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THE STATE SOUTH CAROLINA
In the Court of Appeals

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APR 23 2020

SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr., Circuit Court Judge

Case No. 2017-CP-10-6176
Appellate Case No. 2019-001101

Samantha L. Antley,Respondent,

v.

Dart Shelter, LLC d/b/a The Shelter Kitchen & Bar
and Preston Yelverton,

of whom Dart Shelter, LLC d/b/a The Shelter Kitchen & Bar is..... Appellant.

MOTION FOR LEAVE TO SUPPLEMENT THE RECORD UNDER SCRCR 60(B)

Pursuant to Rule 240 SCACR, Plaintiff/Respondent Samantha Antley (hereinafter "Respondent") respectfully moves this Court to stay the pending appeal and grant her leave pursuant to Rule 60(b), SCRCR in order for the lower court in order for the lower court to consider newly discovered evidence and to supplement the record in order to avoid fraud on the court.

This appeal arises as a result of the lower court's refusal to vacate an Order of Default. In an effort to overrule the lower court's decision, Appellant argues, in part, that:

"[T]here is no objective or contemporary evidence that Mr. Hibri told Plaintiff's counsel

3-1-3

either that the Mason Law Firm no longer represented Defendant with respect to this claim and or/would not accept service on its behalf.” Appellant Initial Br. P. 18.

Furthermore, Mr. Hibri filed an affidavit with the Court on January 4, 2019 that states “I would never instruct another attorney to serve my client directly rather than serve me... I did not refuse to accept service for Shelter” (See Exhibit A)

Through discovery in a declaratory judgment pending in the United States District Court, Charleston Division, brought by Appellant’s insurer, written statements by Mr. Hibri contrary to the positions taken by Appellant before this Court and the lower court have been produced. (See Exhibit B). This statement was produced by Appellant’s insurer and not known to Respondent until after the initiation of this Appeal.

Rule 60(b), SCRPC, states in relevant part:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgement, order, or proceeding for the following reasons...

- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).
- (3) fraud, misrepresentation, or other misconduct of an adverse party

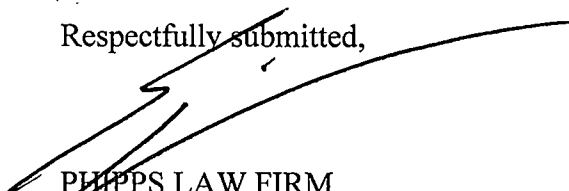
During the pendency of appeal, leave to make the motion must be obtained from the appellate court. SCRPC 60. “Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge.” *Raby Const., L.L.P. v. Orr*, 358 S.C. 10, 17-18, 594 S.E.2d 478, 482 (2004).

Respondent seeks leave to file a motion to supplement the record in the Circuit Court based on newly discovered evidence and potential fraud, misrepresentation, or misconduct. Based on Appellant’s argument and newly found evidence which negates the argument, Appellant believes it is appropriate to temporarily return this matter to the lower court to allow the lower court to consider the new evidence pursuant to Rule 60, SCRPC.

5/2-3

Respondent hereby asks this Court for leave pursuant to Rule 60(b) to file her Motion to Supplement the Record in the circuit court to supplement the Record on Appeal.

Respectfully submitted,

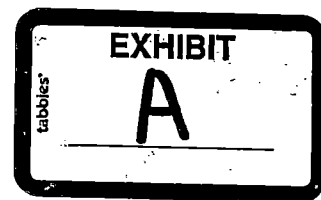


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April 17, 2020
Charleston, South Carolina

4-17-20



STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 SAMANTHA L. ANTLEY,)
)
 Plaintiff,)
)
 vs.)
)
 DART SHELTER, LLC d/b/a THE)
 SHELTER KITCHEN & BAR and)
 PRESTON YELVERTON)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2017-CP-10-6176

SECOND AFFIDAVIT OF
SALAH H. HIBRI

FILED
 2019 JAN -4 PM 4:20
 JULIE J. ARNOLD
 CLERK OF COURT

PERSONALLY APPEARED before me, Salah Hibri who after being duly sworn, deposes and says as follows:

1. I am over the age of eighteen (18) years.
2. I am a resident of Charleston County, State of South Carolina.
3. I am an attorney, licensed to practice in the State of South Carolina since 2010.
4. I am an associate attorney at The Mason Law Firm and have represented DART Shelter, LLC since 2012 and continue to represent DART Shelter, LLC until this day.
5. On or about October 17, 2017, I received notice from Thomas Berry, one of the members of DART Shelter, LLC, that attorney Dan Slotchiver had contacted Shelter with regards to a claim he was making on behalf of Samantha Antley for injuries she alleged to have sustained after she was assaulted by another alleged patron of The Shelter, Preston Yelverton.
6. Both I and Mark A. Mason of my law firm were thereafter in contact with Mr. Slotchiver and his co-counsel, Mr. Edward Phipps regarding this claim.
7. On October 31, 2017 at 4:47 p.m., I emailed the Shelter's insurance agent, Billy

McQueeney and the owners of The Shelter: Ashley Berry, Thomas Berry, Ryan Kaufmann and Dave Kaufmann. In my email I stated "Once coverage counsel has been retained by the carrier, my firm will continue as private counsel for The Shelter."

8. 3 minutes later, on October 31, 2017 at 4:50 p.m., I emailed Plaintiff's counsel, Dan Slotchiver directly. In this email, I told Mr. Slotchiver that The Shelter is my client and that I am coordinating with their insurance agent to get an insurance claim opened for Ms. Antley's claim. I then finish the email by informing Mr. Slotchiver "Once the carrier has retained counsel for The Shelter, my firm will continue on as private counsel."

9. The intention of my October 31, 2017 was to unequivocally put Mr. Slotchiver on notice that my law firm represents The Shelter *and will continue to represent them in the event the insurance carrier should hire defense counsel for The Shelter at some point in the future.* In no way whatsoever was this communication intended for any purpose other than to make it absolutely clear that my firm would not be stepping aside, even if an insurance carrier hired defense counsel for The Shelter.

10. At this point, on October 31, 2017, no lawsuit had been filed and my law firm was assisting in getting their insurance carrier notified of a potential claim.

11. At this point, The Shelter had no other counsel than The Mason Law Firm, and I had notified Plaintiff's counsel that we represent The Shelter.

12. On or about November 10, 2017, I was in communication with insurance claims handler Matthew Smith from Chubb insurance about Ms. Antley's claim and I forwarded to Mr. Smith a copy of the "Damages Package" which Mr. Slotchiver had sent The Shelter.

13. On November 30, 2017, I provided a copy of The Shelter's applicable insurance policy to Plaintiff's counsel, Edward Phipps.

14. In Mr. Phipps' December 19, 2018 affidavit, he contends I told him verbally "on or



about October 27, 2017” that The Mason Law Firm, P.A. would be “out of the case unless the carrier refuses to defend” and that The Mason Law Firm, P.A. would not accept service and that Plaintiff would need to serve the Defendants directly. These statements are entirely incorrect. Just as I informed Mr. Slotchiver, *in writing* in my email some 4 days later on October 31, 2017, my law firm represents The Shelter and my law firm would continue to represent The Shelter even if defense counsel was retained by the insurance carrier at some point in the future.

15. Although I had no knowledge that Mr. Phipps had emailed Mr. Slotchiver on October 27, 2017 and incorrectly told him “The Mason Law Firm will be out of the case unless the carrier refuses to defend”, my email to Mr. Slotchiver directly, on October 31, 2017 made it very clear the opposite was the case.

16. Despite Mr. Slotchiver’s receipt of an email from Mr. Phipps on October 27, 2017 which was in total contradiction with my October 31, 2017 email, neither Mr. Slotchiver nor Mr. Phipps ever sought any clarification of their own misunderstanding. It is noteworthy that my October 31, 2017 email came 4 days after Mr. Phipps’ October 27, 2017 email to Mr. Slotchiver where he incorrectly stated that The Mason Law Firm does not represent The Shelter.

17. My email to Mr. Slotchiver made it very clear my law firm represents The Shelter.

18. On November 30, 2017, I provided Mr. Phipps with a paper copy of The Shelter’s insurance policy.

19. Totally unbeknownst to me, Plaintiff’s counsel filed a Summons and Complaint for Samantha Antley against The Shelter on December 4, 2017.

20. Neither I, nor my law firm, were ever notified of this filing.

21. Again, totally unbeknownst to me, Plaintiff’s counsel filed an Amended Summons and Amended Complaint On December 11, 2017.

22. Neither I, nor my law firm, were ever notified of this filing either.

A handwritten signature in black ink, appearing to be the initials 'DA' or similar, located in the bottom right corner of the page.

23. I have since learned that a copy of the Amended Summons & Amended Complaint and a letter were mailed directly to my client, The Shelter, via Certified Mail.

24. Neither I, nor my law firm, were ever notified of this letter from Plaintiff's counsel to my clients, The Shelter.

25. Despite receiving an email from me on October 31, 2017 which totally contradicted Mr. Phipps' contention 4 days prior that my law firm did not represent The Shelter, Mr. Slotchiver never sought any sort of confirmation from me or Mark Mason of any alleged withdrawal of our representation.


26. Rather, Mr. Slotchiver proceeded to serve my client directly with this lawsuit.

27. At this point in December 2017, my law firm was no longer receiving any communication from Plaintiff's counsel; we were unaware of the existence of any law suit and were likewise kept in the dark that our client was being served directly.

28. In investigating this matter, I determined that on December 22, 2017, Shelter's catering manager and registered agent Ashley Berry signed for the registered mail from Plaintiff's attorney Mr. Slotchiver. At this time I represented Shelter. Ashley Berry believed that the insurance carrier and I were already handling the matter and that any communication from Plaintiff's counsel to Shelter would flow through my office, just like in any other lawsuit.

29. On January 29, 2018, I called Plaintiff's counsel, Mr. Phipps relating to an unrelated DUI case. During this 30 minute phone call, Mr. Phipps did not make any mention that a lawsuit had been filed, nor that the lawsuit had been served directly on my client, nor that over 35 days had elapsed since service on Shelter.

30. On February 22, 2017, I first learned that this lawsuit had been filed and that Mr. Slotchiver had subsequently placed Shelter in default. Mr. Phipps and Mr. Slotchiver immediately came to The Mason Law Firm and stated that they had a "misunderstanding" as to whether The

A handwritten signature in black ink, appearing to be the initials 'RJ' followed by a stylized flourish.

Mason Law Firm represented Shelter and this is why they failed to notify Mason Law Firm of their actions relative to the case. Neither Mr. Slotchiver nor Mr. Phipps had ever contacted Mason Law Firm to clarify their misunderstanding, despite my direct written communication to them to the contrary. Mr. Mason and I were both adamant about the fact that we represented Shelter in this matter from its inception as I unequivocally stated in my October 31, 2017 email, and our position was that we should have been notified about the filing and service of the pleadings. Mr. Mason and I requested Plaintiff's counsel agree to withdraw the entry of default.

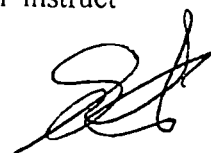
31. I made my position very clear to Plaintiff's counsel from the onset of the notice of this claim that my law firm represents Shelter and that we would represent Shelter on this matter. In an effort to make this abundantly clear, I had emailed Mr. Slotchiver directly on October 31, 2017 and informed him that not only do I represent The Shelter presently, but even in the event that an insurance carrier hired separate defense counsel for The Shelter, that my firm would *continue* to represent the Shelter as private counsel from that point going forward.

32. I do not believe my instructions to Plaintiff's counsel regarding our representation of The Shelter could have been made any more clearly.

33. I never stated to anyone that my law firm no longer represented The Shelter.

34. The allegation I withdrew from representation of Shelter in this matter could not be further from the truth as I have continually represented The Shelter on multiple matters since 2012 and I have represented various owners of the Shelter on personal matters continually since 2012. I continue this representation till this day and there has never been any interruption in this relationship with The Shelter and its members.

35. The assertion that I would not accept service on behalf of my client is also entirely inaccurate. It is our law firm's regular practice to accept service on behalf of our clients as it allows us to control the date of service and when responsible pleadings are due. I would never instruct

A handwritten signature in black ink, appearing to be the initials 'RS' or similar, located in the bottom right corner of the page.

another attorney to serve my client directly rather than serve me when I had repeatedly informed opposing counsel of my representation of my client. I did not refuse to accept service for Shelter.

36. For Plaintiff's counsel to side-step my law firm and serve my client directly without notifying me, in a case in which I was extensively and actively involved in from beginning to end, and in which I had notified them in writing of my representation of The Shelter, to hold them in default without notifying me and to obtain an entry of default and file a Motion for Default Judgment without listing my firm as Defendant's counsel greatly prejudiced my client who reasonably believed their attorneys were representing them in this matter and had notified opposing counsel of their representation of The Shelter.

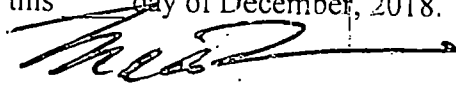
37. The facts of this case clearly show that The Shelter acted diligently in responding to the claims made by Samantha Antley by notifying their attorneys and insurance carriers and relied on the fact that their attorneys had given written notice to Plaintiff's counsel of their representation of Shelter.

38. The registered agent's confusion arose on what to do with the letter containing the then-filed Summons & Complaint when Plaintiff's counsel cut The Mason Law Firm out of the loop and improperly communicated directly with The Shelter after receiving written notice of my representation of Shelter.


39. It is my position that good cause exists to let DART Shelter, LLC out of default so this case may be decided on the merits and that it would be in the interest of justice to do so.

FURTHER THE AFFIANT SAYETH NAUGHT!

SWORN TO BEFORE me
this _____ day of December, 2018.



Notary Public for South Carolina
My Commission Expires: 02/05/21



Salah H. Hibri

EXHIBIT A

Salah Hibri

From: Salah Hibri
Sent: Tuesday, October 31, 2017 4:50 PM
To: 'dan@slotchiverlaw.com'
Subject: Shelter

Dan,

I hope all is well with you. I spoke with my clients and they got their agent to reach out to me. I have provided the agent with the incident report and gotten him up to speed on the case. He should get the claim opened with the carrier. Once the carrier has retained counsel for The Shelter, my firm will continue on as private counsel. I am assuming the carrier should pick up the defense once the claim is opened though.

Kind Regards,

Salah H. Hibri, Esquire
THE MASON LAW FIRM, P.A.
465 West Coleman Boulevard, Suite 302
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Main Line: (843) 884-1444
Direct Line: (843) 284-6009
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E-mail: salah@masonlawfirm.com
Website: www.masonlawfirm.com

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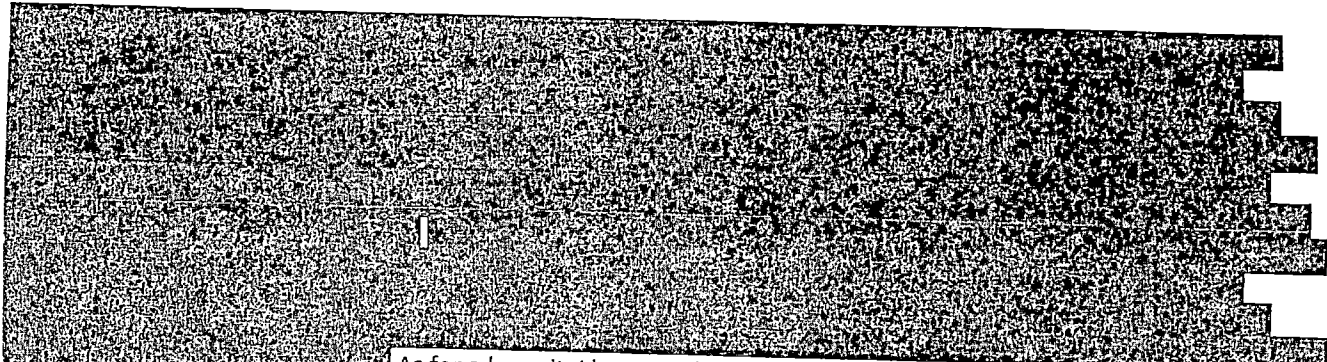
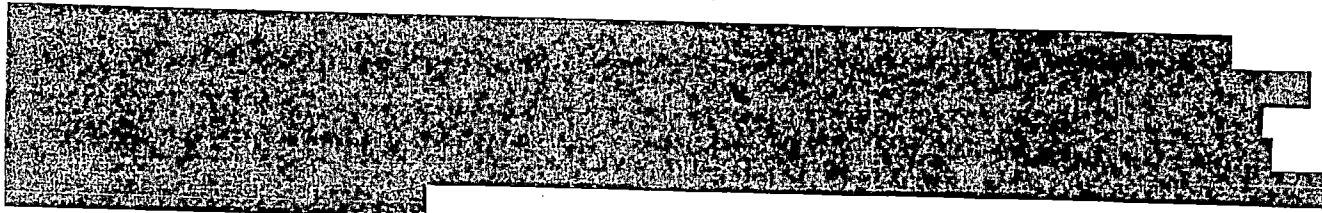
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WESTCHESTER_000007

Prakash,

I apologize as I had not seen the January 5th email. It is possible it was caught in our spam filtering.

To answer your questions, a demand had been made last year. I had previously forwarded the attached demand package to Matthew Smith of Chubb, when we turned the matter over to the carrier for defense back in November. I have broken the demand letter into 2 parts due to the size. The second part of the demand will be sent in a separate email.



As for a lawsuit, I have not been served (nor would I have accepted service of a suit as I am not authorized to accept service) and it has not been brought to my attention that anyone has been served. I would assume Mr. Smith would be the best person to ask as I believe he was handling this file prior to your involvement.

Hopefully this answers any questions you may have. Please let me know if there is anything else I can do to assist. I will send the second half of the demand in a separate email.

Kind Regards,
Salah

Salah H. Hibri, Esquire
THE MASON LAW FIRM, P.A.
465 West Coleman Boulevard, Suite 302
Mount Pleasant, SC 29464
Main Line: (843) 884-1444
Direct Line: (843) 284-6009
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Website: www.masonlawfirm.com

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PHIPPS
Law Firm
April 17, 2020

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Via US Mail:

South Carolina Court of Appeals
The Honorable Jenny Abbott Kitchings
Clerk of Court
PO Box 11629
Columbia, SC 29211

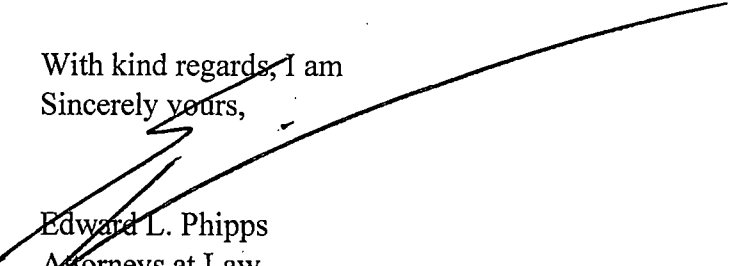
Re: Samantha L. Antley v. Dart Shelter, LLC d/b/a/ The Shelter
Kitchen & Bar and Preston Yelverton
Case No.: 2017CP106176
Appeal No.: 2019-001101

Dear Ms. Kitchings:

Please find enclosed Respondent's Motion for Leave to Supplement the Record Under SCRCF 60(B) along with our Firm's check in the amount of fifty dollars (\$50.00) for the filing fee.

If you have any questions, please do not hesitate to contact me. Thank you for your attention and assistance in this matter.

With kind regards, I am
Sincerely yours,


Edward L. Phipps
Attorneys at Law

ELP/rkp

Enclosure

Cc: Daniel S. Slotchiver, Esq.
Andrew S. McCumber, Esq.
Mary L. Arnold, Esq.
Helen F. Fiser, Esq.
Benjamin B. Davis, Esq.
Thomas E. Lyndon, Esq.

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SC Court of Appeals



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