EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	CASE NO.: 2023-CP-23-02709
	)	
Everett Homes, LLC	)	
	)	
PLAINTIFF	)	
	)	ORDER
vs	)	
	)	
Jermaine Leclerc	)	
	)	
DEFENDANTS.	)	
_____	)	
	)	

THIS MATTER CAME BEFORE THE COURT upon Plaintiff's motion for a damages hearing on an Order of Default Judgment. A hearing was held on November 28, 2023. Present at the hearing was James Stone Craven, Esq. on behalf of the Defendant, Wendell L. Hawkins, Esq. on behalf of the Plaintiff and Jonathan Niemela the sole member of Everett Homes, LLC. The Defendant, just prior to the hearing, to wit, November 21, 2023, filed a Motion for Relief From Judgment and To Dismiss Pursuant to SCRCP, Rules 4 and 60. Attorney for the Plaintiff represented to the Court that he was ready to proceed on the Defendant's Motion prior to the damages hearing. The Court proceeded on the Defendant's Motion first. After hearing argument from both the Defendant's counsel and Plaintiff's counsel, the Court denied the Defendant's Motion for Relief from Judgment and Motion to Dismiss, and proceeded with the damages hearing. The Court accepted the Plaintiff's Affidavit of Damages and took testimony from Jonathan Niemela who was examined by Mr. Hawkins and cross examined by Mr. Craven. After the hearing Mr. Hawkins presented his affidavit of attorney's fees which are awardable as special damages to a prevailing party in a Slander of Title case pursuant to the holdings of Solley v.

Navy Federal Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597, 604-605 (Ct. App. 2012). Prior to the issuance of the Order on the damages hearing, Defendant filed a motion to reconsider based on (1) new evidence that Defendant never resided at 275 Southwest Lost River Road Stuart Florida 34997; and (2) excusable neglect in that Defendant's mother, who resided at 275 Southwest Lost River Road Stuart Florida 34997, was not authorized to accept service on Defendant's behalf. After hearing oral argument, the taking of testimony on the record, a review of the record, a review of the Defendant's Motion to Reconsider and the Plaintiff's Memorandum in Opposition to the Motion to Reconsider, I find as follows:

BACKGROUND

The record reflects that Plaintiff filed this action on May 27, 2023 seeking a quiet title of certain real property known as

> All that certain piece, parcel or lot of land, together with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina being shown and designated as Tract B, on a plat entitled "John Asher," prepared by Stie Design, Inc. dated February 4, 2019 and being recorded in Plat Book 1336, Page 2 in the register of Deeds Office of Greenville County, South Carolina, reference being made to said plat being hereby made for a more complete property description.
>
> This being a portion of the same property erroneously conveyed to Jermaine Leclerc by deed of Everett Homes, LLC dated July 29, 2022 and recorded on August 8, 2022 in the Register of Deeds Office for Greenville County, South Carolina in Deed Book 2665 at Page 224.

along with an action for Slander of Title.

Plaintiff amended its Summons and Complaint on April 30, 2023 prior to service. Plaintiff served the Amended Summons and Complaint on June 7, 2023 via Commercial Delivery Service pursuant to SCRCP, Rule 4(d)(9) upon Betty LeClerc at 275 Southwest Lost River Road Stuart, FL 34997 which Defendant represented through counsel to be his mother and his mother's address. The certificate of service was filed on June 20, 2023. The record also

reflects that an affidavit of non-military service was filed with the Court on June 22, 2023. Plaintiff filed its Motion for Default Judgment and Affidavit of Default on July 14, 2023. An Order of Default Judgment was filed on August 1, 2023 (the "Order"). A certificate of service for the Order was filed on August 2, 2023. The Order directed the Register of Deeds to file a copy of the Order in it's indexes and reflect the transfer of the Property to the Plaintiff. The Order also preserved the Slander of Title cause of action for a subsequent damages hearing. Plaintiff filed its Motion for a Damages Hearing on October 13, 2023. The record reflects that Plaintiff served the Notice of Hearing and Notice of Motion upon the Defendant via Federal Express, overnight delivery to 275 Southwest Lost River Road Stuart, Florida 34997 on October 19, 2023. Defendant's counsel filed a Notice of Appearance on November 11, 2023 and a Motion for Relief from Judgment and Motion to Dismiss on November 21, 2023. At the damages hearing, Plaintiff's counsel announced that he was prepared to have the Defendant's motions argued prior to the damages hearing and the Court proceeded in that fashion. Based on the record, the oral arguments of counsel, the Memoranda reviewed and the testimony of Jonathan Niemela, the sole member of Everrett Homes, LLC the Court finds as follows:

DEFENDANT'S REQUESTS FOR RELIEF

Although the Defendant's Motions are based on both the SCRCP, Rule 60(b)(1) criteria of mistake, inadvertence, surprise or excusable neglect and SCRCP, Rule 4(d)(9), the Defendant's memorandum and oral argument seemed to be based more on improper service. Defendant's counsel did argue that his client made a "mistake" in believing that the dispute had been settled because the Defendant signed the Quit Claim deed sent by Brian Ponder, Esq. of Nelson & Galbreath in Mr. Ponder's May 2, 2023 correspondence which made Defendant aware of the mistake made in the August 22, 2022 closing, however, the Court finds this argument

totally incredulous. If the Court were to believe this argument, it would have to believe the many other inconsistencies that this assertion would give rise to. For instance, the Defendant says he did not receive the Amended Summons and Complaint sent to his "mother's address" some thirty (30) days later, yet he would have certainly had to receive Mr. Ponder's correspondence which contained the very same Quit Claim deed that was introduced at the hearing. Furthermore, the Court finds the Defendant's assertion that he filed the Quit Claim deed with the Register of Deeds quite unbelievable because, as Plaintiff's counsel pointed out, one may only file documents remotely with the Greenville County Register of Deeds through the E-file system which one has to be vetted for and set up an account. Also, the Plaintiff's counsel introduced the indexes of the Register of Deeds cross-checked under the Defendant's name and the Plaintiff's name good through sometime around 11:30 pm prior to the day of the hearing and there was no such entry. These inconsistencies, if not misrepresentations, bring serious doubt upon the credibility and truthfulness of the Defendant's representations to the Court. Therefore, Defendant's request for relief on any SCRCP, Rule 60(b)(1) on the basis of mistake is DENIED.

It appears from the Defendant's Memorandum that the Defendant may have raised some sort of SCRCP, Rule 60(b)(4) and Rule 60(b)(5) arguments for setting aside the Default Judgment, but those arguments were never developed at the hearing and are deemed abandoned.

With respect to the Defendant's SCRCP 4(d)(9) argument that the Default Judgment is void for improper service under the Commercial Delivery Service standards, the Court finds the Defendant's arguments flawed. Defendant's counsel argued, in sum, that Commercial Service Delivery must be restricted to the Defendant only and that it must be served at the Defendant's "usual place of abode" or "dwelling house" (a SCRCP, Rule 4(d)(1) requirement). Defendant represented, through assertions only, that 275 Southwest Lost River Road Stuart, FL 34997 was

not his usual place of abode or dwelling house and that this address was a rental house he owned which was occupied by his mother, Betty LeClerc. Even if this address was not his "usual place of abode" or "dwelling house", the Court finds it to be irrelevant. With respect to the "usual place of abode" or "dwelling house", the Defendant's literal interpretation of the words are not necessarily the law of this State. The Court of Appeals in *Fassett v. Evans*, 364 S.C. 42, 47–48, 610 S.E.2d 841, 844 (Ct. App. 2005) wrote,

> "[a]lthough many courts look to the defendant's intention to return as evidence regarding the location considered one's dwelling or abode, the Fourth Circuit Court of Appeals has noted that the defendant's intent is not in and of itself a test but merely an indication ***"as to whether or not it is likely in a particular case that the one served will actually receive notice of the commencement of the action and thus be advised of the duty to defend.***" citing *Karlsson v. Rabinowitz*, 318 F.2d 666, 668 (4th Cir.1963) (finding no set definition of dwelling or place of abode and that it must be determined by the facts of the particular case) (***emphasis added).***

Because of the many other documents previously discussed that must have been received at the address and come into the possession of Defendant at "his mother's address", the Court finds that the Amended Summons and Complaint were more likely than not to be received by the Defendant and give him actual notice of the commencement of the action. Furthermore, the Defendant represented in his Memorandum that he received the check that was specifically referred to in the Amended Summons and Complaint as being delivered with the Amended Summons and Complaint at his "mother's address." Plaintiff also introduced a "Forewarn" search screenshot showing that the Defendant's most probable address was 275 Southwest Lost River Road Stuart, FL 34997 from February 07, 2009 to current. Plaintiff's counsel also argued that a party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence entitling him to the requested relief. See e.g., *Bowers v. Bowers,* 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App.1991). The Court of Appeals in *Delta Apparel, Inc. v. Farina*, 406 S.C.

257, 267, 750 S.E.2d 615, 620 (Ct. App. 2013) said, "[t]he movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. *BB & T v. Taylor,* 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). "We have never required exacting compliance with the rules to effect service of process." *Roche v. Young Bros., Inc. of Florence,* 318 S.C. 207, 209–10, 456 S.E.2d 897, 899 (1995). "Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Id.* at 210, 456 S.E.2d at 899. "***Further, an [officer's] return of process creates the legal presumption of proper service that cannot be 'impeached by the mere denial of service by the defendant***.' " *Fassett v. Evans,* 364 S.C. 42, 47, 610 S.E.2d 841, 844 (Ct.App.2005) (quoting *Richardson Constr. Co. v. Meek Eng'g and Constr., Inc.,* 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980))." (***emphasis added***). Whether to grant or deny a motion under Rule 60(b) is within the sound discretion of the trial court. *Coleman v. Dunlap,* 306 S.C. 491, 494, 413 S.E.2d 15, 17 (1992). In *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 594–95, 748 S.E.2d 781, 786 (2013), the court opined,

> "[f]urthermore, in reviewing a decision with respect to Rule 60(b), this Court utilizes a deferential standard of review. *See, Tri–County Ice & Fuel Co. v. Palmetto Ice Co.,* 303 S.C. 237, 399 S.E.2d 779 (1990) (recognizing that a motion for relief from judgment pursuant to Rule 60(b) is addressed to the sound discretion of the trial judge, and this Court will not disturb the trial judge's decision absent an abuse of discretion)."

Plaintiff's counsel also argued that SCRCP, Rule 4(d)(9) does not restrict delivery to the Defendant alone. SCRCP, Rule 4(d)(9) provides,

> "Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c) by a commercial delivery service which meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. § 7502(f)(2). Service is effective upon the date of delivery as shown in the delivery record of the commercial delivery service. Service pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a delivery record showing the acceptance by the defendant which includes an original signature or electronic image of the signature of the person served. ***Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the delivery receipt was signed by an unauthorized person***. (***emphasis added)***. If delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

The very nature of the language or Rule 4(d)(9) suggests that an authorized person can sign for the Defendant and if the Defendant is going to assert that the receiving person was unauthorized, the Defendant must demonstrate to the court that the person was unauthorized. In the first hearing, the Defendant in this case did not even attempt to make any such demonstration to the Court and therefore, any argument is deemed waived or otherwise undemonstrated and the Defendant's argument on the Rule 4(d)(9) basis for relief form judgment and dismissal is DENIED. Further bolstering the Plaintiff's position that the Defendant did reside at 275 Southwest Lost River Road Stuart Florida 34997, Plaintiff submitted evidence in its Memorandum in Opposition that Defendant claimed at 275 Southwest Lost River Road Stuart Florida 34997 as his primary residence through real property tax records, the Defendant was registered to vote at that residence, the Defendant sold the property that was listed on his driver's license in 2021, all tax bills for 275 Southwest Lost River Road Stuart Florida 34997 would have been sent and paid from that address and the Quit Claim Deed that Nelson & Galbreath sent in early May 2023 signed by the Defendant on May 17, 2023 and introduced into evidence at the hearing would have also been received by Defendant at 275 Southwest Lost River Road Stuart Florida 34997. The Court also takes notice that the Quit Claim Deed was notarized in Martin

County Florida which is the same county of 275 Southwest Lost River Road Stuart Florida 34997. Again, considering the amplitude of evidence presented in contravention to the Defendant's assertions, the Defendant's Motion for Relief from Judgement and Motion to Reconsider are DENIED.

The Court, having denied any relief to Defendant on any of it's basis for relief from judgment and Motion to Reconsider, moves to the issue of damages and attorney's fees.

DAMAGES

Plaintiff introduced an Affidavit of Damages which was received by the Court. The Plaintiff also took the stand and testified about his damages. The Plaintiff testified that his damages began to accrue on the day he learned of the filing of the erroneous deed that conveyed the Defendant's lot to Defendant along with the contiguous lot that was to be retained by the Plaintiff. Plaintiff testified that he learned of the problem when the Office of Building and Codes posted a "Stop Work Order" notice on the house he was in the process of building on the erroneously conveyed lot. This occurred on May 2, 2023. Plaintiff introduced a copy of the Stop Work Order which appeared to be taped somewhere on the property. Plaintiff testified he called the Building and Codes Office and was told that the Stop Work Order was placed on the Property because the Defendant called their office, showed them the erroneous deed and that the Defendant did not want the Plaintiff working on Defendant's property or words to that effect. It would make no sense for the Plaintiff to place a Stop Work Order on his own property. Plaintiff testified that the Building and Codes Officials allowed him to install the sod he had on site, but nothing further. Plaintiff testified he was not allowed to do any further work until he proved to Building and Codes that the property was back in his name which occurred on August 2, 2023, the date the Order of Default judgment was filed with the Register of Deeds. Plaintiff testified

that he immediately began work on the house to make it ready for final inspections to obtain a certificate of occupancy. One he received the certificate of occupancy, he immediately placed the house on the MLS for sale and ultimately sold the house for One Million and 00/100 Dollars ($1,000,000.00) on October 2, 2023. Plaintiff testified he had lost the use of the money that would have otherwise been available for another project and calculated his damages beginning May 2, 2023 (the day the Defendant's closing attorney made him aware of the mistake) and the day he sold the house, October 2, 2023. Because the Complaint requested pre-judgment and post judgment interest and the Plaintiff had no loan on the house, damages were calculated at the legal rate of interest established by the Supreme Court of South Carolina at 11.5%. By the Plaintiff's calculations, which the Court believes to be correct, Plaintiff is entitled to actual damages of Forty-Seven Thousand Nine Hundred Sixteen and 67/100 ($ 47,916.67).

Plaintiff also requests punitive damages in it's Complaint having asserted that Defendant's behavior was willful, wanton, reckless, malicious and conscionably wrong. Plaintiff asserts in its Complaint that Defendant conscionably refused to cooperate with and follow the closing attorney's request to rectify the situation. Plaintiff further introduced evidence through the Stop Work Order that Defendant knowingly, spitefully and without common decency compounded Plaintiffs injuries by placing a Stop work Order on Plaintiff's property. In essence, Defendant rubbed salt in the wounds of the Plaintiff without care or concern for a fellow man. The Court agrees. Also, because the allegations of the Complaint are deemed admitted in a default judgment case, the Court must accept such allegations as factual. The Plaintiff has requested treble damages in the amount of One Hundred Forty-Three Thousand Seven Hundred Fifty and 01/100 Dollars ($143,750.01) as allowed by S.C. Code of Laws §15-32-530. Because the Defendant is in default, punitive damages are deemed proven by admission, however the

award of punitive damages are at the sound discretion of the Court. Based on the Defendant's behavior in this case, the Court finds that the proper amount of a punitive damages award is $143,750.01 AND IT IS SO ORDERED.

ATTORNEY'S FEES

Plaintiff has requested attorney's fees and costs in its Complaint as special damages. Attorney's fees are awardable as special damages by the holdings of *Solley v. Navy Federal Credit Union, Inc.* 397 S.C. 192, 206-207, 723 S.E.2d 597, 604-605 (Ct. App. 2012). Plaintiff's counsel provided the Court with his Affidavit of Attorney's Fees and Cost in the amount of Thirteen Thousand Eight Hundred Twenty-Nine and 26/100 Dollars ($13,829.26). Of this sum, the costs are ($367.26). Plaintiff's counsel represented in his affidavit that had he not been required to defend this motion, his fees would have been lower by $ 6,177.50. Because Plaintiff's attorney had to respond to the Motion to reconsider, Plaintiff files a revised Affidavit of Attorney's Fees seeking a total of Eighteen Thousand Three Hundred Nine and 26/100 Dollars ($18,309.26) in attorney's fees and costs. Based on counsel's preparedness for the first hearing and the thoroughness of his brief, and the additional time expended in the Memorandum in Opposition to the Motion for Reconsideration, the Court finds this representation credible. After consideration of the factors of Rule 1.5 as contained in Rule 407, South Carolina Appellate Court Rules, which contains the Canons of Ethics concerning the setting of attorney's fees and the factors set forth in Jackson v. Speed 326 S.C. 289 486 S.E.2d 750 (1997) in the award of attorney's fees, the Court, in its discretion regarding the determination of the amount of fees, the revised affidavit presented and the Court's file herein which reflects the difficulty of the services rendered, the time necessarily expended, the result accomplished, and the other factors which are set forth in the Canons of Ethics and the case law decisions of this State, awards Plaintiff

attorney's fees and costs in the sum of $18,304.26. IT IS SO ORDERED!

IT IS HEREBY ORDERED ADJUDGED AND DECREED, that Plaintiff have judgment against the Defendant in the amount of $209,975.94

JUDGE'S SIGNATURE PAGE TO FOLLOW

Greenville Common Pleas

Case Caption: Everett Homes LLC vs. Jermaine Leclerc

Case Number: 2023CP2302709

Type: Order/Other

So Ordered

s/Alex Kinlaw, Jr., #2763