

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Alexander S. Macauley, Circuit Court Judge

Case No. 2020-CP-23-03928

RECEIVED

Dec 30 2020

SC Court of Appeals

Nadira Jackson..... Respondent,

v.

Carolina Auto Credit/Colleen Bartona..... Appellant,

NOTICE OF APPEAL

NOW COMES APPELLANT, Carolina Auto/Colleen Bartona, through the undersigned counsel. Appellant respectfully submits notice to the Respondent of its intent to appeal the Order issued by the Honorable Alexander S. Macaulay. The Order, issued on December 2, 2020, denied Appellant's appeal of the Default Judgment issued by the Honorable Jacquelyn Duckett on August 10, 2020. Due to an error by Appellant calendaring the bench trial date, a default judgment was granted for Respondent in the amount of \$7,420.00.

After Counsel for Appellant asked the Magistrate to reconsider the ruling, and

after that request was denied, Appellant sought relief from the Circuit Court under Rule 60 of the South Carolina Rules of Civil Procedure. Upon the matter being heard by the Circuit Court, Appellant was asked to provide authority allowing the Circuit Court to grant the relief Appellant sought from the Court. After referencing Rule 60 and providing case law almost directly on point, the Circuit Court denied the relief Appellant requested from the Court.

Appellant would respectfully submit that the Circuit Court's Order was decided in error and would humbly ask that the error by Counsel for Appellant not prohibit this matter from being heard on its merits. Appellant will timely file a brief in support of its position. However, Appellant states the following in support of its position to reverse the lower Court's default judgment:

1. That Appellant relies on Rule 60 of the South Carolina Rules of Civil Procedure for the requested relief;

2. That Appellant's error should be considered mistake, inadvertence, surprise, or excusable neglect, as it relates to Rule 60;

3. That our Courts have held that similar conduct is covered by mistake, inadvertence, surprise, or excusable neglect, as it relates to Rule 60, specifically, *Micronics v. South Carolina Dept. Of Rev.*, 345 S.C. 506, 548 S.E.2d 223 (S.C. App. 2001);

4. That Appellant noted that it had a meritorious defense to the claim brought by Respondent, as Appellant denied from the filing of its initial Answer to Respondent's Complaint that it had caused the damage the repossessed vehicle as claimed by Respondent;

5. That the Circuit Court improperly allowed Respondent to give testimony concerning her allegations on the merits, which essentially allowed a de facto hearing of the Respondent's case, when the issue to be decided before the Circuit Court was whether the calendaring error by Appellant's counsel was subject to relief under Rule 60;

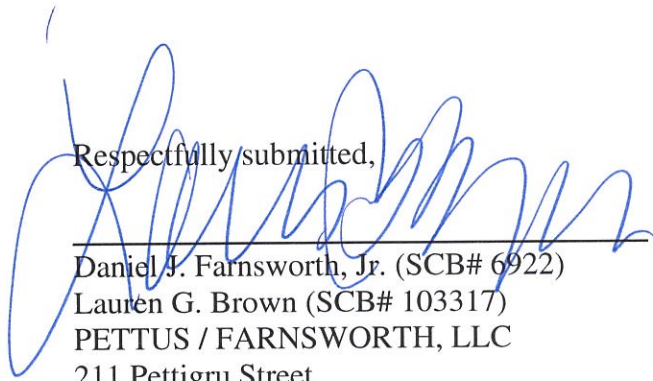
6. That the Circuit Court allowed Respondent to testify freely as to her allegations supporting her claim, without allowing for cross examination or challenge by Appellant, in effect giving Respondent a hearing on the merits without affording Appellant the same;

7. That the Circuit Court's Order seems to erroneously turn on whether the Respondent showed proof of ownership or successful bidding for the repossessed vehicle, which Appellant would argue is not determinative of the issue that was before the Circuit Court. Rather, the issue is whether the merits should properly be addressed after a calendaring error by counsel for Appellant led to a non-appearance by the responding party; and

8. That Appellant, due to an excusable error, has been denied a fair opportunity to have this dispute heard on its merits and it would be in the interests of justice to grant the relief sought herein and have the Respondent's allegations tested by the adversarial system that we so heavily rely on to continue trust and faith in our justice system.

Appellant respectfully submits its intent to respectfully appeal the decision of the Honorable Alexander S. Macauley to the Court of Appeals in this matter.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Daniel J. Farnsworth, Jr.', is written over a horizontal line.

Daniel J. Farnsworth, Jr. (SCB# 6922)

Lauren G. Brown (SCB# 103317)

PETTUS / FARNSWORTH, LLC

211 Pettigru Street

Greenville, South Carolina 29601

December 30, 2020

PETTUS

FARNSWORTH

Reginald Hoffman Pettus (1920-2000)
John Wright Farnsworth (1941-1997)
Daniel Joseph Farnsworth (Of Counsel)

Daniel J. Farnsworth, Jr.*
Lauren G. Brown

*Member of the South Carolina and Virginia Bar

Attorneys and
Counselors at Law

211 Pettigru Street
Greenville, South Carolina 29601

201 King Street
Keysville, Virginia 23947

December 30, 2020

VIA ELECTRONIC MAIL ctappfilings@sccourts.org and U.S. Mail
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED

Dec 30 2020

SC Court of Appeals

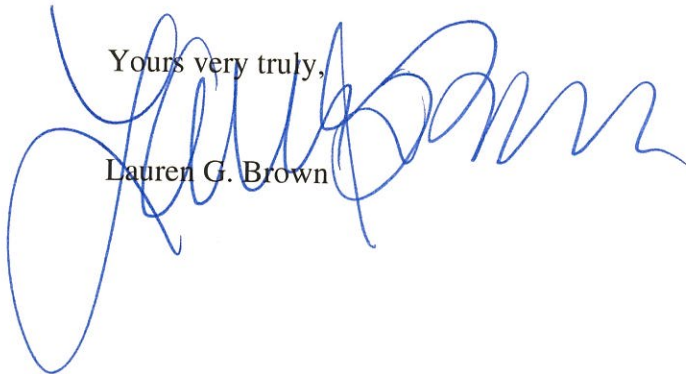
RE: Nadira Jackson Respondent vs. Carolina Auto Credit/Colleen Bartona
Appellant
Case # 2020-CP-23-03928

Please find enclosed Carolina Auto Credit/Colleen Bartona's *Notice of Appeal* in the above referenced case. On Wednesday, December 30, 2020 Appellants Ordered the transcript from the Circuit Court and Appellant's Brief will follow shortly. Also enclosed is our firm's check in the amount of \$250.00.

Thank you. With kind regards, I remain

Yours very truly,

Lauren G. Brown



LGB/gkj
Enclosures

www.FarnsworthLawOffices.com
South Carolina Office 864.250.9119
Virginia Office 434.736.8171