

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY)

FIFTEENTH JUDICIAL CIRCUIT

Ex Parte Waccamaw Publishers, Inc.,)

CASE NO.

Plaintiff,)

2014-CP-26-02004

v.)

MOTION AND ORDER INFORMATION

Aaron C. Butler,,)

FORM AND COVER SHEET

Defendant.)

Plaintiff's Attorney:
 Jay Bender, SC Bar #251
 Bender Baker Ravenel & Bender
 Post Office Box 8057
 Columbia, SC 29202
 Telephone: (803) 799-90091 Fax: (803) 799-3423
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Defendant's Attorneys:
 Henrietta U. Golding, SC Bar #2173
 James K. Gilliam, SC Bar #76695
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Attorney for Intervening Party, Sun Publishing Co.
 Inc.
 George W. Redman, III, Esquire, SC Bar #72365
 Bellamy Law Firm
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 Myrtle Beach, SC 29578-0357
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- MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
 FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
 PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: **Motion to Dismiss**

Estimated Time Needed: **30 minutes**

Court Reporter Needed: YES / NO

SECTION II: Motion/Order Type

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for Plaintiff / Defendant

Date submitted

SECTION III: Motion Fee

PAID - AMOUNT \$25.00

EXEMPT: Rule to Show Cause in Child or Spousal Support

(check reason) Domestic Abuse or Abuse and Neglect

Indigent Status State Agency v. Indigent Party

Sexually Violent Predator Act Post-Conviction Relief

Motion for Stay in Bankruptcy

Motion for Publication Motion for Execution (Rule 69, SCRPC)

PAID

04/29/14

2014 APR 29 PM 1:18
CLERK OF COURT
JUDICIAL CIRCUIT
OF COMMON PLEAS

<input type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____	
<input type="checkbox"/> Other: _____	
JUDGE'S SECTION	
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order.	
<input type="checkbox"/> Other: _____	JUDGE CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: _____	
<input type="checkbox"/> CONTESTED - AMOUNT DUE: _____	

SCCA/233 (11/03)

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
 COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CIVIL ACTION NO. 2014-CP-26-02004

Ex Parte Waccamaw Publishers, Inc.,)
)
 Appellant,)
)
 vs.)
)
 Aaron C. Butler, Associate Chief)
 Magistrate for Horry County,)
)
 Respondent,)
)
 IN RE:)
 Denial of Access to Copies of)
 Executed Search Warrants.)
 _____)

**MOTION TO DISMISS THE
 APPELLANT'S NOTICE OF APPEAL**

CLERK OF COURT
 2014 APR 29 PM 1:18
 HORRY COUNTY

Specifically preserving all rights and objections, the Respondent, Aaron C. Butler, Associate Chief Magistrate for Horry County (hereafter “Judge Butler”), by and through his undersigned attorneys, moves before this Honorable Court for an Order dismissing the Notice of Appeal filed by Waccamaw Publishers, Inc. (hereafter “Appellant”) pursuant to Rule 12(b)(2), 12(b)(4), 12(b)(5), and 12(b)(6) on the following grounds:

1. The letter from Judge Butler, dated March 12, 2014, denying Appellant’s request for copies of certain search warrants is not a “final judgment” and is not appealable pursuant to S.C. Code Ann. § 14-3-330. See Mid-State Distribs. Inc. v. Century Importers, Inc., 310 S.C. 330, 426 S.E.2d 777 (1993).

2. This Honorable Court does not have personal jurisdiction over Judge Butler because Appellant failed to file and serve a summons as required by Rule 3(a), SCRPC. See Brown v. Evatt, 322 S.C. 189, 470 S.E.2d 848 (1996) (citing Rule 3(a), SCRPC, and recognizing

that circuit court acquires personal jurisdiction over the parties once the action is commenced by the filing and service of the summons and complaint).

3. This Honorable Court should dismiss the Notice of Appeal filed by Appellant for insufficiency of service of process because Appellant failed to file and serve a summons on Judge Butler.

4. The Appellant has failed to state facts sufficient to constitute a cause of action because Judge Butler is immune from suit under the doctrine of common law judicial immunity and the immunities provided by the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-60.

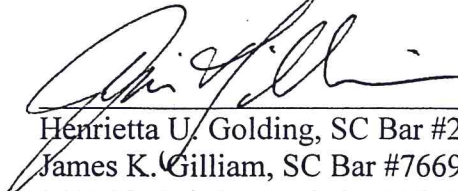
5. The Appellant has failed to state facts sufficient to constitute a cause of action because suit against Judge Butler, under these facts, is barred by Article III, Section 2 of the United States Constitution, which requires there be a “controversy” between litigants that is “definite and concrete, touching the legal relationships of the parties having adverse legal interests.”

6. The Appellant has failed to state facts sufficient to constitute a cause of action because Appellant’s action against Judge Butler is non-justiciable, not ripe for adjudication, and moot, in that there is no real and substantial controversy between the Parties which is appropriate for judicial determination. Judge Butler is not an adversary of Appellant. He is solely but a judicial officer bound to decide issues according to law.

WHEREFORE, Judge Butler moves to dismiss the Notice of Appeal filed by Appellant and for such other and further relief as this Honorable Court may deem just and proper.

[Signature Block on Following Page]

McNAIR LAW FIRM, P.A.


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Attorneys for Aaron C. Butler

Myrtle Beach, South Carolina

April 29, 2014

CERTIFICATE OF SERVICE

I, Sheila A. Evans, an employee of McNair Law Firm, P.A., certify the foregoing documents were served on counsel of record, via Regular U. S. Mail, postage prepaid and affixed thereto, on the _____ day of April, 2014, as follows:

Jay Bender, Esquire
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Attorney for the Appellant

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*Attorney for Intervening Party, Sun Publishing
Co., Inc.*



Myrtle Beach, South Carolina

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SOUTH CAROLINA