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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable William H. Seals, Jr.

Appellate Case No. 2023-001142

Circuit Court Case No. 2022-CP-26-07708

Epic-NRG, LLC..... Respondent,

v.

Nicholas James Ragle, Chaps Development, LLC, and

Ragle Sustainable Technology Sales Agency, LLC..... Appellants,

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APPELLANTS' MOTION TO FOR LEAVE TO FILE A MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b)(4) and RULE 60(b)(5) SCRCP IN CIRCUIT COURT OR AS OTHERWISE APPROPRIATE

(signature page to follow)

THE DODD LAW FIRM, LLC

By: /s/ Michael B. Dodd
SC Bar No.: 100599
The Dodd Law Firm, LLC
13 Sevier Street
Greenville, SC 29605
864-747-5607
michael@thedoddlawfirm.com

Attorney for the Appellants

November 17, 2023

TABLE OF AUTHORITIES

RULES

Rule 240 SCACR..... 1
Rule 60(b)(4) SCRCP..... 1
Rule 60(b)(5) SCRCP..... 1

The Appellants, Nicholas James Ragle, Chaps Development, LLC, and Ragle Sustainable Technology Sales Agency, LLC., through their undersigned counsel, hereby file this motion pursuant to Rule 240 of the South Carolina Appellate Court Rules ("SCACR") and Rules 60(b)(4) and 60(b)(5) of the South Carolina Rules of Civil Procedure ("SCRCP") for leave from the Court of Appeals to make a motion pursuant to Rules 60(b)(4) and 60(b)(50 SCRCP. Appellants filed their notice of appeal on July 14, 2023, appealing an order from the Court of Common Pleas in Horry County, ordering that the Foreign Judgment from North Carolina should be fully enrolled and enforceable in South Carolina. Simultaneously, Appellants sought relief from the underlying judgment in this case from the Superior Court in North Carolina, case is numbered, FILE NO 22-CVS-1510. The South Carolina Court of Appeals thereafter granted Appellants request for an extension of time to file and serve the initial brief of Appellant and designation of matter until November 27, 2023.

On November 7, 2023 Appellant received notice that the Superior Court in North Carolina had rendered a decision finding the underlying judgment void. On November 16, 2023, counsel for Appellants in North Carolina notified the undersigned counsel of the decision and sent the proposed order (which has not yet been entered electronically in NC) confirming the court's decision from November 7, 2023 that the judgment in case numbered, FILE NO 22-CVS-1510 in North Carolina was void. (See attached exhibit A). Rule 60(b) states that, "during the pendency of an appeal, leave to make the motion must first be obtained from the appellate court." Appellant now makes this motion pursuant to Rule 240 SCACR and Rules 60(b)(4) and 60(b)(5) SCRCP and requests leave from the Court of Appeals to make a motion pursuant to Rules 60(b)(4) and 60(b)(50 SCRCP in the Court of Common Pleas in Horry County Circuit Court case numbered 2022-CP-26-07708.

Respectfully submitted,

By: /s/ Michael B. Dodd
SC Bar No.: 100599
The Dodd Law Firm, LLC
13 Sevier Street
Greenville, SC 29605
864-214-5012
michael@thedoddlawfirm.com

Attorney for the Appellants

November 17, 2023

EXHIBIT A

Matthew Roberson
Attorney

Phone 828-254-8800
Fax 828-641-9149
Website mwblawyers.com

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From: Grant, Jacqueline D. <jacqueline.d.grant@nccourts.org>
Sent: Tuesday, November 7, 2023 5:32 PM
To: Matthew Roberson <MRoberson@mwblawyers.com>; jsuttonjr@suttonfirm.com
Cc: lmathis@suttonfirm.com; Erica K. Ritson <ERitson@mwblawyers.com>; Crawford, Cindy <cindy.crawford@nccourts.org>
Subject: Epic-NRG,LLC v. Ragle, et al; File No. 22cvs1510

Good evening Counsel,

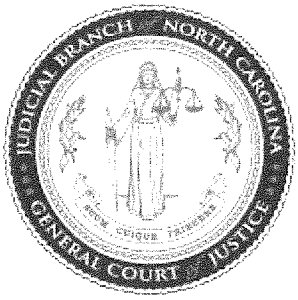
I have reviewed the cases cited in your briefs and the additional case law submitted last Friday. After considering the motions, pleadings and arguments of counsel, the Defendants' Motion for Relief from Judgment is GRANTED. The Plaintiff's Motion to Dismiss/Deny Defendants' Motion for Relief from Judgment/Motion for Sanctions is DENIED. The Plaintiff failed to comply with the rules governing the use of private process servers and, therefore, service by Ms. Welborn was ineffective and invalid. Since there was no valid service of process, the Court did not have personal jurisdiction over the defendants; thereby, rendering the Default Judgment entered by the Court void. A Rule 60(b)(4) Motion for Relief from Judgment based on a void judgment may be raised at any time. Therefore, in the Court's discretion, the Court is relieving the Defendants from the Default Judgment entered in this matter on the grounds that the judgment is void.

Mr. Roberson, please prepare a proposed Order and send it to Mr. Sutton for review prior to sending it to me in word format.

Thanks,

Jacqueline Grant

Resident Superior Court Judge



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Gmail

Epic-NRG, LLC v. Ragle, et al; File No. 22cvs1510

Matthew Roberson <MRoberson@mwblawyers.com> Thu, Nov 16, 2023 at 9:36 AM
To: Michael Dodd <michael@thedoddlawfirm.com>
Cc: "Njragle@gmail.com" <Njragle@gmail.com>

Good morning, Michael,

Attached is the proposed order I drafted based upon the Court's order setting aside the judgment. Opposing counsel is reviewing now, but I do not expect him to object to the form. I will be submitting this to the Court hopefully by the end of the day today or first thing tomorrow.

Matt

McGUIRE WOOD & BISSETTE LAW FIRM
SMART LEGAL

Matthew Roberson
Attorney

Phone 828-254-8800
Fax 828-641-9149
Website mwblawyers.com

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Order on Motion to Set Aside.docx
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STATE OF NORTH CAROLINA BUNCOMBE COUNTY		IN THE GENERAL COURT OF JUSTICE SUPERIOR COURT DIVISION FILE NO 22-CVS-1510
EPIC-NRG, LLC Plaintiff, vs. NICHOLAS JAMES RAGLE, CHAPS DEVELOPMENT, LLC and RAGLE SUSTAINABLE TECHNOLOGY SALES AGENCY, LLC Defendants. _____/	)	**ORDER** **Defendants' Motion for Relief from Judgment** **and** **Plaintiff's Motion to Dismiss/Deny Defendants' Motion for Relief from Judgment/Motion for Sanctions**

THIS MATTER coming on for hearing before the undersigned Superior Court Judge presiding over the November 2, 2023, Civil Session of Superior Court for Buncombe County, North Carolina upon Defendants' Motion for Relief from Judgment and Plaintiff's Motion to Dismiss/Deny Defendants' Motion for relief from Judgment/Motion for Sanctions. Plaintiff was present through its counsel, John R. Sutton, Jr., and all Defendants were present through their counsel, Matthew S. Roberson.

The Court reviewed the Defendants' Motion for Relief from Judgment, Affidavit of Nicholas James Ragle, Affidavit of Erin Marie Ragle, Plaintiff's Motion to Dismiss/Deny Defendants' Motion for Relief from Judgment/Motion for Sanctions, and exhibits to said motion, including the Affidavit of Debbie Welborn, and the pleadings and other papers contained in the court file, including the Motion for Entry of Default, Order Allowing Entry of Default, Motion for Default Judgment, Judgment, and the affidavits filed in support of the Motion for Entry of Default and Motion for Default Judgment.

Further, the Court received and reviewed memoranda of law, and supplemental memoranda, from counsel for Plaintiff and Defendants as well as cited case authority and heard the arguments of counsel.

Having reviewed the motions, supporting materials, pleadings, and papers contained in the court file, memoranda of law submitted by counsel, and having heard the arguments of counsel, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff filed the Complaint herein on April 28, 2022. The Buncombe County Clerk of Superior Court issued a Civil Summons on April 28, 2022.

2. On April 29, 2022, on or about 11:42 a.m., Debbie Welborn, a process server, delivered to Defendants copies of the Complaint and Civil Summons. Ms. Welborn completed and executed a return of service form found on the reverse side Civil Summons.

3. Ms. Welborn was not appointed to serve process by the Buncombe County Clerk of Superior Court under Rule 4(h) of the North Carolina Rules of Civil Procedure.

4. No return of the Civil Summons unexecuted by the Sheriff of Buncombe County, North Carolina, a proper officer of serve process, is contained in the court file that would warrant the use of a private process server pursuant to Rule 4(h1) of the North Carolina Rules of Civil Procedure.

5. On June 10, 2022, counsel for Plaintiff filed an affidavit attaching Ms. Welborn's return of service as evidence of service upon Defendants and relied upon the affidavit and Ms. Welborn's return of service in moving for entry of default.

6. On June 10, 2022, the Buncombe County Clerk of Superior Court entered the Order Allowing Entry of Default.

7. Following entry of the Order Allowing Entry of Default, Plaintiff filed a Motion for Default Judgment on July 20, 2022, along with an affidavit from Plaintiff in support of the Motion for Default Judgment.

8. On August 5, 2022, the Court entered Judgment by default in principal the amount of $60,000.00, and, pursuant to N.C. Gen. Stat. § 75-1.1 et. seq., trebled the principal amount for a total judgment of $180,000.00. The Court also assessed $3,500.00 in attorneys' fees incurred by Plaintiff against Defendants.

9. In the Court's judgment, the Court found as fact that "personal service was had on each of the Defendants on April 29, 2022."

10. According to papers contained in the court file and the Affidavit of Debbie Welborn, the only service of the Summons and Complaint that occurred on Defendants was through Debbie Welborn.

11. On April 19, 2023, Defendants filed the Motion for Relief from Judgment under Rule 60 on grounds that Defendants were not properly served and the Judgment by default was void because the Court never obtained personal jurisdiction. Defendants filed the Affidavits of Nicholas James Ragle and Erin Marie Ragle in support of the Defendants' motion.

12. On May 10, 2023, Plaintiff, in response to Defendants' Motion for Relief from Judgment, filed the Motion to Dismiss/Deny Defendant's Motion for Relief from Judgment/Motion for Sanctions. Plaintiff appended three exhibits to its motion, including the Affidavit of Debbie Welborn.

CONCLUSIONS OF LAW

1. Rule 4(a) of the North Carolina Rules of Civil Procedure requires that a "...complaint and summons shall be delivered to some proper person for service. In this State, such proper person shall be the Sheriff of the county where service is to be made or some other person duly authorized by law to serve summons."

2. In this case, the proper person to serve summons would be the Sheriff of Buncombe County, North Carolina or some other person duly authorized by law to serve summons.

3. Rule 4(h) of the North Carolina Rules of Civil Procedure provides that if "there is not in a county a proper officer, capable of executing process, to whom summons or other process can be delivered for service, or if a proper officer refuses or neglects to execute such process, or if such officer is a party to or otherwise interested in the action or proceeding, the clerk of the issuing court, upon facts being verified before him by written affidavit of the plaintiff or his agent or attorney, shall appoint some suitable person who, after he accepts such process for service, shall execute such process...."

4. The court file contains no affidavit or verified statement attesting to the conditions outlined in Rule 4(h) and the file contains no appointment of Debbie Welborn or other suitable person to serve the Summons and Complaint.

5. Rule 4(h1) of the North Carolina Rules of Civil Procedure provides that "[i]f a proper officer returns a summons or other process unexecuted, the plaintiff or his agent may cause service to be made by anyone who is not less than 21 years of age, who is not related by blood or marriage to a party to the action or to a person upon whom service is to be made."

6. The court file contains no return of service from the Sheriff of Buncombe County, North Carolina showing the Civil Summons unexecuted that would, in turn, permit Plaintiff or his agent to use Debbie Welborn as a private process server, under Rule 4(h1), to serve the Civil Summons and Complaint.

7. The service of the Summons and Complaint by Debbie Welborn on Defendants was ineffective and invalid because Plaintiff failed to comply with the applicable rules of procedure for governing the use of private process servers.

8. Since the service of the Summons and Complaint by Debbie Welborn on Defendants was ineffective and invalid, the Court did not have personal jurisdiction over the Defendants.

9. Because the Court did not have personal jurisdiction over the Defendants, the Judgment by default entered by the Court in this case is void.

10. A motion under Rule 60(b)(4) of the North Carolina Rules of Civil Procedure based upon a void judgment may be raised at any time.

11. Based upon the Court's determination that the Judgment against Defendants is void, the Court, in its discretion, is relieving Defendants from the Judgment by default.

Based on the foregoing Findings of Fact and Conclusions of Law, IT IS, THEREFORE, ORDERED, ADJUDGED, and DECREED as follows:

1. Defendants' Motion for Relief from Judgment is GRANTED and the Judgment by default entered by this Court on August 5, 2022, is hereby set aside and Defendants are relieved from the same; and

2. Plaintiff's Motion to Dismiss/Deny Defendants' Motion for Relief from Judgment/Motion for Sanctions is DENIED.

This the _____ day of November, 2023.

_____
Honorable Jacqueline D. Grant
Superior Court Judge Presiding
Buncombe County, North Carolina

4855-3815-7711, v. 1

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CERTIFICATE OF SERVICE

I, the undersigned attorney for the Appellants., do hereby certify that I have served the below parties in this action with a copy of the Appellant's Motion for leave to file in circuit court, by emailing a copy of the same to the following address and also by United States Mail:

PARTIES SERVED:

Paul H. Hoefer
SC Bar #77506
Robinson Gray Stepp & Laffitte, LLC
P.O. Box 11449
Columbia, SC 29211
(803) 929-1400
Email: phoefer@robinsongray.com

Attorney for the Respondent

By: /s/ Michael B. Dodd
SC Bar No.: 100599
The Dodd Law Firm, LLC
13 Sevier Street
Greenville, SC 29605
864-214-5012
michael@thedoddlawfirm.com

Attorney for the Appellants

November 17, 2023