

EXHIBIT "B"

STATE OF SOUTH CAROLINA
COUNTY OF YORK

John Patton and Tara Patton,
Plaintiffs,

v.

Palmetto Contracting Services of York
County, LLC and Lester Van Epps.
Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2020CP4603434

**ORDER GRANTING DEFENDANTS'
MOTION TO SET ASIDE JUDGMENT
AND
DENYING PLAINTIFF'S MOTION TO
CORRECT A CLERICAL MISTAKE**

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APR 28 2023

SC Court of Appeals

This matter came before me on January 10, 2023 for a re-hearing upon Defendants motion to set aside the October 5, 2021 Order for Default Judgment. Also heard was Plaintiffs' Motion to Correct a Clerical Mistake. Present at the hearing: Daniel D. D'Agostino for Defendants; and Charles B. Burnette IV for Plaintiffs.

The Defendants assert that the judgment should be set aside as void because the Defendants have not been served with the summons and complaint, and that Plaintiffs failed to properly name Lester Van Epps, III by omitting the suffix. Plaintiffs argue that any misnomer or defects in service of process were waived or cured because the Defendants had actual notice of the proceedings. Plaintiffs request that Defendants' motion be denied, and that the pleadings be corrected to add the suffix ("III").

FINDINGS OF FACT

As proof of service, Plaintiffs filed an Affidavit of Personal Service and an Affidavit of Mailing. In the latter, the affiant states that service was made by certified mail to United States Corporation Agents. Plaintiffs agree that all service upon United States Corporation Agents was improper because it is not an authorized agent to accept service for either Defendant. The other affidavit was executed by private process server, Sheila Dover. Dover attests that the pleadings were delivered to "Lester Van Epps" at an address in Catawba, S.C. Plaintiffs' counsel references other proof in his pre-trial brief, but the Defendants objected. The pre-trial brief was not accompanied by testimony, affidavit or exhibit, so it can only be considered as argument. Therefore, the only proof of service provided by Plaintiff is Dover's affidavit.

In rebuttal, the Defendants offered a copy from the South Carolina Secretary of State website, which lists Lester Van Epps, III as the registered agent for the Defendant LLC. at an address in Edgemoor. (Defendants' exhibit B). Plaintiffs do not dispute this fact. Defendants also presented copies of various forms of identification for Lester Van Epps, III, including his North Carolina Driver's License, which lists an address in Washington, N.C. (Defendants' exhibit E).

CONCLUSIONS OF LAW

A plaintiff bears the burden of showing that a court has personal jurisdiction over a defendant. *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996). An affidavit is prima facie evidence of service, but it may be impeached by extrinsic evidence. *Richardson Const. Co., Inc. v. Meek Engineering and Const., Inc.*, 274 S.C. 307, 262 S.E.2d 913 (1980). If the court lacks personal jurisdiction, the judgment is void and should be vacated. *McDaniel v. U.S. Fidelity and Guar. Cp.*, 324 S.C. 639, 478 S.E.2d. 868 (Ct. App. 1996); Rule 60(b)(4). SCRPC.

The parties agree that Lester Van Epps, III, is the correct name of the individual Defendant. The parties also agree that Lester Van Epps, III, is the registered agent for the Defendant LLC. Therefore, personal service upon Lester Van Epps, III, would be proper service for both Defendants.

As stated before, the only proof of service before the Court is Dover's affidavit. The Defendants do not contest that Dover served some individual, but argue that the affidavit falls short of showing that service was made upon Lester Van Epps, III. I agree.

Dover did not use a suffix. She did not detail what steps, if any, she took to determine the person's identity. She listed no physical description. She did not include details regarding the service address in Catawba, S.C., or note what connection it had to the individual. Plaintiffs could have called her as a witness or offered other exhibits. They did not.

Based on the foregoing, Plaintiffs have failed to show that the Defendants have been served with the pleadings; and thus, the judgment should be vacated. Since the orders granting default and judgment will be vacated, Plaintiffs may amend the pleadings as needed.

THEREFORE, IT IS ORDERED:

1. The Defendants' motion is GRANTED;
2. The April 29, 2021 Order of Default and the October 5, 2021 Order for Default Judgment are VACATED;

3. Plaintiffs motion to correct a clerical error is DENIED. Plaintiffs may amend the pleadings as needed prior to service.

Judge's Signature Page to Follow



York Common Pleas

Case Caption: John Patton , plaintiff, et al VS Palmetto Contracting Services Of
York County Llc , defendant, et al
Case Number: 2020CP4603434
Type: Master/Order/Other

So Ordered

s/ Teasa K. Weaver 3084