

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Circuit Court Judge

Appellate Case No. 2021-000480

Jimmy Shaver,

Respondent,

v.

Donald Shaver,

Appellant.

RECORD ON APPEAL

John Martin Foster
Post Office Box 106
Rock Hill, SC 29731-6106
(803) 324-8100
Attorney for Appellant

Stephen D. Schusterman
P.O. Box 4211
Rock Hill, South Carolina 29731
(803) 325-7788
Attorney for Respondent

RECEIVED

Apr 18 2022

SC Court of Appeals

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STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
Jimmy Shaver,)
) Plaintiff)
)
v.)
)
Donnie Shaver,)
) Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Case No.: 2020-CP-46-980

ORDER OF DEFAULT AND
JUDGMENT AGAINST
DONNIE SHAVER

This matter came before this Court for a damages hearing brought by the Plaintiff, Jimmy Shaver. Plaintiff filed a Summons and Complaint on March 11, 2020 and the Defendant was personally served on March 13, 2020. The Defendant failed to file any responsive pleadings. An Affidavit of Default was filed on June 15, 2020. The Defendant was served with the Affidavit of Default on June 15, 2020. A damages hearing was held on September 10, 2020 attended by Stephen D. Schusterman, attorney for the Plaintiff. The Defendant appeared *pro se*.

The Plaintiff testified that at the request of the Defendant, he performed work at the former residence of the Defendant's deceased mother ("residence") due to water damage caused by a water heater. The Plaintiff presented evidence of his South Carolina Labor, Licensing and Regulation license, as well as an estimate of the repairs showing an amount of \$9,500.00. There is no disagreement that the work was completed or the value of the work. Defendant did not object to any of these documents being entered into evidence nor did he present any evidence disputing the validity of these documents.

The Plaintiff previously filed an action, *pro se*, against the Defendant in the Magistrate Court, York County, seeking payment for the repairs to the residence. A hearing was held before the Honorable Clifford E. Berinsky on August 2, 2018. At that time, the Defendant argued that the mother's estate was still open and that Defendant should file a claim through the estate. The

Plaintiff presented evidence that the Mother's estate had been closed by order of the Honorable Carolyn Rogers on March 11, 2016. The Plaintiff argued that Defendant should be liable for the repairs as Defendant is the owner of the property upon the closure of Defendants' mother estate. At that time, Defendant disputed that he had any ownership interest in the residence. As a result of the Defendant disputing ownership, Judge Berinsky dismissed the case pursuant to Section 22-3-1150, South Carolina Code of Laws.

As this matter was previously brought before Judge Berinsky and now brought before this Court, it is imperative that this Court examine whether the dismissal of the magistrate action pursuant to Section 22-3-1150 is res judicata. "Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of the prior action between those parties. Under the doctrine of res judicata, '[a] litigant is barred from raising **any issues which were adjudicated** in the former suit and any issues which might have been raised in the former suit.'" Catawba Indian Nation v. State, 407 S.C. 526, 756 S.E.2d 900, 906 (S.C. 2014) *citing* Plum Creek Dev. Co. v. Conway, 334 S.C. 30,34, 512 S.E.2d 106, 109 (1999). (**Emphasis added**). In reviewing the Order of the Honorable Clifford E. Berinsky dated August 9, 2018, I find that the issues involved in this case have never been adjudicated. Instead, the matter was dismissed in compliance with Section 22-3-1150 once the Defendant disputed ownership. Allowing a litigant to avoid a judgment by contesting ownership would lead to illogical results if res judicata was applied. Therefore, this Court concludes that res judicata does not bar this subsequent action.

The next issue that must be examined is whether collateral estoppel (or issue preclusion) bars this subsequent action. "Issue preclusion bars the relitigation of only the particular issues that were **actually litigated** and decided in the prior suit." Catawba Indian Nation v. State, Id.

citing Crestwood Golf Club, Inc., v. Potter, 328 S.C. 201, 493 S.E.2d 826 (1997). (**Emphasis added**). The issues in the prior case were never actually litigated and therefore this Court finds that collateral estoppel does not bar this subsequent suit.

As this case can proceed against the Defendant and after listening to the testimony, reviewing the exhibits and pleadings, I find that the Defendant is in default. I further find that the Defendant owes the Plaintiff the sum of Nine Thousand Five Hundred and no/100 Dollars (\$9,500.00).

Therefore, the total amount of the Judgment entered against Donnie Shaver is Nine Thousand Five Hundred and no/100 Dollars (\$9,500.00).

IT IS THEREFORE ORDERED:

The Defendant, Donnie Shaver is hereby in default in this matter. An entry of judgment in the amount of Nine Thousand Five Hundred and no/100 Dollars (\$9,500.00) shall be entered against the Defendant, Donnie Shaver.

IT IS SO ORDERED.

Teasa K. Weaver
Master in Equity
E-Signature Page to Follow

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS**

JUDGMENT IN A CIVIL CASE

CASE NO. 2020- CP-46-980

Jimmy Shaver

Donnie Shaver

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Stephen Schusterman

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.
- 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. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- 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: See attached order (formal order to follow) Statement of Judgment by the Court:

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)
Jimmy Shaver	Donnie Shaver	9,500.00
		\$
		\$

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.

Circuit Court Judge

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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



York Common Pleas

Case Caption: Jimmy Shaver , plaintiff, et al VS Donnie Shaver

Case Number: 2020CP4600980

Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2020-09-24 12:35:15 page 6 of 6

ELECTRONICALLY FILED - 2020 Sep 24 12:39 PM - YORK - COMMON PLEAS - CASE#2020CP4600980


CERTIFICATE OF SERVICE VIA US MAIL

I, the undersigned, being over eighteen (18) years of age and not an attorney in or a party to this action, hereby certify that I have served the **ORDER** by delivering a copy thereof and depositing it, postage paid with the United States Post Office and by addressed to the following individuals:

Mr. Donnie Shaver
1427 London Drive
Rock Hill, S.C. 29732

Re: Jimmy Shaver v. Donnie Shaver
Case No.: 2020-CP-46-00980

This 29th day of September, 2020.


Allison Schusterman
Paralegal to Mr. Schusterman

ELECTRONICALLY FILED - 2020 Sep 30 8:48 AM - YORK - COMMON PLEAS - CASE#2020CP4600980

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
 Case No. 2020-CP46-00980

Jimmy Shaver,)
)
 Plaintiff,)
)
 vs.)
)
 Donnie Shaver,)
)
 Defendant.)

ORDER
Rules 59(e) and 60(b), SCRPC

This matter came before me for a hearing upon Defendant’s Motion to Alter or Amend Judgment. Attending by Webex: J. Martin Foster, attorney for the Defendant, and Stephen S. Schusterman, attorney for the Plaintiff. By this motion, Defendant seeks an order to “reopen the Order granting judgment” by default, filed on September 24, 2020.

The Defendant was served with the Summons and Complaint on March 13, 2020. Thereafter, the Defendant delivered a document to the Plaintiff. This document was not a responsive pleading that complied with Rule 8, SCRPC. It was also not shown by the Defendant to have been delivered within 30 days of the service of the Summons and Complaint. The Defendant was served with a copy the Affidavit of Default on June 15, 2020, and appeared at a Default Hearing on September 10, 2020.

The purpose of Rule 59(e), SCRPC, is to request the trial judge to “. . . reconsider matters properly encompassed in a decision on the merits.” *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992) (citations omitted). A party should not raise an issue for the first time pursuant to Rule 59(e). *Johnson v. Sonoco Products Co.*, 381 S.C. 172, 672 S.E.2d 567 (2009).

First, the Defendant claims the Plaintiff was not licensed for plumbing as required by S.C. Code §40-59-30(B). Noncompliance with the statute is an affirmative defense that must be pled. *See Costa and Sons Const. Co., Inc., v. Long*, 306 S.C. 465, 412 S.E.2d 450 (Ct. App. 1991). Also, these arguments were not raised by the Defendant prior to his Rule 59(e) motion.

The Defendant also seeks relief from default pursuant to Rule 55(c), SCRPC. However, since judgment has been entered, request for relief must be considered under the standards of Rule

60(b), SCRCP. See *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 681 S.E.2d 885 (2009). Rule 60(b)(1) provides relief based on a party's "... mistake, inadvertence, surprise, or excusable neglect . . .". In ruling on such a motion, the court must consider "(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties." *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 512, 548 S.E.2d 223, 226 (Ct. App. 2001).

As discussed previously, the Defendant had ample opportunity, prior to judgment, to promptly raise these issues, but he did not. He also did not provide a satisfactory reason for his failure to do so. The Defendant also failed to provide a meritorious defense. The "existence of a meritorious defense" requirement does not require that Defendant show a perfect defense, or one on which he will prevail, only that it raises a question of law or real controversy that deserves further judicial inquiry. *Thomas v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (1989). In review of Defendant's motion, I found no defense that warrants further investigation. Plaintiff neither alleged nor testified he performed plumbing work that would require a license to perform such work. The facts, as alleged in the complaint, sufficiently form a legal basis for the judgment, and the amount of damages was determined from the value of Plaintiff's labor and materials.

Based on the foregoing, it is ordered that Defendant's motion to be relieved from default judgment pursuant to Rule 60(b), and to amend the judgment according to Rule 59(e) be denied.

Judge's Signature Page to Follow



York Common Pleas

Case Caption: Jimmy Shaver , plaintiff, et al VS Donnie Shaver
Case Number: 2020CP4600980
Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084

Electronically signed on 2021-03-31 13:43:09 page 3 of 3

ELECTRONICALLY FILED - 2021 Mar 31 2:15 PM - YORK - COMMON PLEAS - CASE#2020CP4600980

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE MAGISTRATES COURT

Jimmy Shaver,)
Plaintiff)

Vs.)

Donnie Shaver,)
Defendant)

ORDER

Civil Case No. 2018CV4610303297

This matter came before the York County Central Civil Court, in Rock Hill, York County, South Carolina, on August 2, 2018, for a bench trial before Judge Clifford E. Berinsky.

Plaintiff and Defendant each appeared pro se.

PLEADINGS:

Plaintiff filed a Summons and Complaint alleging damages of \$7,500.00 work that he performed at a residential property.

Defendant filed an Answer denying liability.

TESTIMONY:

Plaintiff, Jimmy Shaver, testified that, at the request of Defendant, he performed work at the former residence of Defendant's deceased mother. A previous suit for this same claim was dismissed when Defendant stated that this should be a debt of his mother's estate, and that the estate was still open, with time for Plaintiff to file a claim still available. Plaintiff presented Probate Court records that indicated that the estate of Defendant's mother was closed, by order of Judge Carolyn Rogers, on March 11, 2016. He further asserted that the Defendant should be held liable for the cost of the home repairs, as Defendant has an ownership interest in the premises.

Defendant disputed that he held any interest in the premises.

FINDINGS:

Section 22-3-1150, South Carolina Code of Laws, states:

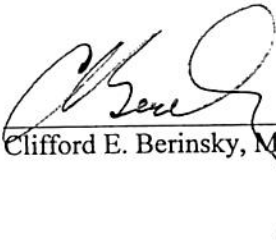
“If, however, it appear on the trial from the plaintiff’s own showing that the title to the real property is in question and such title shall be disputed by the defendant the magistrate shall dismiss the action and render judgment against the Plaintiff for the costs.” (Emphasis added.)

As, during the trial, Plaintiff brought up the issue of ownership of the property where the repairs were performed; and Defendant disputed such claim of ownership, the Court is required to “dismiss the action and render judgment against the plaintiff for the costs.” The record does not indicate that there were any court costs suffered by the Defendant. Therefore, the only action, required by 22-3-1150, is to dismiss the action.

WHEREFORE, it is hereby ORDERED, ADJUDGED AND DECREED that:
This matter be DISMISSED.

IT IS SO ORDERED

August 9, 2018
Rock Hill, South Carolina


Clifford E. Berinsky, Magistrate

STATE OF SOUTH CAROLINA
COUNTY OF YORK
COMMON PLEAS COURT

CASE NO. 2020-CP-46-00980

Jimmy Shaver et al
Plaintiff(s)

VS

Donnie Shaver
Defendant(s)

I find that this case should be referred to a master-in-equity or special referee because:

All parties, not in default, consent to the reference.

This is an action of foreclosure.

This is a default case.

Accordingly, this matter is referred to the master-in-equity or _____
_____ as a special referee to:

Hold a hearing(s) and file a report. Any review of this report shall be in the manner prescribed by Rule 53(e)(2), SCRCP.

Hold a hearing(s) and enter final judgment in this matter. Any appeal from an order of judgment of the master-in-equity or special referee shall be directly to the Supreme Court. See S.C. Code Ann. S 14-11-85 (Supp. 1994).

IT IS SO ORDERED.

CLERK OF COURT

S. Schusterman

ELECTRONICALLY FILED - 2020 Aug 13 9:13 AM - YORK - COMMON PLEAS - CASE#2020CP4600980



York Common Pleas

Case Caption: Jimmy Shaver , plaintiff, et al VS Donnie Shaver

Case Number: 2020CP4600980

Type: Order/Other

So Ordered

s/David Hamilton York County Clerk of Court by
LS

Electronically signed on 2020-08-13 09:12:12 page 2 of 2

ELECTRONICALLY FILED - 2020 Aug 13 9:13 AM - YORK - COMMON PLEAS - CASE#2020CP4600980

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
)
Jimmy Shaver,)
Plaintiff)
)
vs.)
)
Donnie Shaver)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No: 2020-CP-46_____

SUMMONS

TO THE DEFENDANT: DONNIE SHAVER:

YOU ARE HEREBY SUMMONED and required to answer the Summons and Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Summons and Complaint on the subscribed at his office at 541 E. Main Street, Rock Hill, SC 29730, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Summons and Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for judgment by default for the relief demanded in the Complaint.

s/ Stephen D. Schusterman
Stephen D. Schusterman
SCHUSTERMAN LAW FIRM, PA
P.O. Box 4211
Rock Hill, South Carolina 29732
Telephone: 803-325-7788

March 11, 2020

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)
)
)
Jimmy Shaver,)
Plaintiff)
)
vs.)
)
Donnie Shaver)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No: 2020-CP-46_____

COMPLAINT

NOW COMES the Plaintiffs, above-named, complaining of the Defendants, above-named, and does hereby allege and show unto this Honorable Court as follows:

1. The Plaintiff is a resident of York County, South Carolina.
2. The Defendant is a resident of York County, South Carolina.
3. On or about June 29, 2017, the Plaintiff was contacted to perform construction work at the residence located at 1471 Sherwood Road, Clover, South Carolina ("residence") due to the entire contents of a water hearing emptying into the residence.
4. On or about June 29, 2017, the Plaintiff met with a representative of Auto-Owners Insurance Company, Rob Taylor, to walk him through the house and show the damage, as well as provide an estimate to repair the damage in the amount of \$9,500.00
5. The Plaintiff was instructed by Mr. Taylor to commence work on the residence.
6. The Plaintiff purchased the material and completed work on the residence.
7. Based upon information and belief, Auto-Owners Insurance Company has issued payment for the work performed by Plaintiff.
8. The Plaintiff has demanded payment and no such payment has been rendered.

9. The residence was previously owned by Frances Coley and Donald Ray Shaver jointly.

10. The Defendant has ownership interest in the residence as he received ownership interest in the residence on or about January 17, 2017.

11. The Defendant has admitted in Case No. 2018CV4610303297, that the Plaintiff did perform the work however he represented to Court that the debt should be a part of Frances Coley's estate as it was still open at the time of the hearing before the Honorable Clifford Berinsky.

12. Frances Coley's estate was closed on or about March 11, 2016, which is approximately ten months prior to the work was performed by the Plaintiff.

FOR A FIRST CAUSE OF ACTION

13. To the extent not inconsistent with the allegations of this Complaint the Plaintiffs re-alleges and incorporates herein Paragraphs 1 through 12 above.

14. It was agreed that the Plaintiff would perform work on the residence for which Defendant has an ownership interest in the property.

15. The Plaintiff performed work on the residence.

16. The Defendant has failed to pay or has failed to cause to be paid for the services rendered by the Plaintiff.

17. These funds are owed to the Plaintiff pursuant to the agreement regarding the work.

18. The Plaintiff seeks a judgment against the Defendant for the value of the work performed on the residence, attorneys fees and costs, as well as such other relief as this Court

deems just and equitable.

SECOND CAUSE OF ACTION

19. To the extent not inconsistent with the allegations of this Complaint the Plaintiffs re-alleges and incorporates herein Paragraphs 1 through 17 above.

20. The Plaintiff has conferred a benefit on the Defendant by repairing damage to a residence which he has ownership interest.

21. The Defendant appreciated the benefit of the Plaintiff repairing the residence.

22. The Defendant in not paying the Plaintiff for the work he performed as unjustly enriched the Defendant to the detriment of the Plaintiff.

23. The Plaintiff seeks a judgment against the Defendant for the value of the work performed as well as such other relief as this Court deems just and proper.

WHEREFORE, having set forth their Complaint, the Plaintiff prays this Court for judgment as follows:

1. Compensatory Damages;
2. Payment of attorney's fees and costs; and
3. For such other and further relief as this Court deems just and proper.

s/Stephen D. Schusterman
Stephen D. Schusterman
SCHUSTERMAN LAW FIRM, PA
P.O. Box 4211
Rock Hill, South Carolina 29732
Telephone: 803-325-7788

March 11, 2020

Branch Claim Office
10 Palmetto Dr., Ste. 150
PO Box 27123 | Greenville, SC 29616-2123
p. 864 675 0811 | f. 264-957 5518 | auto-owners.com



ELECTRONICALLY FILED - 2020 Nov 03 11:48 AM - YORK - COMMON PLEAS - CASE#2020CP4600980

July 3, 2017

Robert Coley
Frances Coley
1120 Windridge Rd
Friendville, TN 37737-2063

RE: Claim Number: 300-175593-2017
Our insured: Robert L & Frances E Coley
Loss Location: 1471 Sherwood Rd
Date of Loss: 6-26-2017
Policy Number: 9659612200
Subject: Coverage Position

Dear Mr. & Mrs. Coley:

We are in receipt of your claim for damages at the above captioned location. Your Mobile Homeowners Policy, form # 17673 (03-87), includes a dwelling limit of \$48,900. Effective dates of the policy are 08/04/2016 through 08/04/2017.

As we understand it, a claim was submitted to your agent at Moss Insurance Group, Inc. on 6/28/17 for damages to the kitchen, laundry and bathroom resulting from a leaking water heater. Upon inspection of the property on 6/29/17, it was determined the damages were the result of a long term leak. Unfortunately, the Mobile Homeowner's policy does not provide coverage for this.

Your Mobile Homeowners policy, form # 17673 (03-87) reads as follows:

17673 (3-87)

**MOBILE HOMEOWNERS POLICY
SPECIAL FORM**

SECTION I

PROPERTY PROTECTION

EXCLUSIONS

Under Mobile Home and Other Structures Coverages, except as to ensuing loss not otherwise excluded, we do not cover loss resulting directly or indirectly from:

1. c. *Faulty, inadequate or defective:*
(5) maintenance;

of a part or all of the residence premises or any other property.

Serving Our Policyholders and Agents for 100 Years

Auto-Owners Insurance

Page 2
Robert L & Frances E. Coley
July 3, 2017

2. *Wear and tear; marring or scratching; deterioration; inherent vice; latent defect; mechanical breakdown. rust; mold; wet or dry rot; discharge, dispersal or release of pollutants or contaminants; smog; smoke from agricultural smudging or industrial operations; settling, cracking, shrinkage, bulging or expansion of pavement, patios, foundations, walls, floors, ceilings; birds, vermin, rodents, insects or domestic animals. If because of any of these, water escapes from plumbing, heating, air conditioning or automatic fire protection sprinkler system or domestic appliance, we cover loss caused by the water. We also cover the cost of tearing out and replacing any part of the covered building necessary to repair the system or appliance. We do not cover loss to the system or appliance from which the water escapes.*
4. *Constant or repeated seepage or leakage of water or steam from within a plumbing, heating, air conditioning or automatic fire protection sprinkler system or from within a domestic appliance which occurs over a period of weeks, months or years.*

This means that since the water leak is the result of repeated seepage over the course of weeks, months or years, it is specifically excluded by the policy.

The determination that there is no coverage for the claim submitted is based on our investigation, the policy identified and information provided. If there is any additional information you believe to be relevant to the question of coverage, please advise and forward any additional information for review.

Reservation

Please be advised that this letter does not waive any rights or defenses which Auto-Owners Insurance Company may have regarding this matter under any policy of insurance issued by Auto-Owners Insurance Company, whether or not such claims or defenses are set forth herein. Auto-Owners Insurance Company reserves the right to supplement this Reservation of Rights upon receipt of further information which may subsequently become available.

Sincerely,
Auto-Owners Insurance Company

Rob Taylor

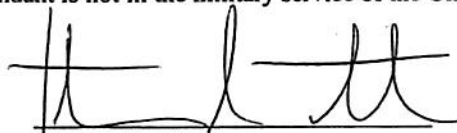
Rob Taylor
Field Claim Representative

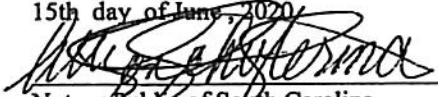
ELECTRONICALLY FILED - 2020 Nov 03 11:48 AM - YORK - COMMON PLEAS - CASE#2020CP4600980

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]
Jimmy Shaver,]
Plaintiffs,]
vs.]
Donnie Shaver,]
Defendant]

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
AFFIDAVIT OF DEFAULT
C.A. No. 2020-CP-46-00980

PERSONALLY appeared before me Stephen D. Schusterman, who on oath states that he is the attorney for the Plaintiff in the above-entitled action, that process was served upon Ronald Eugene Gaines, on March 13, 2020, by personal service and that more than thirty days have lapsed since the said service, and that no answer, demurrer, motion or other pleading, and no appearance or notice thereof has been served upon him by or on behalf of said Defendant, and that the said Defendant is, therefore, in default. He further states that he is informed and believes that the Defendant is not in the military service of the United States.


Stephen D. Schusterman
Attorney for the Plaintiff

Sworn to before me on this the
15th day of June, 2020

Notary Public of South Carolina
My Commission expires: 3-4-2024


CERTIFICATE OF SERVICE VIA US MAIL

I, the undersigned, being over eighteen (18) years of age and not an attorney in or a party to this action, hereby certify that I have served the **ORDER** by delivering a copy thereof and depositing it, postage paid with the United States Post Office and by addressed to the following individuals:

Mr. Donnie Shaver
1427 London Drive
Rock Hill, S.C. 29732

Re: Jimmy Shaver v. Donnie Shaver
Case No.: 2020-CP-46-00980

This 29th day of September, 2020.


Allison Schusterman
Paralegal to Mr. Schusterman

STATE OF SOUTH CAROLINA]
COUNTY OF YORK]

JIMMY SHAVER,]
Plaintiff,]
v.]
DONNIE SHAVER,]
Defendant.]

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

NOTICE and MOTION:
TO ALTER OR AMEND JUDGMENT

Pursuant to:
RULE 59(e), S.C.R.C.P.
C.A. No. 20-CP-46-00980

To: The Plaintiff and
Stephen D. Schusterman
P.O. Box 4211
Attorney for Plaintiff
Rock Hill, South Carolina 29731

You or your attorney should appear before this Court to present evidence or argument, if any you have, relating to the Motion herein, as follows:

DATE AND TIME: To be set by the Clerk of the Court,
or as soon thereafter as counsel may be heard.

PLACE: York County Historical Courthouse
Equity Court
2 South Congress Street
York, South Carolina 29745,
or at such other place as the Court or Clerk may designate

Pursuant to Rule 59(e), S.C.R.C.P., the Defendant, by and through his attorney, moves this Court:

For an Order reopening the Order granting Judgment dated and filed September 24th, 2020 and received by the Movant on October 3rd, 2020, amending the findings of fact and conclusions of law or making new findings and conclusions, and directing the entry of a new Order; and

For such other and further relief as this Court may deem just and proper.

on the grounds that the Order of the Court is contrary to law and the evidence as proven at trial, on the following bases:

JURISDICTION

1. The Plaintiff's action is premised on a claim for payment for services at 1471 Sherwood Circle, Clover, S.C. and specifically on that work and materials referenced in the Proposal submitted to Auto-Owners Insurance and identified as setting out the contract by testimony of the Plaintiff at trial. A copy of the Proposal is attached hereto and incorporated herein. The proposal states an amount of, and the judgment of this Court awarded, \$9,500.00 to the Plaintiff against the Defendant.
2. A copy of the regularly-maintained internet listing from the South Carolina Labor, Licensing and Regulation Department as to Residential Builders is attached hereto and incorporated herein. Counsel for Appellant is informed by personnel for the LLR that their listing for both Residential Builders and Residential Specialty Contractors, as defined in S.C. Code § 20-59-20, is maintained under the internet category of "Residential Builders". No separate listing for "Residential Specialty Contractors exists on the LLR website.
3. The listing maintained by the LLR shows that the Plaintiff is licensed in this State to perform:

Carpentry

Roofing

Vinyl/Aluminum siding

The Plaintiff's license lists no other areas of licensure.

4. The Plaintiff is not listed and, based on this information, has no license to act as a plumber. The Proposal submitted by him does not break the work down into areas of performance. No evidence was plead, nor to counsel's knowledge presented, that any person licensed to do plumbing was involved.
5. S.C. Code § 40-59-20 provides as follows, in relevant part:

(6) "Residential builder" means one who constructs, superintends, or offers to construct or superintend the construction, repair, improvement, or reimprovement of a residential building or structure which is not over three floors in height and which does not have

more than sixteen units in any single apartment building, when the cost of the undertaking exceeds five thousand dollars. Anyone who engages or offers to engage in such undertaking in this State is considered to have engaged in the business of residential building.

(7) "Residential specialty contractor" means an independent contractor who is not a licensed residential builder, who contracts with a licensed residential builder, general contractor, or individual property owner to do construction work, repairs, improvement, or reimprovement which requires special skills and involves the use of specialized construction trades or craft, when the undertakings exceed two hundred dollars and are not regulated by the provisions of Chapter 11. Residential specialty contracting includes the following areas of contracting and other areas as the commission may recognize by regulation:

(a) plumbers; . . .

6. S.C. Code § 40-59-220(A) provides, in relevant part:

All residential builders must be licensed, and all residential specialty contractors must be registered, by the commission for a period established by the commission in regulation. Licensees and registrants must pay an annual fee established by the department and based upon the department's costs in carrying out the provisions of this chapter..

7. S.C. Code § 40-59-30 provides, in relevant part::

(B) Notwithstanding Section 29-5-10, or another provision of law, a person or firm who first has not procured a license or registered with the commission and is required to do so by law may not file a mechanics' lien or bring an action at law or in equity to enforce the provisions of a contract for residential building or residential specialty contracting which the person or firm entered into in violation of this chapter.

[*Emphasis added.*]

8. The provisions of S.C. Code § 40-59-30(B) are jurisdictional in nature. The judgment or Order by the Honorable Court is inconsistent with the provisions of S.C. Code § 40-59-30(B), and the Plaintiff's suit is therefore *ultra vires*.

ILLEGAL CONTRACT

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9. South Carolina precedent disallows the recovery of monies to an unlicensed contractor. *Lenz v. Walsh*, 362 S.C. 603, 608, 608 S.E.2d 471, ___ (Ct.App. 2005).
10. The law of our State is clear, and has been for some time, as to the effect of an illegal contract:

[W]e find the law on this point admirably expressed as follows, to wit: 'It should be observed that the defense of illegality is allowed from motives of public policy, rather than from a regard for the interests of the objecting party. When a person, having actively participated in the illegal transaction, and having obtained all the benefit of it from the other party, refuses to perform his own executory undertaking, and sets up the illegality as a defense, his position, considered by itself, is unjust, but the law sustains it out of regard to the interests of society. The objection comes, in appearance, from the individual litigant, but in reality from society, — the state speaking through the courts. *Citing Holman v. Johnson*, 1 Cowp. 341, 343, *per* Lord Mansfield and others. The theory of the law is that it is not lending aid to the defendant, but is simply withholding it from the plaintiff.

[*Brown v. Newall*, 64 S.C. 27, ___, 41 S.E. 835, 839 (1902).]

11. More recently, our Supreme Court has restated this point of law:

It is a well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. 86 C.J.S. *Torts* § 12 (1954). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. 1A C.J.S. *Actions* § 29 (1985). *See also Graham v. Graham*, 276 S.C. 341, 278 S.E.2d 345 (1981); *Nelson v. Bryant*, 265 S.C. 558, 220 S.E.2d 647 (1975); *Roundtree v. Ingle*, 94 S.C. 231, 77 S.E. 931 (1913); RESTATEMENT (SECOND) OF TORTS § 774 (1977).

[*Jackson v. Bi-Lo Stores*, 313 S.C. 272, ___, 437 S.E.2d 168, 170 (Ct.App. 1993).]

12. Beyond the holding in *Lenz, supra*, the doctrine of illegal contract in South Carolina prohibits the recovery of alleged damages by those who participate, as here, in a non-divisible and illegal contract.

RELIEF FROM DEFAULT

13. The *pro se* Defendant was served with the Summons and Complaint on March 13th, 2020 according to the filed Affidavit of Service. Thereafter, and before default, he contacted the office of counsel for Plaintiff and left documents setting out his defense. He did not file a responsive pleading nor serve such a document on counsel.
14. In this case, counsel for Plaintiff filed a standard default affidavit dated June 15th, 2020. It states, in part, that "no appearance of notice thereof has been served upon [affiant] by or on behalf of said Defendant".
15. As worded, the default affidavit is inaccurate.
16. The standard for relief from default is set out in Rule 55(c), S.C.R.C.P. and commented upon in *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499, (Ct.App. 1989):

Under S.C.R.Civ.P. 55(c), as under F.R.CIV.P. 55(c), the standard for granting relief from an entry of default is "good cause." *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct App.1987); H. LIGHTSEY AND J. FLANAGAN, [SOUTH CAROLINA CIVIL PROCEDURE 1996], *supra* at 82. The decision of whether to grant relief from an entry of default is solely within the sound discretion of the trial court. *Id.* An order based on an exercise of that discretion, however, will be set aside if it is controlled by some error of law or lacks evidentiary support. *Ricks v. Weinrauch, supra.*

17. On knowledge and information, the Defendant's good-faith attempts, as a *pro se* litigant, required a full hearing and ruling by the Court. On information, the Defendant made an attempt at the hearing to raise these points – as best as he could – and was denied a hearing.
18. Under the precedent set by Rule 55(c) and *Wham* and its progeny, the Defendant was entitled to a hearing on default, and to a ruling absolving him of default.

EFFECT OF DEFAULT

19. A Defendant in default has admitted all well-pleaded allegations of the complaint. *Gadsden v. Home Fertilizer & Chem. Co.*, 89 S.C. 483, 72 S.E. 15 (1911); *Masters v. Rodgers Development Group*, 283 S.C. 251, 321 S.E.2d 194 (Ct.App. 1984). Default does not preclude an argument on points that are not well-pleaded. *See Masters, supra.*
20. In this case, the Plaintiff asserts [Para.s 4 and 5 of Complaint] that he was authorized to

repair by Auto-Owners representative and [Para. 7] that Auto-Owners has issued payment therefor. The Plaintiff has not plead, and on information, presented no evidence of that payment.

21. His complaint goes on [Para. 11] to claim that the debt was admitted as a Probate debt. The Plaintiff, on information, has presented no evidence of such Probate responsibility.
22. The complaint goes on [First Cause of Action] to allege that the funds for services are owed to the Plaintiff "pursuant to the agreement". The only agreement pleaded is that alleged with Auto-Owners.
23. The complaint goes on [Second Cause of Action] to allege that the funds for services are owed as a benefit to the Defendant. The Plaintiff, on information, produced no evidence to show the value of the claimed benefit.
24. Under the cited precedent governing default, the Defendant should have been allowed to challenge a) his responsibility for a contract with Auto-Owners and/or g) the worth of the alleged benefit.

Counsel for the Movant is not required to attempt in good faith to resolve the matter contained in this Motion by reason of the dispositive nature thereof.

The basis for this Motion is the applicable law and rules of procedure, the above-cited Rules and Statutes, the records of these civil actions, and any Supporting Memorandum which the Movants may submit herein.

Respectfully submitted,

/s/ John Martin Foster
Attorney for Defendant
S.C. Bar No. 2086

The Guardian Building
223 East Main Street, Suite 520
Rock Hill, SC 29730

Post Office Box 106
Rock Hill, SC 29731-6106

October 13, 2020
Rock Hill, South Carolina

803 324-8100
803 324-8109: Fax
jmfoster@comporium.net

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Proposal

Page # _____ of _____ pages

JIMMY SHAVNER
 DBA
SHAVNER CONST
 116 STERLING DR
 YORK S.C. 29745
 803-417-1886

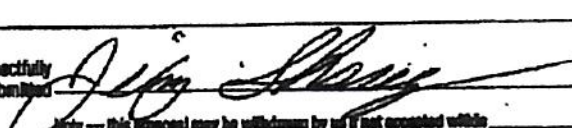
PROPOSAL SUBMITTED TO: Rob Taylor - Auto-Owners Insurance	JOB NAME	JOB #
ADDRESS: 10 Patewood Dr., Ste. 150 Greenville, SC 29616	JOB LOCATION: 1471 Sherwood Road, Clover, SC	DATE
PHONE #	FAX #	ARCHITECT: David Shaver

I hereby submit specifications and estimates for: 1471 Sherwood Rd
 On June 29, 2017, it was explained to adjuster, Rob Taylor o
 of Auto-Owners Insurance Company, that the hot water heater
 ruptured. When it did, it emptied the entire contents of the
 hot water heater into the home causing damage to floors, wal
 walls and insulation. I was contacted immediatly upon
 discovery of the hot water heater rupturing and of the damage
 it caused. At that time, I assessed replacement and repairs
 of all materials. Water service to the home was immediatley
 disconnected so that no further damage could occur. All
 damage was caused by the hot water heater and none existed
 prior to it rupturing and no further damage occurred after.
 Rob Taylor instructed me to proceed with all repairs, without
 concern, at that time. Accordingly, I purchased the material
 immediatley and scheduled and completed repairs.

I propose hereby to furnish material and labor - complete in accordance with the above specifications for the sum of:
\$ 9,500.00 (Estimate) Dollars

with payments to be made as follows: upon agreement

Any alteration or deviation from above specifications incurring extra costs
 will be executed only upon written order, and will become an extra charge
 over and above the estimate. All agreements contingent upon strikes,
 accidents, or delays beyond our control.

Respectfully submitted: 

Note --- this proposal may be withdrawn by us if not accepted within _____ days.

Acceptance of Proposal

The above prices, specifications and conditions are satisfactory and are
 hereby accepted. You are authorized to do the work as specified.
 Payments will be made as outlined above.

Signature _____

Date of Acceptance _____ Signature _____

[Print this page](#)

Board: Residential Builders

JIMMY SHAVER JR
116 STERLING DR
YORK, SC 29745-7435

Associated Businesses:

- SHAVERS CONSTRUCTION & REMODLING

Status: ACTIVE
Registration number: 28131
Registration type: Specialty
Expiration: 06/30/2021
First Issuance Date: 07/14/1999

Licensee is authorized to perform work only in the classification(s) listed below.
CARPENTRY
ROOFING
VINYL/ALUMINUM SIDING
Bond on file expires: 07/01/2021

Board Public Action History:

[View Orders](#)

[View Other License for this Person](#)

	Order Date	Name	License Type	License Number
View	10/16/2019	SHAVER, JIMMY JR	RBS	28131
View	7/8/2019	SHAVER, JIMMY JR	RBS	28131

[File a Complaint against this licensee](#)

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Order reopening the judgment, amending the findings of fact and conclusions of law or making new findings and conclusions of law, and directing the entry of a new order.

DISCUSSION:

The Defendant argues that he should be relieved from Default and is entitled to a full hearing. The Defendant alleges that he “contacted the office of counsel for Plaintiff and left documents setting out his defense” and he further states “he did not file a responsive pleading nor serve such document on counsel”. First, the Defendant did not contact the office of counsel for the Plaintiff nor has counsel spoken with the Defendant regarding any responsive pleading or defense the Defendant believes he may have. Secondly, the Defendant dropped a document off at counsel’s office, however this document was a document from probate court regarding the Defendant mothers’ estate, attached hereto as Exhibit 1. It did not contain any explanation or any notations as to the purpose of this document. Defendant’s motion does not even set forth the basis of how this document is a defense or applicable to the case before this Court. Furthermore, although the Plaintiff does not dispute receiving a probate document, the Defendant has not provided a date he left this document at Counsel’s office therefore there is no evidence that this document was provided within thirty days after the Complaint was filed nor was this document ever provided to the Court.

The Defendant’s document that was dropped off at Counsel’s office did not set forth any defense. Plaintiff is unaware what defense the Defendant was claiming by providing this document nor has the Defendant stated in his Motion what defense that document was purported to represent. Any documentation received by a *pro se* party that could be construed by Counsel as a defense or responsive pleading would have been brought to the attention of this Court and more importantly, an Entry of Default would not have been sought.

Unless an extension is granted, a defendant must serve his answer within thirty days “after the service of the complaint upon him”. Stark Truss Co., v. Superior Const. Corp., 360 S.C. 503, 508, 602 S.E.2d 99 (S.C. App. 2004). Entry of default is a ministerial act that the clerk is required to perform once default is made to appear by the affidavit of the moving party. Id. at 509. A plain reading of Rule 55(a) allows for an entry of default when a pleading or defense is not in compliance with Rule 12(a), SCRC. Id.

The Defendant’s answer was due on April 14, 2020. An extension was not requested or granted. The Defendant was not placed into default until June 15, 2020, over 90 days after the service of the summons and complaint. The Defendant was also served with the Notice of Default on June 15, 2020 and did not take any action *pro se* or alternatively hire counsel at that time. The Defendant did absolutely nothing to protect his interest or even inquire about this default.

The Defendant, in the case before this Court, was present at the damages hearing and was given the opportunity to participate in the hearing. The Defendant opted to represent himself *pro se* at the damages hearing and makes some reference in his Motion that making “good faith attempts” required a full hearing and ruling by the Court and was denied a hearing. The damages hearing was held 3 months after Defendant was placed in default, and it is improper for him to be relieved from an entry of default. The Rules of Civil Procedure and case law set forth the proper procedure for seeking to set aside an entry of default. The Defendant failed to do so for over 3 months.

A court may set aside an entry of default “for good cause shown”. Rule 55(c), SCRC. In making the determination of whether good cause exists, a trial court should consider the following factors: (1) the timing of the motion for relief; (2) whether the Defendant has a

meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted". Id. at 510.

The Defendant has failed to allege in his Motion any "good cause" why the Entry of Default should be set aside. He argues that he made "good faith attempts" but does not state what these good faith attempts were. The Defendant also argues that unknown "good faith attempts" justified him getting a full hearing because he was a *pro se* litigant. However, he fails to set forth the substance of these "good faith efforts". The Defendant had ample opportunity to obtain legal counsel and chose to only hire counsel when the case was decided against him. Choosing to represent oneself is not "good cause" to set aside an entry of default.

In Bage, LLC v. Southeastern Roofing, 646 S.E.2d 153, 373 S.C. 457 (S.C. App. 2007), over two months elapsed between the time Southeaster Roofing was served with the pleadings and when it moved for relief to set aside the default. Id. at 473. The Appellate Court relied on Stark Truss Co. v. Superior Construction Corp., 360 S.C. 503, 602 S.E.2d 99 (Ct.App. 2004), in affirming the circuit courts refusal to grant an entry of default in Bage. The Appellate Court found that the Defendant's failed to present sufficient proof of good cause under Rule 55(c), SCRCF as to why it failed to respond to the summons and complaint. The Court in Southeastern, further opined that Southeastern Roofing simply did not give this matter the proper attention it required and therefore the entry of default was not set aside. Southeastern, 373 S.C. 2d at 475.

The Entry of Default in this matter was filed and served on June 15, 2020. The Defendant failed to seek relief from the default until October 13, 2020. This is almost 4 months after the Entry of Default was granted. The Defendant was at the damages hearing held on September 20, 2020 and failed to raise this issue at the damage hearing. Furthermore, although within the allotted time allowed by the Rules of Civil Procedure, the Defendant waited until the

last minute to file his motion seeking relief from the Entry of Default. In Stark, the Appellate Court found that filing a motion for relief from entry of default over one month after the default judgment was not timely and the motion to set aside was denied. The Defendant in the case before this Court waited almost 4 months to set aside the Entry of Default. This was only done because a Judgment was entered against him. As in Stark, the Defendant's Motion to Set Aside the Entry of Default must be denied as he failed to establish good cause for his failing to file a responsive pleading or defense.

The Plaintiff is not aware of any meritorious defense the Defendant may have and the grounds he alleges in his motion are in error as he is basing it on the grounds that the proposal submitted to the Court included plumbing work.

Lastly, setting aside the entry of default would be highly prejudicial to the Plaintiff. The Plaintiff would have to litigate this matter and incur additional attorney's fees and costs. Additionally, it would further delay a resolution of this matter for the Plaintiff who has been attempting to obtain payment for his services for a substantial period of time.

The Defendant also argues in his Motion that the Judgment against the Defendant should be alter and/or amended with new conclusions of law or facts. As this Court should deny the Defendant's request to set aside the default, the Defendant is not entitled to a full hearing or any modification to the Order.

"A defendant in default admits liability but not the damages..." Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC, 408 S.C. 87, 757 S.E.2d 557, 558 (S.C. App. 2014) *citing*, Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct.App. 2012). At the damages hearing, a defendant cannot argue liability, he may participate by cross-examining witnesses and objecting to evidence. , Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192,

203. 723 S.E.2d 597, 603 (Ct.App. 2012). A defendant in default is entitled to no more.

Ammons v. Hood, 288 S.C. 278, 282, 341 S.E.2d 816 (S.C. App. 1986). Due to the fact that the Defendant is properly in default, liability has been admitted and the Defendant cannot now argue the issue of liability or any defense.

The Defendant's motion goes into great detail regarding the Plaintiff's license with this State and the laws regarding recovery. Defendant's entire argument fails if plumbing work was not included in the proposal. Surprisingly, the Defendant's motion does not even allege that plumbing work was included in the proposal but bases his argument that the Plaintiff cannot recover because he is not licensed to be paid to perform plumbing work.

At the damages hearing, the Plaintiff testified that he was licensed by the South Carolina Labor, Licensing and Regulation Department. He also testified that he performed work to the residence was done to repair water damage resulting from a broken water heater. The Plaintiff did not testify that any portion of the \$9,500.00 repair estimate was for plumbing work nor did the Defendant question him as to a breakdown of what the \$9,500.00 estimate covered. The Defendant was permitted to cross examine the Plaintiff regarding anything contained in his direct testimony. The Defendant never questioned the scope of the proposal. The Defendant, in his motion, goes into great depth, outlining the scope of the Plaintiff's license and arguing that the Plaintiff does not have a license to perform plumbing work. He further argues that no evidence was plead, nor to counsel's knowledge presented, that any person licensed to do plumbing was involved. The Defendant also sets forth an in-depth listing of various portions of the S.C. Code regarding licensing and the result of failing to be licensed and ultimately concludes that the Plaintiff's suit is *ultra vires* and thus this Court does not have jurisdiction over this matter.

Defendant's argument has an essential flaw. He is assuming that the scope of the work that supports the \$9,500.00 repair proposal includes work performed for plumbing. There has been no evidence presented that the Plaintiff's work included plumbing because it did not. Therefore, Defendant's argument that this Court lacks jurisdiction is in error and thus he should not be entitled to alter or amend the Judgment.

The Defendant further argues that Plaintiff's contract is illegal and thus he is prohibited from recovering because he is an unlicensed contractor. Defendant clearly states in his Motion that the Plaintiff is a licensed contractor and sets forth the areas the Plaintiff is licensed. The Defendant rests his sole position on the fact that the damage proposal includes plumbing work when it does not or that any portion of the judgment includes damages for plumbing which it does not.

Our Courts have consistently held that "a party cannot use a motion to... alter or amend a judgment to present an issue that could have been raised prior to the judgment but was not. Tallent v. South Carolina Dept. of Transp., 363 S.C. 160, 165 609 S.E.2d 544 (S.C. App. 2005) citing, Kiawah Prop. Owners v. Public Serv. Comm'n, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004). A party cannot raise issue for first time in Rule 59(e), SCRCF motion which could have been raised at trial. Id.

The Defendant has had ample opportunity to raise any of the issues presented in his motion to this Court or even to Plaintiff's counsel, however he has chosen to ignore these opportunities and chooses to only raise these issues after a judgment has been entered against him. A *pro se* litigant has an obligation to be familiar with the substantive and procedural laws of this State, and although a *pro se* litigant may be given leniency by our Courts when they attempt to comply with these rules, failure to file any responsive pleadings, failing to cross-

examine a witness when attending a damage hearing, or even attempt to advise the Court that he should not be in default, should not be grounds for a *pro se* litigant to re-open a case because he was unsatisfied with the outcome. Absent the Defendant establishing good cause to set aside a default this Court must deny this Motion to Alter and/or Amend.

Based upon the foregoing arguments, the Defendant's Motion to Alter and/or Amend the Judgment and to Set Aside the Entry of Default should be denied.

Respectfully Submitted,

s/Stephen D. Schusterman
SCHUSTERMAN LAW FIRM, P.A.
Post Office Box 4211
541 East Main Street
Rock Hill, South Carolina 29732
(803) 325-7788
Attorney for Plaintiff

November 3, 2020

1 A Jimmy R. Shaver, Jr.
2 Q Mr. Shaver, where do you live?
3 A 116 Sterling Drive, York.
4 Q How long have you been a resident of York County?
5 A All my life.
6 Q What is your occupation?
7 A I'm a contractor.
8 Q What is the name of your company?
9 A Shaver Construction.
10 Q Are you licensed by the LLR?
11 A Yes, sir. I have a bond by LLR.
12 Q Are you licensed in carpentry, roofing, vinyl,
13 aluminum siding?
14 A Yes.
15 MR. SCHUSTERMAN: May I approach the
16 witness.
17 THE COURT: Yes. You may.
18 Q Can you identify this document?
19 A Yes. That's mine.
20 Q That's your license?
21 A A copy of it.
22 Q Were you so licensed in 2017?
23 A Yes. I have been for about 25 years.
24 Q Twenty-five years?
25 A Yes.

1 MR. SCHUSTERMAN: Your Honor, we would
2 mark his license as Exhibit 1.

3 WHEREUPON: Document marked as Exhibit 1.

4 Q So let's go back to June 29th, 2017. Can you tell me
5 on that day you were a licensed contractor. Had you
6 received a call from somebody?

7 A Yeah. I received one from Donnie Shaver.

8 Q What is your relationship to Donnie Shaver?

9 A We're cousins. His father is my daddy's brother.

10 Q So there's a relationship. Are you close family?
11 Is there a close family relationship?

12 A (Indicating)

13 Q How many times have you seen Mr. Shaver in the last
14 30 years?

15 A One time at my dad's funeral back in '17.

16 Q Back in 2017?

17 A (Indicating)

18 Q Is it fair to characterize the call as somewhat out
19 of the blue?

20 A Yeah. A little bit, yeah.

21 Q Why was he calling you?

22 A Had some problem with his mother's double wide mobile
23 home and some water problem with the floors.

24 Q Where is that mobile home located?

25 A Sherwood Road. Right over here in Clover.

1 Q In York County?

2 A Yes.

3 Q So there was -- I assume he was calling you because
4 he wanted your help as a contractor?

5 A He wanted me to come out and look at it, yes.

6 Q Did you go out and look at it?

7 A Yes.

8 Q What did you find?

9 A The bathroom floor was mainly gone from water damage,
10 several feet into the master bedroom, the laundry
11 room. The water heater was a problem, the floor
12 around the water heater and the floor around the
13 electric furnace.

14 Q And that was all from damage from a water heater?

15 A Yes, sir.

16 Q What needed to be done to remedy the situation?

17 A Me go in there and cut some sheetrock out of the
18 walls, put new sheetrock up. I had to pull the floor
19 up, redo all the flooring.

20 Q Whose mobile home was it?

21 A It was actually his mother's double wide when she was
22 living.

23 Q Did you know that that was her double wide mobile
24 home?

25 A He told me it was, yeah.

1 Q When you went out there the first time, did he have
2 keys to it? Was it apparent -- You didn't have to
3 crawl through the window or anything like that.

4 A He unlocked the gate and unlocked the house.

5 Q Did he act as if he had care, custody and control
6 over it?

7 A Yeah. He walked all the way through it and said he
8 was trying to fix it up. His brother was suppose
9 to come to town and work a little bit, and he was
10 going to probably be staying there or something like
11 that.

12 Q At that day, that first time you met, it was just you
13 and Mr. Shaver?

14 A Yes. I believe so.

15 Q Did you give him a price that day?

16 A Yeah.

17 Q How much was that price?

18 A 9,500.

19 Q Did he hire you that day?

20 A He said that he wanted me to come back and meet with
21 him and the adjuster.

22 Q Insurance adjuster?

23 A Yes.

24 Q And did you do that?

25 A Yes. I went back. We walked through everything and

1 went over everything with them. The insurance
2 adjuster and Donnie told me to go ahead and start to
3 work.

4 Q How much after -- How much time was there between the
5 first visit with just you and Donnie and the second
6 visit with the adjuster?

7 A Maybe a week and a half.

8 Q You go back out there. I assume the visit was
9 somewhat similar except for there being an adjuster?

10 A Yeah.

11 Q When I ask you, you have to say yes, no, not uh-huh,
12 un-huh.

13 A Okay. I'm sorry.

14 Q I do it, too. So when you went out the second time,
15 you went through it again. Nothing had changed, I
16 assume.

17 A Everything was the same.

18 Q The same. You quoted the 9,500 again.

19 A Yeah.

20 Q At that point, what was the instruction given to you
21 by Mr. Shaver and the adjuster?

22 A They both told me to go ahead and start work whenever
23 I could get it worked in.

24 Q That instruction was given by both Mr. Shaver and the
25 adjuster?

1 A Yes. I think the adjuster told him okay, he would go
2 ahead and file the claim and take care of that. They
3 both told me I could start work whenever I could.

4 Q Okay. Did you take any kind of deposit or anything?

5 A No. I never do.

6 Q So you started the work. Did the insurance company
7 make you do anything before you started the work?

8 A No. Well, a copy of the agreement you've got over
9 there.

10 Q So that's what I'm getting at. Tell me --

11 MR. SCHUSTERMAN: May I approach the
12 witness.

13 THE COURT: You may.

14 Q Tell me what this document is?

15 A That is just my proposal telling them what we'll do,
16 and the price on everything. Donnie was suppose to
17 give this to his insurance adjuster.

18 Q Tell me when did you prepare that document? Was it
19 after the first visit or after --

20 A After the second visit.

21 Q After the second visit?

22 A Yes, sir.

23 Q So the adjuster and Mr. Shaver both said go ahead and
24 start even without that proposal being done?

25 A Right. I guess.

1 Q When you did that proposal, who did you give it to?

2 A Donnie.

3 Q You gave it to Donnie, Donnie Shaver?

4 A Yeah.

5 Q You had nothing to do with the insurance.

6 A No. I had nothing to do with that.

7 Q You were not -- There was not any kind of deal that
8 you would only be paid if the insurance paid or
9 anything like that?

10 A No, sir. The insurance adjuster -- A lot times
11 they'll tell you they'll send you a check, but he
12 didn't say nothing to me about it so --

13 MR. SCHUSTERMAN: Exhibit 2 or B.

14 THE COURT: Mr. Shaver, any objection
15 to --

16 MR. DONNIE SHAVER: I have quite a few.

17 THE COURT: Take a look at Plaintiff's
18 2 and let me know specifically what you object
19 to.

20 MR. DONNIE SHAVER: This was presented to
21 to the insurance adjuster at the time of the
22 meeting.

23 THE COURT: Do you have any objection?

24 MR. DONNIE SHAVER: Yes. It wasn't
25 subjected or submitted to the insurance adjuster

1 until after the meeting is not a true statement.

2 THE COURT: You can cross-examine the
3 witness. Do you have any objection to me
4 receiving that document?

5 MR. DONNIE SHAVER: No. I don't.

6 THE COURT: Plaintiff's 2 entered without
7 objection.

8 WHEREUPON: Document entered as Plaintiff's
9 Exhibit 2.

10 THE COURT: Let's revisit because I don't
11 think I stated Plaintiff's 1 in evidence so --
12 Any objection to Plaintiff's 1?

13 MR. DONNIE SHAVER: No.

14 THE COURT: Plaintiff's 1 entered without
15 objection.

16 WHEREUPON: Document entered as Plaintiff's
17 Exhibit 1.

18 MR. SCHUSTERMAN - RESUMING

19 Q So at this point, you have permission for \$9,500 to
20 do this scope of work?

21 A (Indicating)

22 Q Tell the court what you did at that point?

23 A I told him it would be a couple of weeks before we'd
24 get it worked in. We were going to start on it. He
25 said he wasn't in no hurry. I said, well, good.

1 We'd come over here and work two or three days one
2 week and skip a few days and get some other stuff
3 done. He said that would be fine. That's what we
4 did. Every time we had to go over there, I'd let him
5 know. He's show up, unlock the gate, unlock the
6 house door for us.

7 Q So he knew that you were doing work because you
8 couldn't get in without him?

9 A That's right.

10 Q Was the job completed?

11 A Yes, sir.

12 Q And everything that is on that proposal, was it done?

13 A Yes, sir.

14 Q How long did it take?

15 A Maybe a month.

16 Q So now it's a month and you contact Mr. Shaver and
17 say job's done. It's time to get paid. What
18 happened?

19 A I never got paid. He didn't get back in touch with
20 me or anything.

21 Q How many times did you try and get paid?

22 A I don't really remember. It was numerous times
23 though. I kept waiting, waiting, waiting and never
24 did get paid.

25 Q Okay. How long did you wait before we get to the

1 next step?

2 A A month and a half, maybe two months, something like
3 that.

4 Q During that time, how many times - not exact - did
5 you attempt to call him to try and deal with this?
6 Did you call one time?

7 A Two or three times a week.

8 Q Per week?

9 A Yeah.

10 Q So if it was six weeks, it might have been a dozen
11 phone calls?

12 A Yeah.

13 Q Did you ever get a response?

14 A No. I did get a response from someone --

15 Q Let's do it like a story. It makes it easier for
16 everybody to follow. During that period, six week to
17 two month period, did you ever get a response from
18 Mr. Shaver from your attempt to collect the debt?

19 A No.

20 Q What did you do next?

21 A Then I talked to a few people. They told me it was
22 best to go to small claims court. You'd get it
23 settled quicker and get out of there.

24 Q And the reason was because the limit of what you
25 could collect was less than the 9,500, correct?

1 A Yes.

2 Q Did you go to magistrate court and file there?

3 A Yes. I did. I went to magistrate's court and filed
4 it.

5 Q How much did you ask for there?

6 A I think 7,500 was the limit down there.

7 Q Correct. So you asked for the 7,500.

8 A (Indicating)

9 Q Did you have a hearing in front of Judge Berinsky?

10 A (Indicating)

11 THE COURT: Answer yes or no.

12 A Yes, sir.

13 Q So you had a hearing. You served him.

14 A Yes, sir.

15 Q Did Mr. Shaver come to court for that?

16 A Yes, sir.

17 Q What happened at that first hearing?

18 A At the first hearing --

19 Q Back up. I'm sorry. I want to go in order. Prior
20 to that first hearing, did anyone contact you before
21 that hearing?

22 A Someone with a North Carolina phone number who said
23 he was an attorney up there representing Donnie, and
24 he told me we'd settle for \$3,500. I laughed at him
25 and said I've got a lot more than that in it myself.

1 Q And that was the extent of the conversation?

2 A That was it.

3 Q Did some man or some attorney appear in court with
4 Mr. Shaver?

5 A No.

6 Q Did you ever hear from this voice again?

7 A No.

8 Q So you don't even know if he was lawyer. You don't
9 know who?

10 A I have no idea.

11 Q And that's the only communication?

12 A (Indicating)

13 Q You go to court. What happened in court that time?

14 A We went to court in front of Judge Berinsky, and he
15 admitted everything, admitted we did the work and the
16 adjuster got -- paid for the work and everything. He
17 told Judge Berinsky that I could get paid out of his
18 mother's estate. Judge Berinsky asked me if that
19 would be all right. I said that's fine. As long as
20 I get paid, I'm fine, you know. About a month later
21 after court through the grapevine, I heard the estate
22 had been settled for over a year. I got to checking
23 and got documents on it and took it back to Judge
24 Berinsky again.

25 Q So you were going to -- You didn't care where the

1 money came from?

2 A No. As long as I get paid, I'm fine.

3 Q So you're told you can get paid, you'll just get it
4 out of his mother's estate?

5 A (Indicating)

6 Q When you leave court, you check and it turns out --
7 How long before had the estate been closed?

8 A A little over a year.

9 Q And you checked with probate court?

10 A (Indicating)

11 Q So the estate was closed for over a year.

12 A (Indicating)

13 Q So you weren't getting your money there?

14 A Yeah.

15 Q So you go back to the judge, and he has another
16 hearing?

17 A Yes.

18 Q Correct?

19 A Yes.

20 Q Tell me about the next hearing.

21 A We got in court. I actually went to probate and got
22 documents showing it had been settled. In court, he
23 told the judge he didn't know. He didn't have no
24 idea it had been settled. I showed documents where
25 him, his brother and his sister signed off on

1 everything. Along with those documents, I had a
2 little thing I had where it showed the copy of the
3 property tax bill on the house up there, the double
4 wide. It had her name and Donnie's name up under it.
5 Judge Berinsky seen that, and he said you're showing
6 proof of property. I have to dismiss this case.

7 Q Did he ever explain to you why he had to dismiss --

8 A He said it's the law. If you show proof of property,
9 try to show proof of property, you got to dismiss the
10 case. I've never heard of that, but I don't the full
11 law.

12 MR. SCHUSTERMAN: May I approach?

13 THE COURT: Yes.

14 Q Can you identify this document?

15 A Yeah. That's where Judge Berinsky ruled in his
16 favor, dismissed it because he said I showed proof of
17 -- who owned the property.

18 Q Did you -- Not that it's a standard -- Did you
19 understand what he meant by this?

20 A I understood what he meant, but I didn't know nothing
21 -- some kind of laws, you know. I was just showing
22 that his name was on the tax thing where the mail is
23 dropped, he gets the mail, you know, on the property
24 tax.

25 MR. SCHUSTERMAN: Your Honor, just to have

1 a complete record I would like to just --
2 Obviously, orders are always a part of -- I'd
3 like to make that a part of the record just
4 so you're aware, the court is aware of the
5 history of this case.

6 MR. SCHUSTERMAN - RESUMING

7 Q You're just seeking \$9,500, correct?

8 A Yes, sir.

9 Q You're not seeking -- You're not looking to own a
10 piece of property or take the property or --

11 A I'd like to get my money back. I've done paid you
12 now, too. I'd like to just get my money back is all
13 I want to do.

14 Q Have you received anything towards the \$9,500?

15 A No, sir.

16 Q Has Mr. Shaver ever contested the amount either to
17 you personally or to anyone, to Judge Berinsky or
18 anything regarding the work or the amount?

19 A Not as far as I can remember, no.

20 MR. SCHUSTERMAN: Please answer any
21 questions that either Mr. Shaver has or the
22 judge has for you.

23 THE WITNESS: Okay.

24 MR. SCHUSTERMAN: Thank you, Judge.

25 THE COURT: Mr. Shaver.

1 MR. DONNIE SHAVER: Thank you.

2 EXAMINATION: (BY MR. DONNIE SHAVER)

3 Q Originally, when this was first initiated, you
4 remember that, right?

5 A (Indicating)

6 THE COURT: Yes or no.

7 A Yes.

8 Q The initial conversation that was imposed between us
9 was that you would look at the work that needed to be
10 done, and I scheduled the time with you to come and
11 look at it because I was the only one that lives in
12 the area with keys to the property. The actual
13 executor of the estate, you were explained to was
14 David Shaver, my brother. He was -- You have the
15 documents to prove it from probate, I guess. His
16 name is on there as the executor. And that I had no
17 authority, none, or inclination to make decisions on
18 his behalf or on the behalf of any insurance
19 corporation that might be involved in it. So the
20 original conversation was -- You quoted me a price of
21 \$1,000 to initially do the work that you looked at.
22 I gave you my brother, the executor, David Shaver's
23 phone number and address and told you that you needed
24 to talk to him.

25 MR. SCHUSTERMAN: I don't want to

1 cut off Mr. Shaver, but he's really not asking
2 questions. What he's doing is testifying and
3 then just looking for him to ratify what he's
4 saying.

5 THE COURT: That's correct.

6 MR. DONNIE SHAVER: I'm trying to lead in
7 to the question.

8 THE COURT: You're taking too long to lead
9 in to the question. Start asking questions.

10 MR. SCHUSTERMAN: Thank you, Your Honor.

11 MR. DONNIE SHAVER - RESUMING

12 Q Do you remember when we first met and you quoted me a
13 price of \$1,000?

14 A No. I never quoted \$1,000 on that work.

15 Q That's not what was

16 MR. SCHUSTERMAN: Objection.

17 Q I'm just saying --

18 MR. SCHUSTERMAN: He can't just --

19 THE COURT: Mr. Shaver, you will get an
20 opportunity to argue. Right now is just for
21 questioning the witness.

22 MR. DONNIE SHAVER - RESUMING

23 Q Did you ever invoice us previous to the \$9,700 that
24 you're claiming you asked for?

25 A You already had a copy of that.

1 Q The proposal?

2 A You already had a copy. The total bill for it. When
3 I tried to call you, you never called me back.

4 Q That was a proposal, I guess. I didn't know it was
5 a bill.

6 THE COURT: Ask a question, Mr. Shaver.

7 MR. DONNIE SHAVER - RESUMING

8 Q You never invoiced us for any amount before that?

9 A Yeah. You knew what the bill was. I told you what
10 the bill was. You had a copy of that. I never knew
11 your brother was over the estate or anything like
12 that. You had the keys. You met me up there.

13 Q Is there any circumstance in which you think you did
14 \$9,700 worth of work?

15 A Yeah. Tearing out all the flooring, hauling off
16 everything, furnishing material and labor.

17 MR. DONNIE SHAVER: That's all I have,
18 your Honor, until my testimony.

19 THE COURT: Mr. Jimmy Shaver, you're
20 excused.

21 MR. SCHUSTERMAN: Can I --

22 THE COURT: I'm sorry. Yes.

23 FURTHER EXAMINATION - BY MR. SCHUSTERMAN

24 Q Mr. Shaver keeps saying 9,700. Is it \$9,500?

25 A \$9,500 is on there, yeah.

1 MR. DONNIE SHAVER: I might have said

2 97.

3 Q It's \$9,500?

4 A Yes, sir.

5 MR. SCHUSTERMAN: That's all. Thank you.

6 THE COURT: You're excused.

7 MR. SCHUSTERMAN: That would be our offer,

8 Your Honor.

9 THE COURT: You can have the time to
10 argue now, Mr. Shaver, if you'd like. In
11 default hearings, you're not able to present
12 evidence. You can cross-examine witnesses, and
13 you can present an argument to the court from
14 the testimony or evidence presented.

15 MR. DONNIE SHAVER: Yes, ma'am. Thank you.
16 I wasn't or never have been the executor of the
17 estate. That was made clear initially.

18 MR. SCHUSTERMAN: I object. I understand
19 there is latitude. I get that but just like
20 his questioning you let it go a little bit, but
21 he's testifying. We never talked about an
22 executor. I don't think under the guise of
23 final argument he gets to testify. Then I
24 leave it to the court's discretion.

25 THE COURT: I agree. Just to let you

1 know, Mr. Shaver, if you talk about evidence
2 that was presented -- that's outside of what was
3 presented, that's not evidence I can take in to
4 consideration.

5 MR. DONNIE SHAVER: I have document proof
6 of what I'm saying, Your Honor, if I can present
7 those for evidence.

8 THE COURT: This is a default hearing. Like
9 I said, you're only allowed to cross-examine and
10 make an argument based upon what was presented
11 today.

12 MR. DONNIE SHAVER: From what was presented
13 today, the initial estimate that he gave me for
14 the work to be done was \$1,000. That's on
15 record in Judge Berinsky's files. I never told
16 Judge Berinsky or him or anybody they could
17 collect out of the estate. I never said
18 anything about me being responsible or having
19 the authority to do anything. His argument
20 and conversations were with my brother and the
21 insurance company. I had nothing to do with it.
22 I had nothing -- I don't what they talked about.
23 The insurance company -- I was there, told him
24 the work needed to be done. They did not tell
25 him to continue with work. I didn't tell him

1 to continue with work.

2 The \$9,500 was an insurance proposal. It
3 was never a quote given to me. It was a
4 proposal to do work. That's all I know, Your
5 Honor. I don't know anything about the -- I
6 wasn't involved in it, not to that extent.

7 THE COURT: Thank you, Mr. Shaver. Anything
8 further, Mr. Schusterman.

9 MR. SCHUSTERMAN: May it please the court.
10 I think much of what Mr. Shaver said, without
11 trying to be a legal jerk, was inadmissible. I
12 think he was testifying to a great degree. The
13 reality is -- I think the testimony is whether
14 or not Mr. Shaver has a brother who is an
15 executor. There were only three people involved
16 in this transaction. It was -- By all accounts,
17 the testimony was that he met with Mr. Shaver,
18 Mr. Donnie Shaver, and the adjuster and that
19 each and every time he went out to the facility,
20 to the house to get in, it was Mr. Shaver who
21 let him in. With all due respect, these are
22 all terrific arguments but maybe they could have
23 been made at a better time and a more
24 appropriate time.

25 I think that my client has shown that

1 there was a proposal. It is uncontroverted
2 that he did the work. Even in Mr. Shaver's
3 closing statement, he acknowledges that he let
4 him in, that the work was done. There's
5 absolutely no evidence whatsoever that he's been
6 paid one cent for it. At this point, I think
7 that it's uncontroverted that the amount was
8 \$9,500. So I believe that we've shown the
9 measure of damages in this matter and would ask
10 for a judgment against Mr. Shaver in the amount
11 of \$9,500. Thank you very much.

12 MR. DONNIE SHAVER: Your Honor, on the
13 proposal, that work was never done. I object to
14 that being even a truth. It was never done.
15 That was a proposal. Even in his words, he was
16 saying you ought to get enough out of this that
17 you can get a free air conditioning unit. I
18 did not even have nothing to do with that. The
19 reason he wasn't paid is it went from a \$1,000
20 bill to a \$9,500 bill overnight because of a
21 proposal.

22 MR. SCHUSTERMAN: May I say something, Your
23 Honor.

24 THE COURT: Yes.

25 MR. SCHUSTERMAN: Because I don't know

1 where this goes from today, for the record --
2 Not to be disrespectful but for the record, I
3 object to everything he stood up and replied
4 was inappropriate, and I don't know that he even
5 has an opportunity to do a second closing. I
6 would ask you to strike everything he said in
7 that regard.

8 THE COURT: I can't consider anything that
9 was outside of evidence presented to me.

10 THE SCHUSTERMAN: Thank you.

11 THE COURT: I'd like to take this matter
12 under advisement. In re-reading Judge
13 Berinsky's order, I just want to review the
14 statute. I just need to review the statute
15 because of the way he worded the order. So
16 let me review just to make sure that I'm
17 proceeding as we should, make sure everything
18 is done properly. I thank the plaintiff for
19 bringing this to the court's attention. Let
20 me review this and then I will issue an order.

21 MR. SCHUSTERMAN: Thank you.

22 THE COURT: In case I did not say, I'm
23 going to accept the Order as Plaintiff's
24 Exhibit 3. I don't know that I stated that.

25 MR. SCHUSTERMAN: I don't know that I

1 offered it formally. Did I offer it formally?

2 THE COURT: I'm going to accept.

3 Plaintiff's Exhibit 3.

4 WHEREUPON: Document entered as Plaintiff's
5 Exhibit 3.

6 WHEREUPON: The hearing was concluded.

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TRANSCRIPT OF PROCEEDINGS

BEFORE: THE HONORABLE TEASA WEAVER

THE COURT: This is Case Number 2020-CP-46-980,
Jimmy Shaver versus Donnie Shaver. Present on
behalf of plaintiff is Mr. Steve Schusterman.
Present on behalf of defendant is Mr. Martin Foster.

This is defendant's motion under Rule 59 E to
alter, amend judgment. Mr. Foster, you may proceed.

MR. FOSTER: Thank you, ma'am. I am, first of
all, very well aware of the fact that I was not at
the hearing. I'm; therefore, making some assumptions
about what happened based upon the Order and what
my client told me.

I've got several issues to discuss. I'm not
attempting to evade any of them raised. The first
and basic matter that I'm raising here is the fact
that Mr. Shaver, Mr. Jimmy Shaver, is not licensed to
do the work he talked about.

Now, in my Brief I noted that he was licensed
to do - we attached this - carpentry, roofing, vinyl,
aluminum siding. My reading of his proposal,
undated, signed by him and not signed by anyone else
is (inaudible) quote, all repairs without concern.
Whatever that means. I assume means without

1 limitation. He discussed the fact that the hot water
2 heater overflow had broken, and he talks specifically
3 about the walls and the insulation.

4 Ma'am, this is not attached to my document, but
5 it is in relation. I believe I can ask the court to
6 take judicial notice of. The LLR, Licensing, Labor
7 and Regulation Board, characterizes carpentry as one
8 area. It characterizes drywall installation and
9 repair as another area and painting and paper wall as
10 another area. Neither of those are licensing -- The
11 plaintiff is not licensed in either of those areas
12 which I've just recited, drywall or painting.

13 I have to go in this case by what he is saying
14 in his proposal, quote, all repairs. He lists that
15 assumingly as taking care of damage to floors, walls
16 and insulation.

17 Opposing counsel rightly makes the argument
18 that, well, we don't know how much of that problem
19 was -- the area that he was licensed in. It's an
20 argument, but with respect, it's a bad argument.
21 The law on illegal contracts - we have this for the
22 court if it wishes - is that if you're illegal in any
23 basic area, that knocks the whole contract out. It's
24 not a matter of dividing it up between this and that.
25 He was not licensed in plumbing. He was not licensed

1 in drywall. He was not licensed in painting or
2 wallpaper. He was not licensed.

3 If I may be allowed to go on with this, the
4 problem with this kind of installation is that when
5 you're not licensed under longstanding South Carolina
6 law -- The earliest case that I could find I haven't
7 cited to the court is that of Lord Bensfield
8 (phonetic) in England in 1775. The cases are
9 consist. They don't look to the question of is this
10 going to be unjust, is this going to hurt one person
11 more than another, shall me make an exception to the
12 guy who had to pay out the money (inaudible) work.

13 Illegal contracts are completely and absolutely
14 ultra vires. They cannot be dealt with by any court
15 except to say go away. Now, I'm quoting some things
16 that I said that I have not supplied to the court.
17 I'll be happy to -- I'm holding this up as an
18 example. I'll be happy to get documents showing that
19 the LLR classifies drywall and painting as a separate
20 issue. Plumbing is certainly a separate issue. We
21 believe on that basis, without any other argument,
22 this matter goes away.

23 I want to get into another matter here, and I'm
24 very disturbed that it may be that I don't understand
25 here what went down. Mr. Jimmy Shaver filed a

1 Summons and Complaint, unverified, stating that he
2 had an oral instruction by, I believe, it was Roy or
3 Rob Taylor to go ahead with the repairs. Rob. I
4 believe the Summons says, and I can look it up, that
5 he got this in late June of whatever year it was,
6 2017, June 29th.

7 Well, counsel has been honest and careful
8 enough, opposing counsel, to file a document which is
9 a letter from July 3rd, 2017, which denies coverage.
10 So here is what we have. We have a Summons and
11 Complaint supposedly unanswered by my client by being
12 in default which says I had permission from the
13 insurance company. And by the way, my cousin, I
14 believe it is, was paid by the insurance company, and
15 I haven't received the money. That's the allegation.
16 We now today, with his Return, have a document saying
17 there is no coverage, there is no payment, there will
18 be no payment.

19 Now, Mr. Schusterman and I have dealt with each
20 other for a good while. I make no implications upon
21 him. I know the quality attorney he is. But for a
22 client -- Again, I don't know exactly what Mr. Jimmy
23 Shaver said at trial. If he tried to advance the
24 theory, under his first cause of action, that he had
25 an agreement, and he hasn't been paid, that's fraud.

1 That is intrinsic fraud. That is to say I went
2 before the court, and I said up and it was down,
3 white and it was black. If I can find it, Your
4 Honor, I would cite the case of Chewning versus, I
5 believe, Ford Motor, where our Supreme Court has
6 basically said that cannot be tolerated.

7 Again, as I say, I wasn't there. I don't know
8 what Mr. -- Let me give you the citation, Your Honor.
9 Chewning versus Fort Motor Company 354 S.C. 72; 579
10 S.E. 2nd 605. It's a 2003 case. There's no basis
11 for a claim for an agreement. So what are we left
12 with? We are left with a claim for, at best, quantum
13 meruit. That is, in fact, what Mr. Schusterman
14 claimed as his second cause of action on behalf of
15 his client.

16 Quantum meruit is a cause of action in which
17 what must be proved and what must be found is the
18 benefit to the party being sued, to the defendant.
19 Now, these issues not having been raised to the court
20 as I certainly -- What I'm reading from your Order,
21 ma'am, is that there's no disagreement the work was
22 completed or the value of the work.

23 Well, that would be fine if we were talking
24 about an action in contract. We are, however,
25 talking about an action in quantum meruit. That's

1 all that's left. There is no action in contract on
2 the basis of the documents that Mr. Schusterman has
3 given us.

4 In order for it to go forward, assuming this
5 court does not accept my argument on legality, there
6 had to be proof of the benefit to my client for the
7 work done. Well, the benefit would have been to the
8 estate of the deceased, would it not, not to my
9 client?

10 Therefore, once again, where are we? Now,
11 ma'am, I have also cited and Mr. Schusterman has
12 ably argued his side that I am improper for saying my
13 client was held in default. I grant this is a fine
14 point. It is not the first point I'm making to the
15 court.

16 It was admitted that my client supplied
17 something to Mr. Schusterman's office. Mr.
18 Schusterman argues that it was not sufficient to
19 make a defense. He may be correct. I don't think
20 that is the claim that can be made or that is the
21 position that can be held.

22 His affidavit to this court, as I recall,
23 contained the standard language saying -- I apologize
24 for having to flip a bit to do it. No notice nor
25 appearance of notice thereof has been served on the

1 client by or on behalf of said defendant.

2 Well, I know what the rules are. This court
3 knows them better than me. There's supposed to doing
4 something with an attorney, they're supposed to
5 appear in court. We are talking about a pro se
6 defendant. I would suggest that that language is
7 probably insufficient to set out what actually
8 happened. I think my client should have been given a
9 full hearing as to whether he was allowed a full
10 defense. I, obviously, have no ability to talk about
11 what he raised or tried to raise at the hearing.

12 Ma'am, these are some serious points. If
13 there's anything I can clarify to you or opposing
14 counsel, I'll be happy to do so.

15 THE COURT: Thank you, Mr. Foster. Mr.
16 Schusterman?

17 MR. SCHUSTERMAN: Thank you, Your Honor. May it
18 please the court. I want to make sure that the court
19 has read and -- not read but has in its possession
20 the memorandum that I submitted to the court in
21 response. It is entitled Plaintiff's Response to
22 Defendant's Motion to Alter and/or Amend.

23 THE COURT: Yes.

24 MR. SCHUSTERMAN: It's about an eight page
25 document. Attached to it are the three pieces of

1 paper that the defendant allegedly brought to my
2 office and left at the front desk.

3 THE COURT: Yes.

4 MR. SCHUSTERMAN: To the degree, Your Honor, that
5 my comments will be brief, I would ask the court to
6 rely on the memorandum that I've supplied as my full
7 and complete response if I in anyway by cutting my
8 comments short I should eliminate any point that I
9 made within my response.

10 My argument is really somewhat simplistic. My
11 argument is that while there may be some very
12 valuable lessons, some legal treaties that Mr. Foster
13 is providing to us, there may be things he may even
14 be right about.

15 The problem is that this is not a case of first
16 impression for this court. The law does not allow
17 someone to come into court, even as a pro se
18 litigant, take a shot, see how it goes, then if it
19 doesn't go right hire someone as skilled as Mr.
20 Foster to come and make all the arguments and bring
21 all the issues up that should have been raised
22 initially.

23 We can't lose sight of the fact, Your Honor,
24 that Mr. Shaver, as it relates to being found in
25 default, even if he had some issue with it when

1 we were in court -- I may be wrong. I want to say it
2 was in September of last year. Even if he had some
3 issue, he had the opportunity then. If I am
4 recalling the hearing differently than the court
5 does, I completely understand, but it is to my
6 recollection that at no time did Mr. Shaver ever tell
7 the court, mention to the court, that he had provided
8 anything to my office, that he had some type of
9 argument, giving him the benefit that he didn't have
10 to put it in what we would call legalese. He could
11 articulate it in anyway possible that he had some
12 issue.

13 It is my recollection that he said nothing. He
14 went through that hearing. Only upon the court
15 deciding the case, did he decide I better get someone
16 as skilled as Mr. Foster to come in to make these
17 arguments that could have been raised, may have been
18 raised. You don't know what the court would have
19 done with it, but to be allowed to do that now, it
20 just seems that it is the classic second bite at the
21 apple.

22 The reality is, Your Honor, that quite candidly
23 this notion of -- To be honest with the court, that
24 these three pieces of paper that I provided to the
25 court, only upon Mr. Foster telling us about this,

1 did I get to the bottom that some man, never
2 addressing who he was, dropped them off. That was
3 all that was done. Those are the three pieces of
4 paper. I can assure the court, as sure as I'm
5 sitting here, that had I known, when I stood before
6 the court on September 24th, that Mr. Shaver had
7 dropped off those three pieces of paper, whatever
8 they were, I would have informed the court.

9 As it relates to the other arguments, I submit
10 that these are all arguments that are, and I don't
11 mean to be flippant about it, but they're a day late
12 and a dollar short. I believe that all the reasons
13 that I articulate in my Response that the case has
14 been heard. The man was given ample time. He chose
15 to do nothing. He was properly before the court, and
16 it has come to an end and that it is not something
17 that the court should entertain and reopen the case
18 or we would be just re-litigating all that was
19 available to Mr. Shaver for months and months that he
20 chose not to avail himself of. As such, I will
21 answer any questions the court may have for me.
22 Thank you.

23 THE COURT: Thank you, Mr. Schusterman. Anything
24 further, Mr. Foster?

25 MR. FOSTER: Briefly, ma'am. Jurisdiction,

1 which is what I'm raising, the legality question, we
2 all know can be raised at anytime. Secondly, the
3 case I'm citing, Chewning, involved a situation, and
4 I am not beginning to compare Mr. Schusterman's
5 situation with this. In that case, the supreme court
6 found that an attorney at one level had failed from
7 (audio interference) discovery that could have ended
8 the case in a different manner.

9 They basically said, in a unanimous decision,
10 this will not stand. Equity demands that we look at
11 the facts. Equity demands that we see the full
12 situation. It was - How should I say? Analogous to
13 a Rule 60 motion which was the Rule 59.

14 Ma'am, if there's anything that I've cited,
15 either in terms of the information from LLR, which
16 I'm holding up, or if the court would like further
17 information about the question of legality of the
18 contract, I would be happy to supply it.

19 MR. SCHUSTERMAN: Your Honor, may I just respond
20 with one sentence?

21 THE COURT: Yes.

22 MR. SCHUSTERMAN: I absolutely join Mr. Foster.
23 I'm familiar with the Chewning case. I want the
24 court to read the Chewning case, and if the court
25 equates my receiving the three pieces of paper, and

1 you have what they are, with what happened in
2 Chewning, I want Mr. Shaver, Donnie Shaver, to get a
3 new trial, if that's the standard that we are
4 imputing.

5 MR. FOSTER: That is not my contention. I'll
6 supply Chewning. I'm quite sure the court has access
7 to Westlaw and whatever else. I'll be happy to
8 circulate the opinion if the court wishes.

9 THE COURT: I can review it. Thank you, Mr.
10 Foster. Thank you, Mr. Schusterman. Anything
11 further Mr. Schusterman?

12 MR. SCHUSTERMAN: No, Your Honor. Thank you.

13 MR. FOSTER: Thank you, ma'am.

14 THE COURT: I may end up taking this under
15 advisement because there's a little bit more -- I'm
16 trying to approach it from the two rules that you
17 cite, Mr. Foster, beginning with Rule 59 E. My
18 understanding is with a Rule 59 E motion, it
19 contemplates two situations. One in which I have
20 misunderstood or failed to correctly apply the law
21 with the facts that were given or that I didn't rule
22 on an issue or argument that was made. I haven't
23 heard that either of those situations apply.

24 What I've heard are arguments or issues not
25 raised by the defendant that you wish for me to now

1 consider in the ruling and that there was nothing
2 that I failed to rule upon. There was no argument or
3 issue that I failed to rule upon.

4 However, I'm going to take that under
5 advisement, but I just wanted to set out for you, Mr.
6 Foster and you, Mr. Schusterman, sort of where I'm
7 coming from now from what I'm seeing. I don't know
8 how a Rule 59 E applies to the arguments that you've
9 made, whether it be jurisdiction or the fact that
10 he's unlicensed which should have been an issue that
11 he raised in a pleading or some sort of response or
12 even in questioning perhaps at the damages hearing
13 although I don't know that at that point it being in
14 default that would have been an issue that would have
15 been correctly raised at that point.

16 That might have been something that he should
17 have affirmatively defended here. That's something
18 that I'm going to have to take a look in to. I'm not
19 seeing either of those two situations that our
20 appellate courts have said apply to this situation.

21 As to the defaults, the rule that you would ask
22 me to relieve from default is 55 C although I don't
23 think that applies in this situation either because a
24 judgment has been issued. It should be, I think more
25 appropriately, a Rule 60 motion. I think Rule 55 C

1 or the portion of Rule 55 that would apply would be
2 for an entry of default, not for default judgments.

3 In my review of our case law, as far as
4 reviewing whether or not to relieve Mr. Shaver from
5 default judgment, I believe the factors or part of
6 the factors are -- I consider the timing of the
7 motion, whether or not you've -- or he has supplied a
8 meritorious defense and the prejudice to the
9 plaintiff in relieving him from default.

10 In this case, it clearly shows he was served
11 with the Summons and Complaint, failed to respond.
12 After that, I believe, he had through some time in
13 April to respond. He did not respond.

14 Thereafter, plaintiff, I believe, in June, filed
15 an Affidavit of Default which was served upon Mr.
16 Shaver. Again, Mr. Shaver did not respond to the
17 Affidavit of Default or file an objection, request a
18 hearing.

19 Then following the service of the Affidavit of
20 Default, there was a damages hearing scheduled. At
21 no time during that hearing did Mr. Shaver object to
22 his default status, the Affidavit of Default. I find
23 that the timing of this motion does not support the
24 relief.

25 As to the meritorious defense, what I see that

1 you have raised, Mr. Foster, I'll review it, but I
2 don't see that it necessarily warrants relief from
3 default. Again, these were matters that Mr. Shaver
4 had plenty of opportunity to plead, to defend himself
5 or to object to service of the Affidavit of Default
6 or at the damages hearing, and some of these issues
7 were raised at the hearing itself. These were not
8 the issues that he raised or at least not that I
9 recall. Mr. Foster, you look like you want to reply.

10 MR. FOSTER: I did want to make one point here,
11 ma'am. It may help the court. One of the rules
12 regarding the Rules of Civil Procedure is, the court
13 looks to the substance of the motion and not to the
14 designation that it's given. I will accept for the
15 sake of this argument that the court is using a
16 proper though (inaudible) interpretation of Rule 59.
17 However, I would suggest that if we have not
18 adequately invoked Rule 59, we have more than
19 adequately invoked Rule 60, both as to fraud and as
20 to jurisdiction and as to the question of whether
21 there's been an actual proof under the theory of
22 quantum meruit, the benefit to the party (audio
23 interference) which I believe, and I haven't heard
24 anything - no offense, ma'am - yourself or Mr.
25 Schusterman indicate otherwise that the question of

1 benefit was tried in the case. So to that extent, I
2 believe that's where we're at from my point of view.

3 THE COURT: I'm just addressing the way you --
4 the rules that you supplied. I'm not saying that
5 your use of the Rule 59 E is inappropriate. What I'm
6 saying is that my review of it and what -- As far as
7 your issues of jurisdiction and the illegal contract.

8 MR. FOSTER: I understand, ma'am, and I don't
9 mean to interrupt the court. What I'm saying is that
10 if I've, in fact, improperly designated this as a
11 matter of Rule 59, the fact of the matter is the duty
12 and the ability of the court goes to the full scope
13 of the civil procedure rules. That includes the
14 grounds under Rule 60. And while there may be some
15 basis for saying, I'm not arguing with the court,
16 that 59 is too narrow (inaudible). Rule 60 is not so
17 enclosed. That's all.

18 THE COURT: Any response to that, Mr.
19 Schusterman?

20 MR. SCHUSTERMAN: No, ma'am. Thank you.

21 MR. FOSTER: I always try to bring you the easy
22 ones, ma'am.

23 THE COURT: I like a challenge. I'm going to
24 take this matter under advisement. I just wanted to
25 relay to you both my initial review of this and where

1 -- Mr. Foster, I'm not saying your Rule 59 E was
2 inappropriate. It was the Rule (audio interference)
3 Mr. Schusterman, I am going to review as if Mr.
4 Foster made a Rule 60 motion as to relief from
5 default.

6 MR. SCHUSTERMAN: Thank you.

7 MR. FOSTER: By the way, Steve, I appreciate the
8 fact that you lied about me so nicely about my
9 abilities. I'll get you next time I need someone to
10 do it.

11 MR. SCHUSTERMAN: For two fifty an hour, I can
12 vouch for you all day long.

13 THE COURT: Thank you both. This concludes the
14 hearing unless either one of you have anything
15 further you want to add.

16 MR. FOSTER: Thank you, ma'am.

17 THE COURT: Thank you both.

18 MR. SCHUSTERMAN: Thank you.

19 WHEREUPON: The hearing was concluded.

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CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not an other material.

April 16, 2022



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