

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 PTA-FLA, Inc.)
)
) *Plaintiff,*)
)
 TW Telecom Holdings, Inc., a Delaware)
 Corporation; and DOES 1-10, inclusive,)
)
) *Defendants.*)

IN THE COURT OF COMMON PLEAS

C/A No. 2015-CP-40-01394

**ORDER GRANTING PLAINTIFF'S
 MOTION TO RESTORE**

2017 OCT -5 PM 3:54
 RICHLAND COUNTY
 FILED

This matter is before the Court pursuant to Plaintiff PTA-FLA, Inc's (hereinafter "Plaintiff") Motion to Restore. For the reasons set forth below, this Court Grants Plaintiff's Motion to Restore.

RECEIVED

FEB 20 2017

FACTS AND PROCEDURAL HISTORY SC Court of Appeals

Plaintiff filed its Summons and Complaint on March 3, 2015, and served TW Telecom on March 16, 2015 via certified mail to CT Corporation System in Columbia, SC. On May 6, 2015, upon motion of PTA-FLA, the clerk filed an entry of default against TW Telecom Holdings, Inc. (hereinafter "Defendant"). Defendant filed a Motion to Set Aside Entry of Default, an Affidavit from Ryan McManis, and an Answer to Plaintiff's Complaint. By order dated July 16, 2015 this Court denied Defendant's Motion to Set Aside Entry of Default and by order dated August 25, 2015, this Court denied Defendant's Motion to Reconsider. Defendant is in default.

In early March 2016, the parties were notified that the case was placed on the Richland County jury trial roster for the damages hearing. There was a roster meeting scheduled for April 4, 2016. On April 1, 2016, counsel for the parties entered into a stipulation striking the case from the docket pursuant to Rule 40(j) of the South Carolina Rules of Civil Procedure

GR

(hereinafter the "Stipulation"). The Stipulation was dated and filed with the Court on April 1, 2016. The Form 4 Order was filed on April 7, 2016. Plaintiff filed its Motion to Restore on April 6, 2017. On or about April 12, 2017, Defendant filed an Opposition to Plaintiff's Motion to Restore.

LAW/ANALYSIS

I. South Carolina Rule of Civil Procedure 40(j) Does not Bar Restoration.

"Rule 40(j) does not require that a party move to restore the case to the docket within one year after it was stricken. Instead, the unambiguous language provides that, if the claim is restored within one year after it is stricken, the statute of limitations is tolled for that period." *Maxwell v. Genez*, 356 S.C. 617, 620-21, 591 S.E.2d 26, 28 (2003). "A party may move to restore the case to the docket more than one year after the claim was stricken without running afoul of Rule 40(j); the party simply cannot take advantage of the one year tolling period provided by the rule." *Id.* at 621, 591 S.E.2d at 28.

While there may be some question as to whether or not Plaintiff may have an issue with the statute of limitations, the law is clear that Plaintiff may restore its case more than a year after it is stricken notwithstanding South Carolina Rule of Civil Procedure 40(j).

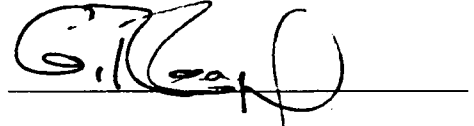
CONCLUSION

South Carolina Rule of Civil Procedure 40(j) does not bar the restoration of a case to the trail docket more than a year after it is stricken as Defendant contends.

3/2

IT IS THEREFORE ORDERED that the Plaintiff's Motion to Restore is GRANTED.

IT IS SO ORDERED.

A handwritten signature in black ink, appearing to read "G. Thomas Cooper, Jr.", is written over a horizontal line.

Judge G. Thomas Cooper, Jr.

ORDER 4, 2017

Richland County, South Carolina