheme to misrepresent to this Court the facts of the case that " Appellant **did not** on 1/27/16 filed in the circuit court the **initial** motion to reconsider under SCRCR Rule 59(e) and SCRCR Rules 60(b)(1) for mistakes of the court and (b)(3) for fraud upon the court but simply filed the motion under SCRCR Rule 59(e)." Thus, Appellant, argues the statement is a total deliberate fabrication of the truth because the initial 1/27/16 motion to reconsider also contain allegations of mistakes of the court under SCRCR Rule 60(b)(1) to deny amendment of the complaint to state a second theory of recovery for intentional tort, exclusion of critical evidence and fraud upon the court under SCRCR Rules 60(b)(3). {petition for supersedeas/stay, filed on 10/28/19, pp. 80-88; Initial Brief of Respondent, filed on 9/27/19, p. 8, argument III, line 1-p. 10, line 4}. Thus, Appellant argues that this Court overlooked, misapprehended and fail to consider in its orders denying supersedeas/stay that Respondent's attorneys repeated and deliberate misrepresented the facts of the case to this Court with intent to attempt to improperly influence this Court's decision relied on by respondent's attorneys in the circuit court and now on **appeal** to this Court which they stated in their **Initial Brief** filed on 9/27/19 that: " the circuit court lack jurisdiction after the remittitur because Appellant **never made Judge Dennis or the Court of Appeals aware of his post-trial motions still pending during his appeal to get a limited remand. A motion to reconsider this form order was filed on January 27, 2016. Additionally, to the extent the motion was even viable after the circuit court's full, formal order of dismissal , Appellant abandoned this argument in his previous appeal. Appellant's motion to reconsider the form order related entirely on the orders on appeal, as it challenged Judge Dennis's reason for dismissing the suit. Accordingly, the circuit court properly denied Appellant's motions, as the argument about the initial motion to reconsider the form order was abandoned on appeal, or was ruled on." {petition for supersedeas/stay, filed on 10/28/19, pp. 39-42; p. 50, line 1-p.67, line 3; pp. 84-88; Initial Brief of Respondent, filed on 9/27/19, p.**

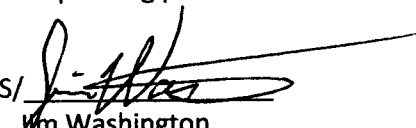
8, argument III, line 1-p. 10, line 4}. See Ex Parte Carter, 422 S.C. 623, 626-631, 813 S.E.2d 686(2018)(Same)(citations omitted)(quotations omitted); See also Hazel-Atlas Glass Co. v. Hartford-Empire Co, 322 U.S. 238, 239-251, 64 S. Ct. 997, 88 L.Ed. 1250(1944)(Same)(citations omitted)(quotations omitted); See Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21-26, 602 S.E.2d 772(2004)(Same)(citations omitted)(quotations omitted); See Skydive Myrtle Beach v. Horry County, 426 S.C. 175, 179-192, 826 S.E.2d 585(2019)(Same)(citations omitted)(intentional tort claim remain viable and amendment of complaint would not be futile); See also Dean v. Heritage Healthcare of Ridgeway, 408 S.C. 371, 387-401, 759 S.E.2d 727(2014)(remanding to compel mediation. Finding contract agreement issue not waived)(citations omitted). Thus, Appellant argues that based upon all of the above circumstances it is manifestly imperative that this Court **rehear the petition for supersedeas/stay and correct its own errors** because this Court orders before two single appellate court Judges and the order dated 12/9/19 before the full appellate court denying supersedeas/stay to hold the appeal in abeyance and remand the case to the circuit court to consider two 2016 motions which as earlier stated are incorrect dates and to consider the merits of the case once final briefing is completed would in effect be dismissal of the appeal and **reaffirm** Respondent attorneys basis for denying supersedeas/stay in the first place because final briefing would only be based on the initial brief arguments of both parties and this Court has already **reviewed and adopted Respondent's attorneys propositions of law that Appellant allegations lacks merits as a basis to** denied supersedeas/stay based on Respondent's attorneys fraud upon this Court based on their initial briefing and in their opposition to supersedeas/stay which was a scheme designed to deliberately misrepresent the facts of this case to this Court with intent improperly attempt to influence this Court's decision on the issues **pending on appeal and on petition for supersedeas/stay** so that judicial machinery cannot perform in the usual manner its impartial task of adjudging the case presented which has and will effectively prevent this Court to rule impartially to grant supersedeas/stay to remand and for this Court to impartially rule for

Appellant to present his case and be heard on appeal to have a real contest if this Court does not vacate its orders, hold the appeal in abeyance and remand to the circuit court for a hearing on the merits. See Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 536-540, 773 S.E.2d 144(2015)(Same)(citations omitted)(quotations omitted); See also Cord v. E.H. Hines Const. Co., 220 S.C. 356, 359-363, 67 S.E.2d 677(1951)(citations omitted)(quotations omitted); See Tobias v. Rice, 386 S.C. 306, 308-311, 688 S.E.2d 552(2010)(Same)(citations omitted)(quotations omitted); See also LaSalle National Bank Association v. Davidson, 386 S.C. 276, 278-281, 688 S.E.2d 121(2009)(Same)(citations omitted)(quotations omitted); See Garris v. Governing Board of S.C. Reinsurance Facility, 333 S.C. 432, 442-448, 511 S.E.2d 48(1998)(Same)(citation omitted)(quotations omitted); See also Kizer v. Dorchester County Vocational Educational Board Of Trustees, 287 S.C. 545, 551-554, 340 S.E.2d 144(1986)(Same)(citations omitted)*quotations omitted; See Perry v. Heirs at Law of Gadsden, 357 S.C. 42, 47-48, 590 S.E.2d 592(Ct. App. 2003)(citations omitted)(quotations omitted); See also Withrow v. Larkin, 421 U.S. 35, 47, 95 S. Ct. 1456, 1464, 43 L.Ed. 712, 723(1975)(Same)(citations omitted)(quotations omitted); See Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E.2d 686(2018)(Same)(citations omitted)(quotations omitted); See also Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239-251, 64 S.Ct. 997, 88 L.Ed. 1250(1944)(Same)(citations omitted)(quotations omitted). Furthermore, appellant argues that since this Court was deliberately defrauded by Respondent's attorneys scheme to improperly influence this Court's decision to adjudicate the case in a fair impartial manner to decide the merit of the appeal after final briefing but not on petition for supersedeas/stay he will be effectively prevented from fully and fairly presenting his case and be heard on this defense he should be now allowed to have this defense now consider in this petition for supersedeas/stay. See Southeastern Housing Foudation v. Smith, 380 S.C. 621, 637-638, 670 S.E.2d 680(Ct. App. 2008)(Same)(citations omitted)(quotations omitted); See also Cord v. E.H. Hines Const. Co., 220 S.C. 356, 360-363, 67 S.E.2d 677(1951)(Same)(citation omitted)(quotations omitted); See Chewing v. Ford Motor Company., 354

S.C. 72, 81-88, 579 S.E.2d 605(2003)(citations omitted)(quotations omitted); See also Ex Parte Carter, 422 S.C. 623, 626-632, 813 S.E.2d 686(2018)(citations omitted)(quotations omitted); See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 239-251, 64 S. Ct. 997, 88 L.Ed. 1250(1944)(citations omitted)(quotations omitted); See Mr. T. v. Ms. T., 378 S.C. 127, 133-140, 662 S.E.2d 413(Ct. App. 2008)(citations omitted)(quotations omitted); See also Werner v. Carbo, 731 F.2d 204, 206-209(4th Cir. 1984)(citations omitted)(quotations omitted). Thus, for the above stated reasons and the extraordinary circumstances presented in this case based upon equitable principles this Court should rehear the petition and grant supersedeas/stay.

CONCLUSION

This, this Court should correct its errors, vacate its prior orders, grant supersedeas/stay and remand to the circuit court to hold a hearing on the merits of the pending post-remittitur motions.

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December 19, 2018

The South Carolina Court of Appeals

Jim Washington, Appellant,

v.

Trident Medical Center, LLC, Respondent.

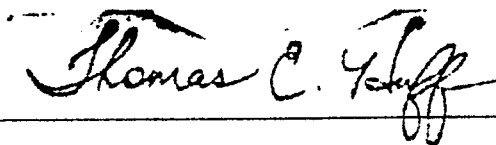
Appellate Case No. 2019-000640

ORDER

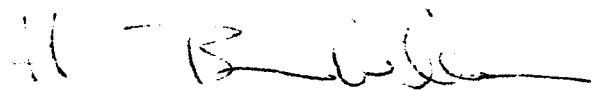
Appellant has filed a "Request to Petition for Supersedeas/Stay with the Full Appellate Court and Request to Stay All Time Limit[s] to the appeal filing process." This court construes Appellant's motion as a petition for supersedeas under Rule 241(d)(2) of the South Carolina Rules of Appellate Procedure. After careful consideration, the petition is denied.

Appellant also seeks clarification of this court's November 13, 2019 order and its letter of the same day, which he argues conflict. We clarify that this court accepted and considered Appellant's reply on November 13, 2019, before issuing its order adhering to its denial of Appellant's Petition for Supersedeas/Stay, and the clerk's office's letter was sent in error.

Finally, Appellant requests this court hold his appeal in abeyance and remand the case for the circuit court to consider two 2016 motions. The request is denied. This court will consider the merits of the case once final briefing is complete.



J.



J.

Stephen P. McMill

J.

Columbia, South Carolina

cc:

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FILED

Dec. 9, 2019

STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY

DEADRA L. JEFFERSON, Circuit Court Judge

Case No. 2015-CP-10-5000
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Jim Washington,.....Appellant,

v.

Trident Medical Center, LLC.....Respondent.

PROOF OF SERVICE

I, the undersigned do hereby certify that I have served all counsel in this action with a copy of this request to rehear/clarify the petition for supersedeas/stay herein below specified by mailing a copy of the same by United States Mail, postage prepaid, the following addresses:

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