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SC Court of Appeals

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019-CP-42-02092

Luther HARRIS, Donna HARRIS, and Bobby E. LEOPARD

Perry Wendell BARBOUR and SOUTHLAND TRANSPORTATION Co.,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: the COURT
Attorney for: [] Plaintiff [] Defendant or [] 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.
[X] 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.
[X] ACTION DISMISSED (CHECK REASON): [X] Rule 12(b), SCRPC; [] Rule 41(a), SCRPC (Vol. Nonsuit); [] Rule 43(k), SCRPC (Settled); [X] Other SC Code Section 15-3-530
[] 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: [X] See attached order OR formal order to follow [X] Statement of Judgment by the Court:

This matter came before this court on motion of the defendants to dismiss the complaint pursuant to Rules 12(b)(1), (2), (4), and (5), SCRPC.

This is a civil action for the recovery of compensation for personal injury suffered by the plaintiffs resulting from a motor vehicle collision occurring on June 10, 2016. This action in tort based upon the negligent operation of a motor vehicle proximately causing injury to another is clearly an action which the Court of Common Pleas has subject matter jurisdiction to hear. "Subject matter jurisdiction is the power of a court to hear and determine cases of a general class to which the proceedings in question belong." Posey v. Proper Mold & Engineering, Inc., 378 SC 210 (App. 2008).

The limitations period for bringing this action is three years from the date of the event. S. C. Code Ann. Section 15-3-530(5).

A civil action is deemed commenced when the summons and complaint are filed with the clerk of court and served within the applicable limitations period or, if not served within the applicable limitations period, actual service is accomplished not later than 120 days after filing. Rule 3, SCRPC.

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"Service of process on a foreign corporation not authorized to do business within this State ... is considered to have designated the Secretary of State as its agent upon whom process against it may be served in any action ... arising ... out of or in connection with the doing of any business within this State." S. C. Code Ann. Section 15-9-245.

A nonresident operating a motor vehicle in this State is deemed to have designated the Director of the Department of Motor Vehicles as his agent for service of process in any action against him arising out of a motor vehicle accident in which the nonresident was involved. S. C. Code Ann. Section 15-9-350.

"Service of a summons and complaint upon a defendant ... may be made by ... registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt." Rule 4(d)(8), SCRPC.

The record in this case reflects that the summons and complaint was filed with the clerk on June 7, 2019. Neither of the defendants was served prior to June 10, 2019 and therefore service must be accomplished not later than October 7, 2019 as required by Rule 3(a)(2), SCRPC. The summons and complaint were received by defendant Southland through certified mail on October 10, 2019, as shown by the certified mail return receipt, pursuant to Rule 4(d)(8), SCRPC. The summons and complaint was attempted on defendant Barbour by certified mail to the SCDMV on October 25, 2019 pursuant to S. C. Code Ann. Section 15-9-350.

Based upon consideration of the record, memoranda submitted, argument of counsel, and the applicable rules as well as statutory and case law, this Court finds that the defendants' **MOTION to DISMISS** pursuant to Rule **12(b)(1)**, SCRPC, should be and **IS** therefore **DENIED**.

The defendants' **MOTION to DISMISS** pursuant to Rules **12(b)(2)**, **(4)**, and **(5)**, SCRPC, should be and **IS** therefore **GRANTED** for failure of the plaintiff to commence this action with effective service upon the defendants within the applicable limitations period.

Counsel for defendants is requested to prepare and submit a proposed formal order for the Court's consideration.

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) |
| | | \$ |
| | | \$ |
| | | \$ |
| 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.**

J. DERHAM COLE, PRESIDING JUDGE 2053 03/03/2020
Judge Code **Date**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

DONALD L. SMITH, Esq.

DAVID L. MOORE, Esq.

ATTORNEY FOR THE PLAINTIFFS

ATTORNEY FOR THE DEFENDANTS

AMY W. COX, CLERK OF COURT

Court Reporter: **LINDA MOFFITT**

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.



Spartanburg Common Pleas

Case Caption: Luther Harris , plaintiff, et al VS Perry Wendell Barbour , defendant,
et al
Case Number: 2019CP4202092
Type: Order/Form 4

IT IS SO ORDERED!

s/J. Derham Cole 2053