

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

FILED FOR RECORD IN THE COURT OF COMMON PLEAS
2025 DEC -3 AM 8:59 FOR THE FIFTH JUDICIAL CIRCUIT

Jay and Amber Weber,

GINGER M. FARMER
CLERK OF COURT
KERSHAW COUNTY, SC

C/A No. 2024-CP-28-00214

Plaintiffs,

v.

Progressive Home Builders, Inc.,

Defendant.

ORDER DENYING DEFENDANT'S MOTION
FOR RELIEF

RECEIVED

Dec 11 2025

SC Court of Appeals

THIS MATTER came before the Court for hearings on Defendant Progressive Home Builders, Inc.'s Motion for Relief from Judgment. The hearing was held on November 6, 2025. Plaintiffs Jay and Amber Weber were represented by Dylan R. Glick, Esq. Defendant was represented by Kirby D. Shealy, III. Edward and Sherry Padgett were also present on behalf of Defendant. For the reasons set forth herein, Defendant's Motion is **DENIED**.

FINDINGS OF FACT

This case arises out of construction defects to newly constructed home in Kershaw County that was constructed by Defendant and subsequently sold to Plaintiffs. Plaintiffs filed their Summons and Complaint in Kershaw County on March 21, 2024. Service was effected on Sherry Padgett on behalf of Defendant on April 9, 2024. No Answer was filed within thirty (30) days of service on behalf of Defendant. As a result, Defendant was held in default on September 13, 2024. Plaintiffs moved for default judgment supported by filed exhibits and an Affidavit on August 23, 2024. The Court entered judgment against Defendant on September 13, 2024 in the amount of \$170,557.94. Thereafter, Plaintiffs executed on the judgment and initiated supplemental proceedings on May 19, 2025. Initially, the matter was referred to the Master in Equity for Kershaw County. Due to a conflict of interest discovered by the Master in Equity, the matter was

subsequently referred to Warren R. Herndon, Jr. acting as Special Referee for Kershaw County on September 10, 2025. The Special Referee ordered a Rule to Show Cause hearing to take place on November 6, 2025, which was served upon Sherry Padgett. On November 6, 2025, counsel for Defendant made an appearance and filed a Motion for Relief from Judgment with accompanying Affidavits of Edward E. Padgett, Jr. and Sherry Padgett. The Court heard the Motion for Relief and declined to proceed with the Rule to Show Cause hearing until ruling upon Defendant's Motion.

CONCLUSIONS OF LAW

Defendant's argument for relief is premised under Rule 60(b)(4), which provides

The court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

...

(4) the judgment is void

Defendant argued that the September 13, 2024 judgment is void because the original lawsuit filed by the Plaintiffs was not properly served on Defendant. Defendant is a South Carolina Corporation. Defendant claimed the individual served – Sherry Padgett – was not and is not capable of being served on behalf of Defendant. Service of process upon a domestic corporation is governed by Rule 4(d)(3), SCRCF which provides service may be accomplished upon a corporation:

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.

In support of Defendant's argument, Defendant filed Affidavits of Edward and Sherry Padgett. Collectively, the Affidavits attested that Sherry Padgett was not authorized to be served on behalf of Defendant because she was not an officer, a managing or general agent, or to any

other agent authorized by appointment or by law to receive service of process within the meaning of Rule 4(d)(3), SCRPC.

Mrs. Padgett testified that she did not believe she was the corporate secretary of Defendant. Instead, she believed that she was Defendant's secretary in the proverbial sense, assisting her husband Edward Padgett, who is the owner of Defendant, with daily tasks associated with Defendant's operations. However, Mrs. Padgett admitted she listed her position with Defendant as 'secretary' in her email signature which she used for general business on behalf of the Defendant. The Court reviewed a copy of an email sent on June 17, 2024 from Mrs. Padgett which evidenced this representation to all who came into contact with Defendant. The email also provided sufficient factual support that both Mrs. Padgett and Mr. Padgett were on notice of the lawsuit filed by Plaintiffs on or before June 17, 2024. Specifically, Mrs. Padgett wrote to Plaintiff's counsel on June 17, 2024 "I am contacting you regarding the Summons & Complaint for Case No.: 2024-CP-28-00214 from Jay Weber that we received from your office." The Court gives particular credence to Mrs. Padgett's usage of 'we' in conjunction with testimony elicited from her making clear that both she and Mr. Padgett were aware of the Weber's lawsuit that was served on Mrs. Padgett by June 17, 2024.

In addition, the Court reviewed evidence submitted by Plaintiffs further suggesting Mrs. Padgett is the corporate secretary of Defendant. A corporate filing submitted to the Florida Secretary of State in February 2025 to enable Defendant to carry on business in Florida was introduced into evidence. Of note, the form listed Sherry Padgett as the Secretary of Defendant with the same address as listed for Defendant with the South Carolina Secretary of State. The form was electronically signed by Edward Padgett as the President of Defendant with an accompanying certification that "the information indicated on this report or supplemental report is true and

accurate and that my electronic signature shall have the same legal effect as if made under oath. .
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Based on the documents introduced into evidence and testimony given, the Court finds that Sherry Padgett was properly served on behalf Defendant because there is abundant evidence that Mrs. Padgett was ‘an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process’ within the meaning of Rule 4(d)(3), SCRPC. Accordingly, the Defendant’s Motion for Relief from Judgment is **DENIED**.

IT IS SO ORDERED.

December 2, 2025



Warren R. Herndon, Jr.
Special Referee for Kershaw County