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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
The Honorable Jocelyn Newman, Circuit Court Judge

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Civil Action No.: 2023CP4003086  
Appeal Number: 2024-001802

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Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee.....Plaintiff/Appellant,

v.

All Seasons Healthcare, LLC, All Seasons Healthcare, Inc., and TWG Polo Road, LLC d/b/a Mill  
Creek Manor, LLC f/k/a Amara Place at Columbia .....Defendants,

Of whom All Seasons Healthcare, LLC is .....Respondent.

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**APPELLANT'S FINAL BRIEF**

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    III.  Whether the trial judge erred in finding Appellant failed to achieve effective service despite compliance with Rule 4(d)(8) and despite the failure of Respondent to meet its burden of proving the return receipt was signed by someone unauthorized to accept service?

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*Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981)

*Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 693 S.E.2d 27 (Ct. App. 2010)

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## STATEMENT OF THE ISSUES ON APPEAL

- IV. Whether the trial judge erred in finding dismissal was warranted where Plaintiff simply filed her Notice of Intent, pursuant to S.C. Code Ann. § 15-79-125, in the wrong county?
- V. Whether the trial judge erred in finding the United States Postal Service “certified mail, restricted delivery” service failed to meet the requirements of South Carolina Rule of Civil Procedure 4(d)(8)?
- VI. Whether the trial judge erred in finding Appellant failed to achieve effective service despite compliance with Rule 4(d)(8) and despite the failure of Respondent to meet its burden of proving the return receipt was signed by someone unauthorized to accept service?

## STATEMENT AND FACTS OF THE CASE

This case arises out of Respondent's failure to meet the standard of care in providing reasonable hospice care for Phyllis Gee, the decedent. Ms. Gee was a resident at a facility which contracted with All Seasons Healthcare (Respondent) to provide hospice care to its residents, including Ms. Gee. On December 30<sup>th</sup>, 2019, the day Ms. Gee died, Respondent failed to timely provide medication necessary for Ms. Gee to pass peacefully. Instead, Ms. Gee suffered as she passed, showing signs of air hunger, pain, and ongoing discomfort. As a result, Jennifer Murphy, as personal representative of the estate of Phyllis Gee, filed suit.

The parties agree the correct venue for this lawsuit is Richland County, South Carolina. The parties agree the statute of limitations in this matter ran on December 30<sup>th</sup>, 2022, and Appellant filed her Notice of Intent within that time. The parties agree Heather McCloy, an owner of All Seasons Healthcare, named herself as Registered Agent and used Respondent's facility's address, 7142 Woodrow Street, Irmo, SC 29063, as the address for the registered agent for purposes of service of process.

Pursuant to S.C. Code Ann. § 15-79-125, Appellant filed her Notice of Intent in South Carolina Circuit Court on November 11<sup>th</sup>, 2022, within the three-year statute of limitations. (R. p. 1) By mistake, Appellant listed Greenwood County in the caption of the Notice of Intent, instead of Richland County. (R, p. 1) However, in the body of the Notice of Intent, Respondent was appropriately identified by name, description, and location. (R. p. 2, paragraph 4-5). On December 16<sup>th</sup>, 2022, Appellant's Notice of Intent was properly served on Respondent via Certified Mail Restricted Delivery, as shown below on the return receipt. (R. p. 189).

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> <li>■ Complete items 1, 2, and 3.</li> <li>■ Print your name and address on the reverse so that we can return the card to you.</li> <li>■ Attach this card to the back of the mailpiece, or on the front if space permits.</li> </ul>	<p>A. Signature  <input checked="" type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name)  <input type="checkbox"/> Agent  <input type="checkbox"/> Addressee</p> <p>C. Date of Delivery  <input type="checkbox"/> Yes  <input type="checkbox"/> No</p> <p>D. Is delivery address different from item 1?            If YES, enter delivery address below:</p>												
<p>1. Article Addressed to:</p> <p style="text-align: center;">H. McCloy, as RA for Service of            Process for All Season' Healthcare            Inc.            7142 Woodrow St            Irmo, South Carolina 29063</p>  <p style="text-align: center;">9590 9402 7396 2055 4955 28</p>	<p>3. Service Type</p> <table border="0"> <tr> <td><input type="checkbox"/> Adult Signature</td> <td><input type="checkbox"/> Priority Mail Express®</td> </tr> <tr> <td><input type="checkbox"/> Adult Signature Restricted Delivery</td> <td><input type="checkbox"/> Registered Mail™</td> </tr> <tr> <td><input type="checkbox"/> Certified Mail®</td> <td><input type="checkbox"/> Registered Mail Restricted Delivery</td> </tr> <tr> <td><input checked="" type="checkbox"/> Certified Mail Restricted Delivery</td> <td><input type="checkbox"/> Signature Confirmation™</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery</td> <td><input type="checkbox"/> Signature Confirmation Restricted Delivery</td> </tr> <tr> <td><input type="checkbox"/> Collect on Delivery Restricted Delivery</td> <td><input type="checkbox"/> Restricted Delivery</td> </tr> </table>	<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®	<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™	<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery	<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™	<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery	<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Restricted Delivery
<input type="checkbox"/> Adult Signature	<input type="checkbox"/> Priority Mail Express®												
<input type="checkbox"/> Adult Signature Restricted Delivery	<input type="checkbox"/> Registered Mail™												
<input type="checkbox"/> Certified Mail®	<input type="checkbox"/> Registered Mail Restricted Delivery												
<input checked="" type="checkbox"/> Certified Mail Restricted Delivery	<input type="checkbox"/> Signature Confirmation™												
<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Signature Confirmation Restricted Delivery												
<input type="checkbox"/> Collect on Delivery Restricted Delivery	<input type="checkbox"/> Restricted Delivery												
<p>2. Article Number (Transfer from service label)</p> <p style="text-align: center;">7017 0660 0000 1954 2299</p>													
PS Form 3811, July 2020 PSN 7530-02-000-9053	Domestic Return Receipt												

As the return receipt above makes clear, Respondent was served by certified mail, restricted delivery at the address for Respondent’s agent, and signed by an individual who identified themselves as “agent”.

In response, Respondent did not file a Notice of Appearance with the Court. In accordance with S.C. Code § 15-79-125, Appellant moved forward with scheduling of pre-suit mediation to ensure the mediation occurred within 120 days of the time Respondent was served. Appellant sent a certified letter to Respondent addressed to the same recipient and mailed to the same address, 7142 Woodrow Street, Irmo, SC 29063, as the Notice of Intent weeks prior. (R. p. 195, paragraph 5). The certified letter was intended to notify Respondent of the scheduled pre-suit mediation.

When Respondent received the certified letter on March 27<sup>th</sup>, an employee, “Trish,” from Respondent’s facility reached out to office of Appellant’s counsel. After discussing the case with Appellant’s paralegal, “Trish” was sent a copy of the filed documentation in preparation for the pre-suit mediation. This interaction was confirmed by email. (R. p. 195, paragraph 6). By virtue

of the served Notice of Intent, the certified mediation letter, and the communication with “Trish”, Respondent was on notice of the litigation. Further, Respondent contacted their insurance carrier to report the claim. (R. p. 251, line 1) see also, (R. p. 177, line 24).<sup>1</sup>

Respondent did not attend the scheduled pre-suit mediation. Mediation was finally held on April 20<sup>th</sup>, 2023, after agreed upon rescheduling for other parties. The mediation resulted in impasse. Proof of ADR was filed on May 24<sup>th</sup>, 2023. (R. pp. 192-193). Thereafter, Appellant filed the summons and complaint in Richland on June 13<sup>th</sup>, 2023. (R. pp. 23-32). The summons and complaint were then served on Respondent on June 26<sup>th</sup>, 2023, as shown below. (R. p. 191).

The image shows a Domestic Return Receipt form. The top left section, titled "SENDER: COMPLETE THIS SECTION", contains instructions: "Complete items 1, 2, and 3.", "Print your name and address on the reverse so that we can return the card to you.", and "Attach this card to the back of the mailpiece, or on the front if space permits." Below these instructions is the recipient's address: "1. Article Addressed to: H. McCloy, as Registered Agent for Service of Process for All Season' Healthcare, Inc. 7142 Woodrow St Irmo, South Carolina 29063". A barcode is present with the number "9590 9402 7396 2055 4958 87". The bottom left section, "2. Article Number (Transfer from service label)", shows the number "7022 2410 0001 3098 4865". The top right section, "COMPLETE THIS SECTION ON DELIVERY", contains: "A. Signature" with a handwritten signature and checkboxes for "Agent" and "Addressee"; "B. Received by (Printed Name)" with a handwritten name; "C. Date of Delivery" with a handwritten date "6/26"; and "D. Is delivery address different from item 1? If YES, enter delivery address below:" with checkboxes for "Yes" and "No". The bottom right section, "3. Service Type", lists various options with checkboxes: "Adult Signature", "Adult Signature Restricted Delivery", "Certified Mail", "Certified Mail Restricted Delivery", "Collect on Delivery", "Collect on Delivery Restricted Delivery", "Priority Mail Express", "Registered Mail", "Registered Mail Restricted Delivery", "Signature Confirmation", and "Signature Confirmation Restricted Delivery". The "Restricted Delivery" checkbox is checked. The text "Domestic Return Receipt" is printed at the bottom right.

The above return receipt reflects the third time Appellant mailed documentation addressed to Respondent at this address, 7142 Woodrow Street, Irmo, SC 29063. The return receipt signed and returned by Respondent serving the summons and complaint was filled out by

<sup>1</sup> Respondent admitted at this hearing that its insurance carrier had denied coverage.

Respondent almost identically to the return receipt from December of 2022 when Respondent was served with the Notice of Intent. Again, Respondent deliberately designated the recipient as “Agent” and not “Addressee.” Demonstrating receipt by an authorized agent, Respondent requested a 30-day extension to hire counsel and file her answer.

On August 23<sup>rd</sup>, 2023, Respondent filed a Motion for Summary Judgment on three bases: 1) failure to timely serve the complaint pursuant to Rule 3 of the South Carolina Rules of Civil Procedure, 2) improper service of process pursuant to Rule 4 of the South Carolina Rules of Civil Procedure, and 3) the statute of limitations had lapsed. Appellant filed her response. A hearing was held on April 17<sup>th</sup>, 2024. Appellant filed a supplemental briefing in response to Respondent’s new argument that filing a Notice of Intent in the wrong venue did not toll the statute of limitations and was cause for dismissal.

The lower court granted summary judgment. The court’s oral ruling indicated the case was dismissed primarily because Appellant filed her Notice of Intent in the wrong venue. (R. p 185 lines 1-15). Secondly, the Court ruled the United States Postal Service “Certified Mail Restricted Delivery” service did not meet the requirements of Rule 4 of the South Carolina Rules of Civil Procedure, and that Appellant could not prove the Notice of Intent or Summons and Complaint were served on the registered agent or anyone else permitted to accept service on behalf of Respondent. (R. pp. 144-149). Appellant moved for reconsideration on May 23<sup>rd</sup>, 2024. (R. pp. 132-141). Appellant’s Motion for Reconsideration was denied. (R. p. 151). This appeal followed.

#### STANDARD OF REVIEW

"Questions of statutory interpretation are questions of law, which we are free to decide without any deference to the court below." *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 62, 744 S.E.2d 547, 550 (2013) citing *Grier v. AMISUB of S.C., Inc.*, 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012) (quoting *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011)). Whether or not S.C. Code Ann. 15-79-125 calls for dismissal when a Notice of Intent is filed in the wrong venue is a statutory interpretation question.

The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012), citing *Clark v. Key*, 304 S.C. 497, 500, 405 S.E.2d 599, 601 (1991).

#### ARGUMENT

- I. The trial judge erred in finding dismissal was warranted where Plaintiff simply filed her Notice of Intent, pursuant to S.C. Code Ann. § 15-79-125, in the wrong county.

Appellant inadvertently filed her Notice of Intent in Greenwood County when the appropriate venue was Richland County. The correct resolution was to simply transfer the case to the appropriate county. In 2005, the South Carolina Legislature enacted S.C. Code Ann. § 15-79-125, requiring a plaintiff to file and serve a Notice of Intent before the plaintiff could initiate a medical malpractice civil action. S.C. Code Ann. § 15-79-125. This statute states “the plaintiff shall. . . file a Notice of Intent to File Suit. . . in a county in which venue would be proper for filing or initiating the civil action.” S.C. Code Ann. § 15-79-125(A).

However, the statute is silent as to the consequences for failure to strictly abide by the venue requirement laid out in the statute. The South Carolina Supreme Court has found that failure to strictly abide by the mediation requirements of the statute was not cause for dismissal. *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013). There, the Court found

“[i]t is clear that the Legislature enacted section 15-79-125 to provide an informal and expedient method of culling prospective medical malpractice cases by fostering the settlement of potentially meritorious claims and discouraging the filing of frivolous claims.” *Id.* The Court explained that S.C. Code Ann. § 15-79-125 was not enacted to create a “trap” to dismiss meritorious claims. *Id.*

Certainly, then, given these legislative goals, failure to strictly abide the venue requirements of § 15-79-125 when filing a Notice of Intent should not result in the ultimate sanction of dismissal. In fact, the trial court’s action would result in a harsher consequence than failing to follow the proper guidelines in initiating a civil action by filing a complaint. Rule 82 of the South Carolina Rules of Civil Procedure makes it clear that “[w]hen an action is brought in the wrong county or in the wrong court, the court ***shall not dismiss*** the action but ***shall transfer*** it to any proper county or court in which it could have been brought.” SCRCP 82 (emphasis added). The rule does not leave room for discretion.

In accordance with SCRCP Rule 82 and the Supreme Court’s ruling in *Ross*, filing a Notice of Intent in an improper venue should not lead to the absurd result of creating a harsher consequence than the consequence outlined for a plaintiff who files her complaint in the wrong venue. The appropriate action is to transfer the action to the proper venue, which Appellant did by transferring the Notice of Intent to Richland County when the error was recognized.

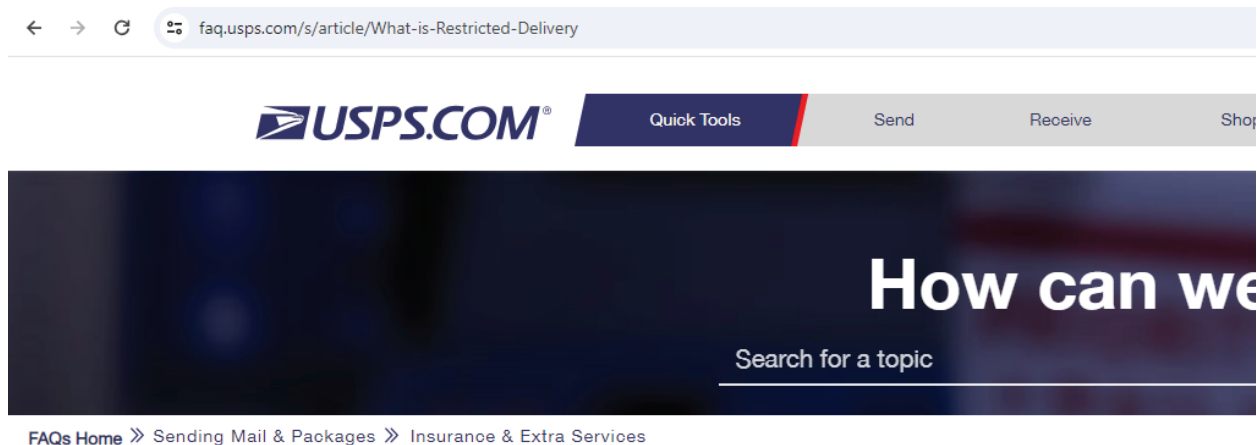
- II. The trial judge erred in finding the United States Postal Service “certified mail, restricted delivery” service failed to meet the requirements of South Carolina Rule of Civil Procedure 4(d)(8) and thus creating a presumption of proper service.

The Supreme Court of South Carolina has “never required exacting compliance with the rules to effect service of process.” *Roche v. Young Bros.*, 318 S.C. 207, 210 (1995). Rather, the Court looks to whether “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.* In this case, both of these goals were met. South Carolina Circuit Court had personal jurisdiction over Respondent when the Notice of Intent was filed, properly served by certified mail, restricted delivery, and accepted by a recipient who deliberately designated themselves as “agent”.

Respondent had notice of the proceedings within the statute of limitations as evidenced by the proper service and Respondent’s contact with the office of Appellant’s counsel within 120 days of the filing of the Notice of Intent to discuss the case and the pre-suit mediation.

Rule 4(d)(8) of the South Carolina Rules of Civil Procedure states service is effective when a party serves a defendant by “registered or certified mail, return receipt requested and delivery restricted to the addressee.” Both return receipts in this case show Appellant mailed the Notice of Intent and later the Summons and Complaint “Certified Mail Restricted Delivery.” The United States Postal Service website defines restricted delivery as “direct delivery only to the addressee or the addressee’s authorized agent,” as noted on their website.



## What is Restricted Delivery?

Selecting Restricted Delivery allows the mailer to direct delivery only to the addressee or the addressee's authorized agent.

Respondent incorrectly argued, and the Circuit Court incorrectly ruled, that “certified mail, restricted delivery” does not meet the requirements of SCRPC 4(d)(8) because the “delivery was not restricted to the addressee.” (see, Circuit Order Granting Respondent’s Motion for Summary Judgment). Respondent and the Circuit Court point to the signature box on the return receipt, where the *recipient* must check “agent” or “addressee.” Respondent incorrectly suggested the sender is required to check “addressee” upon sending. However, as instructed on the return receipt itself, one must “Complete This Section On Delivery,” thus, indicating action by the *recipient*. The recipient signing the return receipt is responsible for identifying whether they are the addressee or an agent. The sender does not, and cannot, check the box of addressee or agent, as they are not the recipient of the package and would not be present on delivery. By using any form of restricted delivery, the USPS is ensuring that documents are delivered restricted to the addressee or its agent. Respondent’s agent signed the return receipt, not Appellant.

The Circuit Court erred in its interpretation of the USPS processes. Appellant, by mailing the Notice of Intent and later the Summons and Complaint, by “Certified Mail, Restricted Delivery” met the requirements of service of process as described in Rule 4(d)(8) of the South Carolina Rules of Civil Procedure and by doing so put the burden on the defendant to prove the service documents were accepted by an unauthorized agent. *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995). Respondent failed to do so.

III. The trial judge erred in finding Appellant failed to achieve effective service despite compliance with Rule 4(d)(8) and despite the failure of Respondent to meet its burden of proving the return receipt was signed by someone unauthorized to accept service.

Appellant properly served Respondent’s authorized agent at the address provided by Respondent, pursuant to the rules. There is a presumption of proper service when the civil

rules on service are followed. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 295, 721 S.E.2d 430, 433 (2012), citing *Roche v. Young Brothers, Inc.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1994). Thus, Respondent can only attempt to rebut the inference that service was affected by “showing that the return receipt was signed by an unauthorized person.” *Id.*, citing Rule 4(d)(8), SCRPC. Yet, Respondent admitted it could not identify who signed the return receipt showing service of the Notice of Intent and then the Summons & Complaint. As a result, Respondent cannot meet its burden in proving the return receipt was signed by an unauthorized party and cannot rebut the presumption of service.

Respondent in this case indicated in response to an interrogatory that they did not know who signed the return receipt on delivery of the Notice of Intent, and later the Summons and Complaint. Respondent’s owner and registered agent, Heather McCloy, submitted an affidavit in which she denied knowledge of who signed for the receipt of the Notice of Intent or for the Summons and Complaint. Much of this confusion comes as a result of the recipient repeatedly signing the name of the corporation as opposed to their full name. What is known is that the recipient was someone who worked at the Respondent’s facility, which was also the address listed for Respondent’s registered agent; that the recipient was someone who knew to identify themselves as an agent, rather than the addressee; and that this individual knew what to do with the suit papers because Respondent had notice of the claim. Respondent contacted the office of Appellant’s counsel for information. Respondent notified their insurance carrier. Respondent filed a timely answer. All of these actions by Respondent were done in response to documentation mailed and served on the same agent, at the same location. Because of Respondent’s notice of the proceedings, there is no prejudice to Respondent. Appellant should not be punished for

Respondent's agent signing the return receipt in the manner described. Respondent should not be rewarded for playing games with service.

Heather McCloy is a part-owner of All Seasons Healthcare and made the decision to serve as the company's registered agent, listing the facility's address as the location to effect service. However, Ms. McCloy, as the registered agent, was not the only person with the authority to accept service on behalf of the Respondent. Rule 4(d)(3) of the South Carolina Rules of Civil Procedure states service on a corporation is effective 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." SCRPC Rule 4(d)(3). The principal objective of service of process "is to give notice to the defendant corporation of the proceedings against it." *Burris Chem., Inc. v. Daniel Constr. Co.*, 251 S.C. 483, 163 S.E.2d 618 (1968). However, service on someone within the corporation who would likely ensure notice of the proceedings to the corporation is sufficient. *Id.* For example, the South Carolina Supreme Court has ruled that service on an assistant manager of a corporation is sufficient to satisfy service requirements because it is expected that person would relay notice of the proceedings to the appropriate parties. See, *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981). The rules do not require Ms. McCloy, or anyone she explicitly gave authority to accept service, to sign the return receipt to affect service on All Seasons Healthcare, Inc.

Even if we accept as true Ms. McCloy's contention that she did not receive the Notice of Intent or Summons and Complaint, that fact does not negate service when Plaintiff met the requirements of service, creating a presumption of proper service. In *Roche v. Young Bros.*, supra, the South Carolina Supreme Court found a defendant corporation was properly served

when the plaintiff met the requirements of SCRCP Rule4(d)(8), as Appellant has done here, and someone with authority accepted service. In *Roche*, neither the manager nor the registered agent ever physically received a copy of the summons and complaint. An employee of the defendant corporation accepted service of the mail, delivered it to the secretary, and the secretary then distributed the mail to the appropriate recipients. The Summons and Complaint never made it to the manager or registered agent after acceptance. However, the Court found that losing a summons and complaint within the corporation did not negate proper service. *Roche*, 318 S.C. at 212. In this case, proper service is presumed and has not been rebutted. That is not negated if Ms. McCloy in fact did not receive a copy of this documentation.

In ruling Appellant did not meet the requirements of service of process, the Court relies almost entirely on an affidavit from the registered agent and part owner of Respondent's facility, Heather McCloy. Ms. McCloy's affidavit indicated she did not sign the return receipt. This is not sufficient to rebut the presumption of service because she is not the only person capable of accepting service on the corporation. She then stated did not give explicit authorization to anyone to accept service on her behalf. This is still not sufficient to rebut the presumption of service on a corporation because she does not need to confer explicit authority on all individuals capable of accepting service on behalf of the corporation. In her affidavit, Ms. McCloy was unable to deny that the return receipt was signed by another party authorized to accept service of process on the corporation's behalf.

The lower court shifted the burden of proving whether the individual who signed the return receipts in this case had authority to do so. Respondent had the burden to prove the

return receipt was signed by an unauthorized person and Respondents cannot meet that burden.

The circuit court accepted the assertions of Ms. McCloy despite a real credibility issue at play that would make the question of service a jury issue. The circuit court failed to address the reliability of the affidavit submitted by Heather McCloy indicating she was never served with the lawsuit in question, that she had never given anyone authority to accept service of process on her behalf, and that she had no notice of these proceedings or this lawsuit. However, as expressed to the circuit court, Ms. McCloy had a history of evading service.

Between the years of 2011 and 2015, Ms. McCloy, along with her husband and co-owner, failed to pay over \$150,000.00 in taxes. As a result, the Internal Revenue Service (IRS) attempted to levy on those unpaid taxes. The McCloy's continued to evade the IRS. As a result, the IRS filed a claim against the McCloy's. *United States v. All Seasons Healthcare, Inc.*, Civil Action No. 3:20-cv-00639-JMC, 2021 U.S. Dist. LEXIS 21455, 127 A.F.T.R.2d (RIA) 2021-814 (D.S.C. Feb. 4, 2021) The IRS, a federal agency, attempted to serve process on Ms. McCloy, at the same address Appellant used in this case, 7142 Woodrow Street, Irmo, SC 29063, by leaving the summons and complaint with her. Ms. McCloy explicitly told the process server she would not accept service, despite receiving the papers personally. (Request for Entry of Clerk's Default Against Defendant by U.S. Attorney General).

The IRS, out of an abundance of caution, served Ms. McCloy a second time, personally, at her home. The Court found that Ms. McCloy was properly served twice, at her business and then again at her home, despite telling the process server she would not accept service. Despite being served twice with the summons and complaint, neither Ms. McCloy nor

Respondent ever responded to the United States' summons and complaint against them, resulting in a default judgment against Respondent.

It must be considered that Ms. McCloy and Respondent evaded tax responsibilities, ignored and evaded proper service by a federal agency, and refused to appear in federal court in response to suit filed by the United States of America when considering the truthfulness of her affidavit in this case.

Plaintiff met the requirements of Rule 4 of the South Carolina Rules of Civil Procedure in serving Respondent. The goals of service were met: the lower court had person jurisdiction over the matter and Respondent had notice. Ms. McCloy's affidavit failed to beat the presumption of service. The circuit court then failed to consider the reliability of the affidavit given Ms. McCloy's history of evading service. At the very least, there is a genuine issue of material fact relating to service and, as a result, granting summary judgment based on service was an abuse of discretion by the lower court. Rule 56(c) SCRCF.

### Conclusion

The circuit court's dismissal based on Appellant's failure to file her Notice of Intent in the appropriate county is controlled by an error of law and should be reversed.

The Circuit Court abused its discretion in ruling "Certified Mail, Restricted Delivery" failed to meet the requirements of SCRCF 4(d)(8). Because Appellant met the requirements of proper service, the presumption arose that service was affected. The circuit court abused its discretion in shifting the burden of proving whether the Notice of Intent and later the Summons and Complaint were signed by an individual capable of accepting service on Respondent, All

Seasons Healthcare, LLC. The circuit court's ruling granting summary judgment to Respondent for failure to timely serve the Notice of Intent and Summons & Complaint in the underlying case within the statute of limitations should be reversed and the case remanded for further proceedings.

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