

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CLARENDON) THIRD JUDICIAL CIRCUIT
DOCKET NO.: 2024-CP-14-00106

RECEIVED

Dec 23 2025

Elgin M. Selbee,

Plaintiff,

vs.

Palmetto Shores RE Holdings, LLC and
Palmetto Shores RV Management, LLC

Defendants.

SC Court of Appeals

ORDER DENYING DEFENDANTS'
MOTION FOR RELIEF FROM
JUDGMENT PURSUANT TO
RULE 60(b), SCRPC

This matter came before the Court on September 26, 2025 for a hearing on Defendants' Motion for Relief from Judgment pursuant to Rule 60(b), SCRPC. Appearances were made by Christopher R. DuRant, Esq., on behalf of Plaintiff, and Hal E. Cobb, Esq., on behalf of Defendants. After careful consideration of the pleadings, including the memoranda, exhibits and cited authority submitted in support of and in opposition to the Motion, together with arguments of counsel, Defendants' motion is respectfully **DENIED** for the reasons detailed herein.

BACKGROUND AND PROCEDURAL HISTORY

Plaintiff commenced this action on March 6, 2024 by the filing of its Summons and Complaint, alleging causes of action for assault and battery and negligence, and requesting an award of actual and punitive damages against Defendants. As alleged therein, Plaintiff's Complaint arises out of an incident wherein Plaintiff, then a lessee and resident of the Palmetto Shores Campground in Clarendon County, was assaulted by a security/maintenance officer employed by Defendants. As evidenced by Affidavits of Non-Service, the Court's file reflects that Plaintiff attempted service of process upon Defendants in accordance with Rule 4(d)(3) and S.C. Code Ann. §§15-9-210 and 33-44-111, by certified mail, restricted delivery, return receipt

requested, addressed to the shared registered agent of each Defendant, namely, George McLaughlin, at the address maintained with the South Carolina Secretary of State, said mail having been deposited on March 11, 2024. On May 27, 2024, Plaintiff attempted service on the said registered agent by personal service at a suspected address in Myrtle Beach, SC, pursuant to which the server indicated that the agent cannot be located at such location. Additional Affidavits of Non-Service indicate that on June 20, 2024, Plaintiff, through an independent process server, attempted personal service upon the registered agent at the address maintained with the South Carolina Secretary of State, pursuant to which the server indicated he was informed that the agent did not work at the stated address.

In light of the foregoing, and as evidenced by the Affidavit of Service filed September 11, 2024, Plaintiff then effected service of process pursuant to S.C. Code Ann. § 33-44-111 by and through delivery of its Summons and Complaint to the South Carolina Secretary of State, which accepted and forwarded copies of the filed pleadings to Defendants at their designated office, being the same as that of the registered agent, by mail deposited July 12, 2024 and July 9, 2024 as to each Defendant, respectively. On September 11, 2024, neither Defendant having filed an Answer or other responsive pleading, Plaintiff filed an Affidavit of Default and Motion for Judgment by Default.

On March 28, 2025, a damages hearing was held before the undersigned, out of which arose an Order of Judgment issued April 21, 2025. As evidenced by a Certificate of Service, notice of the damages hearing was provided to Defendants by first class mail addressed to the last known address of Defendants, being the address of its registered agent and designated office according to records of the Secretary of State.

On May 1, 2025, Defendants filed a Motion to Dismiss Pursuant to Rule 4(d)(3), SCRCPP, on the grounds of insufficiency of service of process. A hearing was before the Honorable S. Bryan Doby on July 11, 2025, out of which arose a Form 4 Order dated July 28, 2025 and formal Order dated August 6, 2025 denying Defendants' Motion and concluding that service was properly effected.

On July 28, 2025, Defendants filed this Motion for Relief from Judgment Pursuant to Rule 60(b) pursuant to which they seek an Order setting aside the Order of Judgment on the grounds of mistake and insufficiency of service of process.

LAW / ANALYSIS

“Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCPP.” *Sundown v. Intedge Industries*, 681 S.E.2d 885, 888, 383 S.C. 601, 609 (2009). The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c).” *Id.* Relief from a default judgment under Rule 60(b), SCRCPP, “requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party.” *Id.* The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.” *Id.*

In determining whether to set aside a default judgment under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense; and (4) the prejudice to the other parties. *Tobias v. Rice*, 379 S.C. 357, 366, 665 S.E.2d 216, 221 (Ct.App.2008).” A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence proving the

essential facts entitling him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (S.C. App. 1991).

A motion to set aside a default judgment based on alleged insufficiency of service of process is governed by Rule 60(b)(4), on the ground that the judgment is void for lack of personal jurisdiction. *Fassett v. Evans*, 364 S.C. 42, 51 n.4, 610 S.E.2d 841 (S.C. App. 2005) *see Roche v. Young Bros., Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1994) (service of process of a legal action commenced against a defendant serves at least two purposes; “it confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action”). Under Rule 60(b)(4), the Court may grant a party relief from judgment if the judgment is void. Rule 60(b)(4), SCRPC. “The definition of ‘void’ under the rule encompasses judgments from courts ... which lacked ... personal jurisdiction.” *McDaniel v. U.S. Fidelity and Guar. Co.*, 478 S.E.2d 868, 871, 324 S.C. 639, 644 (S.C. App. 1996).

The civil rules governing service of process are set forth in the Rules of Civil Procedure as well as certain relevant statutes applicable to distinct classes of defendants.

Rule 4, SCRPC, provides that “service shall be made as follows:

(d)(3) Corporations and Partnerships. 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.

(d)(7) Statutory Service. Service upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule is also sufficient if the summons and complaint are served *in the manner prescribed by statute.*” (emphasis added).

A limited liability company authorized to do business in this State is required by statute to “designate and continuously maintain in this State (1) an office, which need not be a place of business in this State; and (2) an agent and street address for service of process on the company.”

S.C. Code Ann. § 33-44-108 (2003, as amended). Section 33-44-111 of the Code of Laws of South Carolina further prescribes the manner of service of process upon a limited liability company as follows:

“(b) If a limited liability company ... fails to appoint or maintain an agent for service of process in this State or the agent for service of process cannot with reasonable diligence be found at the agent’s address, the Secretary of State is an agent of the company upon whom process, notice, or demand may be served.

(c) Service of any process, notice, or demand on the Secretary of State may be made by delivering to and leaving with the Secretary of State, or a clerk in the limited liability company department of the Secretary of State's office duplicate copies of the process, notice, or demand. If the process, notice, or demand is served on the Secretary of State, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office. Service is effected under this subsection at the earliest of:

- (1) the date the company receives the process, notice, or demand;
- (2) the date shown on the return receipt, if signed on behalf of the company; or
- (3) five days after its deposit in the mail, if mailed postpaid and correctly addressed.

S.C. Code Ann. § 33-44-111 (2003, as amended).

“Service upon an agent designated by law is permissible without any need to personally serve the defendant. *Holman v. Warwick Furnace Co.*, 456 S.E.2d 894,896, 318 S.C. 201, 204 (1995) (*citing* 62B Am.Jur.2d Process § 239). "When the civil rules on service are followed, there is a presumption of proper service." *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 318 S.C. 207, 211 (S.C. 1994) (*citing* 62B Am Jur 2d Process § 111 (1990)). “A plaintiff need only show compliance with the rules." *Id.*

I. Rule 60(b)(1), SCRCP; Mistake, Inadvertence, Surprise, or Excusable Neglect

Although more appropriately framed as neglect, Defendants’ stated basis for relief under Rule 60(b)(1) is its own *mistake* in failing to maintain correct addresses with the Secretary of State, the explanation given being that its registered agent serves in the same capacity for 19 other

entities. It was Defendants' duty, imposed by statute, to designate and continuously maintain a (1) designated office and (2) an agent and street address of the agent for service of process. Defendants have presented no evidence as to a mistake of fact having resulted in its breach of this legal duty. Moreover, the law is clear that "a party may not use Rule 60(b)(1) as a vehicle for relief from a mistake of law." *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 14, 17 (1992).

To the extent that Defendants' argument might rest on the excusable neglect grounds of Rule 60(b)(1), there is no likewise no evidence in the record to support such a finding. Defendants have presented no factual or legal justification for its negligence, beyond the above-referenced assertion made in its memorandum as to the volume of entities served by its agent. Again, lack of familiarity with the law is not an acceptable excuse. *See Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (S.C. App. 2001) (holding "lack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney"). Defendants' failure to maintain a viable address for either its designated office or its statutory agent was not caused by any misconduct or omission of Plaintiff, but by its own neglect of a legal duty. Therefore, Defendants must suffer the consequence of their failure.

Even were this Court to find that Defendants' neglect in failing to maintain correct addresses for its designated offices and its agent for service of process were excusable, there is no competent evidence of record to establish the existence of a meritorious defense to this action as required. Defendants have presented no evidence, by affidavit or otherwise, to establish the basis of its defense. A party seeking to set aside a judgment pursuant to Rule 60(b) has the burden of presenting evidence proving the essential facts entitling him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (S.C. App. 1991). Defendants have failed to meet this burden.

II. Rule 60(b)(4), SCRCP; Judgment is Void

The record in this matter demonstrates Plaintiff's exercise of reasonable diligence in attempting service of process on Defendants' registered agent at the agent's designated address for service of process. As evidenced by the Secretary of State's records attached to Plaintiff's Affidavits of Non-Service filed September 11, 2024, Defendants then maintained a shared registered agent, namely, George McLaughlin, at a designated address of 105 E. North St., Suite 201, Greenville, SC, 29601. Plaintiff first attempted service of process upon the agent by certified mail properly addressed to the agent at the designated address, said mailings having been returned unsigned. The record indicates that Plaintiff then attempted personal service upon the registered agent at the agent's address, the affidavit of which indicates that the process server was informed the registered agent did not work at the address designated by Defendants. Plaintiff also attempted to locate the registered agent via a skip trace search conducted by the process server, whose attempt at personal service upon an individual bearing the same name in Myrtle Beach yielded negative results. Only after these attempts to locate Defendants' registered agent did Plaintiff proceed to effect service upon the Secretary of State.

Notably, the statute permitting service upon the Secretary of State requires only as a prerequisite that the plaintiff exercise reasonable diligence to locate the company's designated agent for service of process "at the agent's address" maintained by the Company. S.C. Code Ann. § 33-44-111(b). Plaintiff attempted service at the designated address by certified mail and personal delivery by a private process server. Plaintiff's attempt to locate and effect service on the agent at an address *other* than that designated by Defendants went above and beyond the requirement of the statute.

The Secretary of State is not merely a conduit through which a plaintiff may attempt actual delivery upon a limited liability company defendant. Instead, by statute, “the Secretary of State *is an agent of the company* upon whom process, notice, or demand may be served.” S.C. Code Ann. § 33-44-111(b) (emphasis added). This is consistent with the Rules of Civil Procedure which permit service of process upon a company defendant by “delivering a copy of the summons and complaint to an ... *agent authorized by appointment or by law to receive service of process.*” Rule 4(d)(3), SCRCP. (emphasis added). Our Courts have held to the general rule that “service upon an agent designated by law is permissible without any need to personally serve the defendant.” *Holman v. Warwick Furnace Co.*, 456 S.E.2d 894,896, 318 S.C. 201, 204 (1995). (citing 62B Am.Jur.2d Process § 239). Section 33-44-111 further expands upon this rule by extending the date of effectiveness of service to “the earliest of: (1) the date the company receives the process, notice, or demand; (2) the date shown on the return receipt, if signed on behalf of the company; or (3) five days after its deposit in the mail, if mailed postpaid and correctly addressed. S.C. Code Ann. § 33-44-111(c). As evidenced by letter of the Secretary of State attached to the Affidavit of Service filed September 11, 2024, the Secretary of State accepted service of Plaintiff’s Summons and Complaint and deposited the same in the mail properly addressed to the Defendants’ designated office on July 12, 2024 and July 9, 2024. By statute, service became effective five days thereafter.

CONCLUSION

For the foregoing reasons, the Court finds that Defendants have failed to show that they are entitled to relief from the default judgment under Rule 60(b), SCRCP. Moreover, the Court again concludes that Plaintiff properly effected service on Defendants, by and through the South Carolina Secretary of State, as Defendants’ designated agent for service of process, in accordance

with Rule 4(d)(3) and (7), SCRPC, and S.C. Code Ann. 33-44-111. Therefore, Defendants' motion is hereby **DENIED**.

AND IT IS SO ORDERED.

R. Kirk Griffin
Presiding Judge

December ____, 2025



Clarendon Common Pleas

Case Caption: Elgin M Selbee VS Palmetto Shores Re Holdings, Llc , defendant, et al
Case Number: 2024CP1400106
Type: Order/Other

So Ordered

s/ R. Kirk Griffin 2768