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Aug 31 2021

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER IN EQUITY

CASE NO.: 2017-CP-07-01921

Serena Green Grant

Respondent,

vs.

Palbert, Inc, et al.,

Appellant.

RESPONDENT'S
REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS
APPEAL

RESPONDENT, SERENA GREEN GRANT, by and through their undersigned attorney, Replying to Appellant's Return to Respondent's Motion to Dismiss, would respectfully set forth as follows:

The Appellant has intentionally attempted to mislead this Court by its characterization of this matter.

The Appellant seeks to re-litigate a default that was entered on August 10, 2018, merely by virtue of the South Carolina Property & Casualty Insurance Guaranty Association's intervention into this matter due to liquidation of the carrier.

No Appeal or Motion for Reconsideration was filed as to this Order. See attached Exhibit

“1”

The Appellant continued to file the same motion, which should be rendered *res judicata* and now attempts to appeal a decision that was made two years after the default and 13 months after the final order denying the Appellant’s motion to set aside default. Judge Dukes order correctly states the following in pertinent part:

With regard to the Motion to Set Aside: As the Entry of Order of Liquidation was filed on August 11, 2020, some two years after the Beaufort County Clerk’s default and 13 months after the Final Order, I find that the motion is untimely. The legislature could not have intended that the Association be allowed to re-litigate the distant past. Further, there is nothing in the record to indicate that the “insurer” defaulted or failed to defend the insured. Presumably, such a default or failure would occur when an insured, after service, turned the pleadings over the carrier, who then failed to respond or defend. The record does not indicate that situation.

Again, the Appellants Notice of Appeal is not timely and should be dismissed in its entirety.

MOSS, KUHN & FLEMING, P.A.

By: 

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Beaufort, South Carolina
August 31, 2021

Attorneys for the Respondent

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
)
 Serena Green Grant,)
)
 Plaintiff(s),)
)
 vs.)
)
 Palbert, Inc., et al.,)
)
 Defendant(s).)
 _____)

IN THE COURT OF COMMON PLEAS

CASE NO: 2017-CP-07-01921

**ORDER GRANTING MOTION
TO INTERVENE AND DENYING
MOTION TO SET ASIDE**

This matter comes to me pursuant to a SOUTH CAROLINA PROPERTY & CASUALTY INSURANCE GUARANTY ASSOCIATION’S MOTION TO INTERVENE AND SET ASIDE DEFAULT. The Motion seeks, pursuant to S.C. Code § 38-31-160, to Intervene and to re-litigate the Default, entered August 10th, 2018. (The Damages hearing was set aside on other grounds and is awaiting scheduling)

The Motion to Intervene is granted.

With regard to the Motion to Set Aside: As the Entry of Order of Liquidation was filed August 11, 2020, some two years after the Beaufort County Clerk’s default and 13 months after the Final Order, I find that the motion is untimely. The legislature could not have intended that the Association be allowed to re-litigate the distant past. Further, there is nothing in the record to indicate that the “insurer” defaulted or failed to defend the insured. Presumably, such a default or failure would occur when an insured, after service, turned the pleadings over the carrier, who then failed to respond or defend. The record does not indicate that situation.

This Order should in no way be considered a finding on the issue of limitation of liability or any other matter contained in the South Carolina Property and Casualty Insurance Guaranty Association Act

IT IS SO ORDERED:

Honorable Marvin H. Dukes, III
Master in Equity and Special Circuit Court Judge
for Beaufort County

April _____, 2021
Beaufort, South Carolina





Beaufort Common Pleas

Case Caption: Serena Green Grant VS Palbert Inc

Case Number: 2017CP0701921

Type: Order/Other

So Ordered:

s/Marvin H. Dukes III #3069

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MARVIN H. DUKES, III, MASTER IN EQUITY

CASE NO.: 2017-CP-07-01921

Serena Green Grant

Respondent,

vs.

Palbert, Inc, et al.,

Appellant.

CERTIFICATE OF SERVICE

Undersigned certifies that the **Respondent's Reply to Appellant's Return to Respondents Motion to Dismiss**, to which this certificate is affixed, was served upon the party (s) to this action by depositing a copy of same, enclosed in a first class, postpaid wrapper properly addressed to the attorney(s) of record:

Brandon P. Jones, Esquire
Alexander P. Zuraff, Esquire
The McKay Firm, PA
Post Office Box 7217
Columbia, SC 29202

in a post office or official depository under the exclusive care and custody of the United States Postal Service, on August 31, 2021

By: 
Karen M. Cummins, MPS, SCCP, PP

LAW OFFICES

MOSS, KUHN & FLEMING P.A.

JAMES H. MOSS
H. FRED KUHN, JR.
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*ALSO MEMBER OF GA BAR

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SC Court of Appeals

August 31, 2021

Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Serena Green Grant v. Palbert, Inc., et al.

Dear Clerk Kitchings :

Enclosed for filing is the original and seven (7) copies of Respondents Reply to Appellant's Return to Respondent's Motion to Dismiss Appeal and Certificate of Service. Please file the enclosures and return a clocked copy to me in the enclosed self-addressed stamped envelope. By copy of this letter and the enclosures, I am serving a copy of the same on Brandon P. Jones, Esquire, Attorney for the Appellant.

With kindest regards, I am

Very truly yours,

MOSS, KUHN & FLEMING, P.A.


James H. Moss

JHM:kmc

Enclosures

C: Brandon P. Jones, Esquire (w/enclosures)