STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND)	FOR THE FIFTH JUDICIAL CIRCUIT
MICHAEL L. PERRY and)	**C/A NO. 2023-CP-40-04072**
LONNIE L. LONG,)	
)	*In Re:*
Plaintiffs,)	Asbestos Personal Injury Litigation
)	Coordinated Docket
v.)	
)	
AMERICAN INTERNATIONAL)	
INDUSTRIES, et al.)	
)	
Defendants.)	

ORDER DENYING AII/CLUBMAN'S MOTION TO LIFT DEFAULT

Michael Perry ("Perry" or "Plaintiff") filed this lawsuit on August 4, 2023. On August 10, 2023, service was obtained on American International Industries ("AII") at 2220 Gaspar Avenue, Los Angeles, CA 90040 by serving AII's Executive Vice President, Terri Cooper. An affidavit of good service was signed and returned by the process server.

AII's answer was due on September 11, 2023. AII did not file an answer or an appearance in the case, nor had AII reached out to Plaintiffs' counsel seeking an extension to answer. Several other Defendants had requested such an extension and each and every time the request was granted.

On September 26, 2023, Plaintiffs filed the instant Motion for Default as a result of AII's failure to answer the complaint. On September 29, 2023, AII filed an answer to Plaintiffs' Original Complaint that was served on August 10, 2023.

On October 10, 2023, two weeks following the filing of the Default Motion, AII filed a Motion to Lift Default. In its motion AII contends, among other things[1], that "Plaintiffs served an individual who was not authorized to accept service." The Court disagrees.

APPLICABLE LAW

South Carolina Rule of Civil Procedure 4(d)(3) provides that service shall be made

> Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

SCRCP 4(d)(3). As set forth above, Terri Cooper is the Executive Vice President of AII. Rule 4 provides that a summons and complaint served on a corporate officer is valid. Thus, AII's complaint about valid service necessarily fails. Moreover, AII has previously accepted service via service at the exact same address in a Connecticut matter in which they have answered and are defending.

The decision about whether to set aside a default is within the sound discretion of the trial judge. *Richardson v. P.V.*, 383 S.C. 610 (2006). AII contends that Terri Cooper was not authorized to accept service for AII arguing that because she was not listed as an officer of AII at the California Secretary of State's office, Ms. Cooper is not really an officer. Of course, SCRCP 4(d)(3) does not mandate that an officer be identified at a government office. Clearly, an Executive Vice President is an officer of the corporation.

[1] The other contentions made via affidavit in the first Motion to Lift Default focus on attacking plaintiff's counsel for AII's failure to answer the complaint. A supplemental motion to lift default and the accompanying affidavits materially change the allegations made by AII. AII concedes that any complaints they had about plaintiffs' counsel conduct occurred after the company was already in default. Plaintiffs' counsel vigorously disputes those allegations. Because I find the issues raised in the affidavits occurred after the default was already in place, I do not consider, in any way, the affidavits submitted by AII.

In *Richardson,* the South Carolina Supreme Court wrote that: "apparent authority is when . . . the principal holds the agent out as possessing such authority." *Id.* at 615. Thus, even if AII did not expressly authorize Cooper to accept service, by virtue of Cooper's title, AII provided all the apparent authority Cooper needed to accept service under the South Carolina rules.

Next, as AII acknowledges in its motion, its national lawyers received the complaint and turned the complaint over to AII's insurer prior to the time to answer. Yet no one sought an extension to answer until after the Plaintiffs sought default. These two facts clearly demonstrate that AII had notice that the complaint had been served and that an answer would be due. "In South Carolina, negligence on the part of an attorney is imputable to the client and will not be the basis for finding good cause to set aside entry of default." *Limehouse v. Hulsey*, 397 S.C. 49 (Ct. App. 2010). The *Limehouse* court went on to find "that negligence on the part of an insurance company or attorney will be imputed to a defaulting litigant and negligence does not constitute good cause to relieve an appellant from entry of default." *Id.* at 72.

As AII notes in on pages 4-5 of their Amended Motion to Lift Default:

> The decision to set aside an entry of default judgment lies within the sound discretion of the trial judge. *Robertson v. S. Fin. Of S.C., Inc*., 365 S.C. 6,9 (2005). The standard for granting relief from an entry of default under Rule 55(c) is merely "good cause." *Wham v. Shearson Lehman Bros., Inc*., 298 S.C. 462, 465 (Ct.App. 1989). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc*., 383 S.C. 601, 607 (2009) Thereafter, "once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-608).

Here, AII has not put forth a satisfactory explanation for the default. Terri Cooper was an officer of the company and therefore was an appropriate person to serve under SCRCP 4(d)(3). AII admits that the Complaint was given to its national counsel the day after service. AII further

admits that the Complaint was then passed on to the Insurer. AII gives no reason, much less a satisfactory explanation for the default. Therefore, the Court does not need to reach the *Wham* factors.

CONCLUSION

Plaintiffs indisputably served AII's corporate officer. Even if she did not possess actual authority, her title alone confers apparent authority. Rule 4 further confirms that service on Cooper was proper. Therefore, the Court DENIES AII's Motion to Lift Default.

IT IS SO ORDERED.

[JUDGE'S E-SIGNATURE PAGE FOLLOWS]

Richland Common Pleas

Case Caption:	Michael L Perry , plaintiff, et al vs American International Industries , defendant, et al
Case Number:	2023CP4004072
Type:	Order/Other

So Ordered

Jean H. Toal