

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

State Fiscal Accountability Authority
Insurance Reserve Fund, as subrogee of
Hilton Head No. 1 Public Service District,

Plaintiff,

vs.

Village Park Homes, LLC, Cleland
Construction Co., Inc., Cleland Site Prep,
Inc., and Ashlind Contracting Corporation,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2023-CP-07-00335

**ORDER DENYING MOTION OF
CLELAND CONSTRUCTION CO.,
INC. AND CLELAND SITE PREP,
INC. FOR RELIEF FROM DEFAULT
JUDGMENT**

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Jul 26 2024

SC Court of Appeals

Defendants Cleland Construction Co., Inc. and Cleland Site Prep, Inc. filed a Motion for Relief from Default Judgment pursuant to South Carolina Rule of Civil Procedure 60(b)(4), and a hearing was conducted on said motion on April 9, 2024. The Court heard arguments of Counsel and has reviewed all memoranda and materials submitted both in support of and in opposition to the motion, including filings submitted by the parties following the hearing. Having heard the arguments and considered the submissions of Counsel along with the record before the Court, the Court denies the motion.

The Plaintiff filed this action on February 17, 2023. The record before the Court shows that the Plaintiff then served the defendants with the Summons and Complaint and received return-receipts for the mailing of said documents from both Cleland Construction Co., Inc. and Cleland Site Prep, Inc. following which the Plaintiff filed a Motion for Entry of Default and a Motion for Default Judgment. Entry of Default was made on April 20, 2023. No hearing was required on the Motion for Default Judgment, as the Plaintiff limited recovery sought to the liquidated damages set forth in the Complaint. Upon execution of the Order for Default Judgment on June 9, 2023,

Plaintiff's Counsel sent a copy of the Entry of Default and the Order for Default Judgment to both Cleland Site Prep, Inc. and Cleland Construction Co., Inc. via certified mail on June 30, 2023. On July 6, 2023, an agent of Cleland Site Prep., Inc. received the documents and executed the return-receipt. That person marked the box signifying that he or she was an agent of Cleland Site Prep., Inc. at the time of receipt.

South Carolina Rule of Civil Procedure 60(b)(4) requires a motion thereunder to be filed within a reasonable time. Determining whether the motion was filed within a reasonable time is a matter left to the discretion of the Court and is to be determined based on the circumstances of each case. *Smith Companies of Greenville v. Hayes*, 311 S.C. 358, 428 S.E.2d 900 (Ct. App.1993); *In re Coleman*, 303 S.C. 511, 513, 402 S.E.2d 181, 182 (Ct. App. 1991). In considering the circumstances of this action, it appears that the Plaintiff was unable to pursue claims against the additional named defendants without participation of the Cleland entities in litigation and was therefore required to dismiss those defendants from this action on July 31, 2023, at which time a Motion to Dismiss was scheduled for hearing. The dismissal was filed following execution of the Order of Default Judgment and receipt of said Order by Cleland Site Prep, Inc. and was in reliance on the default of the Cleland entities. The Plaintiff has been prejudiced by the delay of the defense in seeking relief from judgment due to the inability to litigate the claims in this action and ultimate requirement for dismissal of defendants.

Further, the motion before the Court is based on the contention that the person who received service of the Summons and Complaint was not authorized to do so. The movants rely upon *Roberson v. Southern Finance of South Carolina* in making this argument and assert that the receptionist who signed the return-receipt was not authorized to receive service. However, *Roberson* and other case law referenced in the Defense's motion provide that agency of a person

other than the registered agent to accept service of process is conferred by the actions and past behavior of the principal. Specifically, in their motion, the movants acknowledge that the burden shifts to them to demonstrate that the receptionist was not authorized to accept service. They have not satisfied that burden. The Plaintiff has submitted Certificates of Service and return-receipts filed in other civil actions involving Cleland Site Prep., Inc. and Avery Cleland, the principal of and Registered Agent for the Cleland entities involved in this action. These filings and records of the Beaufort County Clerk of Court and the Jasper County Clerk of Court show that Cleland Site Prep, Inc. and the Registered Agent for both Cleland entities involved herein have a history of allowing people other than the Registered Agent to accept service in the exact same manner as in this action without challenge to the validity of service of process or contending that agency of those who signed the return-receipts did not exist. These include a return-receipt executed by a person that appears to be affiant Ms. Hayes, the individual who executed the return-receipt for the Summons and Complaint in the action before the Court. The record before the Court demonstrates that Defendants appear to be sophisticated business entities with knowledge of the processes and procedures of litigation who have a history of allowing persons other than the Registered Agent, including affiant Ms. Hayes, to accept service of process. While Ms. Hayes states that she is employed as a receptionist for an entity not a party to this action, the Plaintiff has submitted materials demonstrating that the entity for which she acts as receptionist has the same telephone number and operates out of the same building as the Defendants served in this action. Attempts to find contact information for the employer of Ms. Hayes, Cleland Constructors, Inc., direct one to the website for Cleland Site Prep, Inc..

The Court finds that the movants have a history of holding out numerous people, including affiant Ms. Hayes, as authorized to receive service by certified mail on behalf of Cleland Site Prep,

Inc. and that an agent of Cleland Site Prep, Inc. executed the return-receipt acknowledging receipt of the Entry of Default and Order for Default Judgment in this action. The Cleland Defendants failed to file for relief in a timely manner considering their role in the action and the consequence of dismissal of the remaining defendants.

For these reasons, the Court finds that the Defendants' argument of lack of apparent or implied agency fails. There is a history of Cleland Site Prep, Inc. and Avery Cleland, the Registered Agent of both Cleland Defendants, holding out that individuals other than the registered agent are authorized to receive service of process by certified mail, including Ms. Hayes. Further, based on the circumstances of this individual case, the motion was not filed within a reasonable time as required by SCRCP 60(b)(4) due to the restrictions, prejudice, and expense caused to the Plaintiff during the time of default of the Defendants and the months of delay in filing their motion following receipt of the Order of Default Judgment.

Therefore, the Motion for Relief from Default Judgment of Cleland Construction Co., Inc. and Cleland Site Prep, Inc. is denied.

IT IS SO ORDERED.

Kristi F. Curtis
Presiding Circuit Court Judge



Beaufort Common Pleas

Case Caption: State Fiscal Accountability Authority Insurance Reserve Fund ,
plaintiff, et al VS Village Park Homes Llc , defendant, et al

Case Number: 2023CP0700335

Type: Order/Other

So Ordered

s/ Kristi F. Curtis, Circuit Court Judge, No. 2762