

THE STATE OF SOUTH
CAROLINA
In the Court of Appeals
(In the Supreme Court)

Appeal From THE Court of Common
Pleas, Paul M. Burch, Circuit Court Judge

Case No. 2020-001696

TED JOHNSON, Appellant.

v.

Bad Cock + Home
Furniture, Respondent,
Final

BRIEF OF APPELLANT

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SC Court of Appeals

INDEX

	<u>PAGE NUMBER</u>
Table of Contents	3A
Certification	3
Statement of Case	4
Argument	6
Statement of Issues	9
Standard of Review	10
Designation of Matters	11
Conclusion	12
Certificate of Counsel	13
Proof of Service	14

I Ted Johnson - Appellant Certify that I have read the herein brief, that to the best of My Knowledge, information and belief there is good ground to support it, and that the document is not interposed for delay.

Table of Contents of Brief

	<u>PAGE NUMBER</u>
Respondent were served properly	6, par. 1
Respondent are in default to pg 7 par 4, and 6. And pg 8 par 9.	6, par. 3
The lower Courts erred	8, par 7

Table of Cases

<u>M'Elwee v. House, S.C. 108-109</u>	8
<u>Duke Power Co. v. SC Pub. Serv. Comm,</u> 284 S.C. 81, 325 S.E. 2d 395 (1985)	8

Civil Rules

Rule 40 CFR § 374.2	8 to 10
Rule § 702.61	8 to 10
Rule 55	8 to 10

<u>Exhibits A to F</u>	5 to 8
Partail Transcripts of Sept 8, 2021 proceedings showing that Respondent is default	7, par. 6
3 A	

Statement of Case

The history of the case is as follows:

This case began when Appellant purchased a push Mower on June 6 (Correction, June 1) 2018. Subsequently in 2019 said Mower Failed to work. Appellant then returned said Mower to Badcock + Moore where they stated they didn't carry the warranty to said Mower. Appellant then told Badcock that had they told Appellant before he purchased said Mower that they didn't honor or carry the warranty for the Mower, Appellant would not have purchased said Mower from them. Subsequently Appellant filed or served his notice of Intent to file a claim with Badcock + Moore by Certified Mail. Said intent claim is dated 12-11-2019. Then on 3-9-2020 Appellant filed his claim with the Magistrate Court. However, even though Appellant properly filed his claim ^{with} the Court and Badcock + Moore, never-the-less, Badcock refused Appellant's claim by Certified ^{mail} and ^{neither} they showed up or appeared in Court on May 12, 2020, May 26, 2020, and June 23, 2020.

In addition, Badcock + Moore ^{refused} Appellant's Service by Certified Mail return receipt "3 times", on or about 2-4-2020; 2-6-2020; and 12-11-2019. (See proof of Service as Exhibit A attached herein).

Even though Badcock + Moore refused Service and never appeared in Court, the Magistrate Court dismissed Appellant's Claim in Favor of Badcock and Moore.

Because the above, Appellant Filed with the Court of Common Pleas and Respondent a notice of a Civil appeal (Filed on 7-10-2020). The above appeal was heard on September 8, 2020 and once again Badcock + Moore - Respondent was a no show. In any event, the Case was heard and subsequently sent back to the Magistrate Court for a response or to give a reason why said case was dismissed in favor of Respondent.

On October 26, 2020, the Court of Common Pleas gave a written Order affirming the Magistrate's Court decision based on Rule 55.

Because the Court of Common Pleas based its ruling on an application of the provisions of Rule 55, is what moved Appellant to file a notice of appeal with the Court of Appeals on December 21, 2020.

Legal Argument; Statement of Facts

1. On 12-11-2019, 2-4-2020 and 2-6-2020, Appellant serviced or served upon Badcock + Moore-Respondent by Certified Mail return receipt (which Respondent refused service) Appellant's 4 page complaint. (See as Exhibit A attached herein).
2. Subsequently Appellant brought his case before the Magistrate Court, M.D. Weaver in which the Court scheduled the case to be heard on May 12, 2020; May 26, 2020 and June 23, 2020 (see all three Magistrate Summons as Exhibit B attached herein).
3. On all three scheduled ^{Court dates} mentioned above, Respondent did not appear, thus being in default.

4. During said June 23, 2020 Court proceeding, Appellant argued before the Court that Respondent was in default. Nevertheless although Respondent never appeared and in default, the case was dismissed in favor of Respondent. (see June 23, 2020 Transcript in CD Form as Exhibit C).

5. On ~~December~~^{September} 21, 2020, Appellant Filed with Common Pleas Court and Respondent, notice of appeal from the Magistrate Court decision and the case was heard on Sept. 8, 2020.

6. During the above proceeding, Appellant stated on the record how during the Magistrate Court proceeding and during the Sept 8, 2020 proceeding, that Respondent was served properly by certified mail receipt which they refused and that said Respondent was in default. (See Sept 8, 2020 transcripts as Exhibit D pg 7, line 18 to 20; pg 10, line 9 to 11; pg 15, line 24 to pg 18, line 10, as confirmation of the above).

7. Although the record shows that Respondent are clearly in default, the Common Pleas Court, Paul M. Burch on October 26, 2020 erred or unjustly by means of his order affirmed the Magistrate application dismissing Appellant's case according to provisions of Rule 55. (see said Oct. 26, 2020 Order as Exhibit E).

8. Because of the above, Appellant now brings his case before this Court by means of his 19 page notice of appeal (see as Exhibit F) and this brief and appeal.

9. Accord to Civil Rule 40 CFR § 374.2; § 702.61 and the cases of M'Elwee v. House, S.C.L., 108-109 (1828); Duke Power Co. v. S.C. Pub. Serv. Comm, 284 S.C. 81, 325 S.E. 2d 395 (1985), holds that when a person or respondent is properly served and summoned to appear in Court and fails to do so, such a person or respondent are in default according to Civil Rule 55, such as Respondent are in the case at bar.

Statement of Issues

1. Was Badcock + Moore Home Furniture, Respondent properly serviced by Ted Johnson, Appellant?
2. Was Badcock + Moore Home Furniture, Respondent in default during the lower Court proceedings? (under Rule 55)?
3. On June 23, 2020, did the Magistrate Court, M.D. Weaver, Judge err when dismissing Appellant's case in favor of Respondent?
4. On October 26, 2020, did the Court of Common Pleas, Paul M. Burch, Presiding Judge err when affirming the Magistrate's application according to provisions of Rule 55 dismissing Appellant's claim in favor of Respondent?
5. Did the Common Pleas Court and Magistrate Court (mentioned above) violate Appellant's 14th Amendment Due Process rights when making their decisions mentioned above?

"Standard of Review"

1. The standard for review for properly serving a notice of Intent to file a claim is under Rule 40 CFR § 374.2; § 702.61.
2. The standard for review when a person whom was properly served a Complaint, summoned to Court and does not appear is found in the case of M'Elwee v. House, S.C.L. (Bail.) 108, 109 (1828); Duke Power Co. v. S.C. Pub. Serv. Comm., 284 S.C. 81, 325 S.E. 2d 395 (1985) and Rule 55 of the Civil Rule of Law.

Rule 209
Designation of
Matter To Be Included
IN THE RECORD ON APPEAL

The Matters to be included on appeal as follows:

1. 19 page notice of Appeal to the Court of Appeals dated Dec. 21, 2020.

The 19 pg notice of Appeal includes the Common Pleas Court Paul M. Burch, Presiding Judge Order dated October 26, 2020.

2. The 23 page Transcript of Record dated May 28, 2021, (which is an appeal from the Magistrate Court).

The above Transcript is from the Court of Common Pleas proceeding which took place on September 8, 2020.

3. The Transcript (CD Form) of the Magistrate Court proceedings which took place on 6-23-2020 and 10-6-2020. (Summons dated 5-12-2020, 5-26-2020, 6-23-2020 and 10-6, 2020).

4. Front page of Notice of Intent or Complaint to Badcock + More Home Furniture with proof of Service by Certified Mail as Exhibit A.

Conclusion

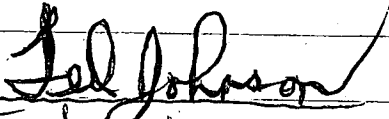
Wherefore, because all that is mentioned and for the reasons mentioned in this brief, Appellant ask this Court to grant his appeal by legally and/or properly applying Rule 55 in this Case by granting Appellant's appeal because it is in fact said defendant - Badcock & Home Furniture are in default and it was err on the lower Court (s) to have ruled in favor of Respondent and any other relief this Court deems just and proper.

Dated: Nov. 27, 2021

Ted Johnson
Ted Johnson -
Appellant

Certificate of Counsel

I Ted Johnson - Appellant, Certify that the Record on Appeal contains all Material proposed to be included by any of the parties and not any other Material.
Dated: Nov. 27, 2021


Ted Johnson,
Appellant - Pro Se

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