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Jan 28 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

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 ColumbiaDefendants,

Of whom All Seasons Healthcare, LLC isRespondent.

**SUPPLEMENTAL RECORD ON APPEAL
VOLUME II**

Jamie Rae Rutkoski (SC Bar 103270)
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John D. Kassel (SC Bar No.: 03286)
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Other email: emoultrie@kassellaw.com

ATTORNEYS FOR APPELLANT

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The McKay Firm, PA
3700 Forest Drive, Unit 404
Columbia, South Carolina 29204
803-256-4645
803-730-7581 (Fax)

ATTORNEYS FOR RESPONDENT

Healthcare, Inc. administered care to Ms. Gee at the Amara Place nursing facility where Ms. Gee resided.

5. On December 29, 2019, the hospice nurse went to Amara Place at 7:10 p.m. and provided comfort care to Ms. Gee and instructions to the employees of Amara Place regarding care of Ms. Gee. I am informed and believe that the hospice physician was contacted to prescribe Ativan and Morphine for Ms. Gee. At approximately at 12:15 a.m., December 30, 2019, our hospice nurse returned to Amara Place and requested that Amara Place employees administer the Ativan and Morphine to Ms. Gee. The Amara place employees refused to administer the morphine and Ms. Gee was pronounced dead at approximately 12:47 a.m., on December 30, 2019. Our hospice nurses did not have access to Ms. Gee's medication because the medications were under the exclusive and total control of Amara Place.

6. Despite requesting they provide the medications, Amara Place refused. Ms. Gee was subsequently pronounced dead at 12:47 a.m., on December 30, 2019. I am informed and believe that the All Seasons hospice nurses did everything appropriately but could not administer medication which they did not have in their possession, and they do not carry scheduled medications with them. *See generally* Paragraphs 12 through 16 of the Notice of Intent to File Suit.

7. The Proofs of Service filed by Plaintiff (Plt. Exhibits 2 and 5) contend that All Seasons Healthcare, Inc., was served with the Notice of Intent to File Suit on December 16, 2022, and served with the Summons and Complaint on June 26, 2023. The documents attached Plaintiff's certificates of service do not have my signature and I did not authorize any other person to accept service for me. I do not know who signed the return receipts, and I do not know of any agent or employee of All Seasons Healthcare, Inc. that received or signed for these alleged mailings. I am the Registered Agent for service of process and did not sign the return

receipts. I am informed and believe that I have never been properly served with either the Notice of Intent to File Suit or the Summons and Complaint.

FURTHER AFFIANT SAYETH NOT.

Heather McCloy

Heather McCloy

SWORN TO AND SUBSCRIBED BEFORE ME)
this 12th day of March, 2024 (CP))
D. Gale Rostick)
NOTARY PUBLIC FOR SOUTH CAROLINA)
My Commission Expires: 23 February 2031)

D. Gale Rostick

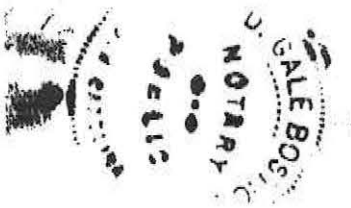


EXHIBIT C

USPS TRACKING #



9590 9402 7396 2055 4955 28

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

Sender: Please print your name, address, and ZIP+4® in this box*

Elizabeth C Moultrie, Senior Paralegal
KASSEL McVEY ATTORNEYS
P O Box 1476
Columbia SC 29202-1476



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <input checked="" type="checkbox"/> Addressee</p> <p>C. Date of Delivery 12-26</p>												
<p>1. Article Addressed to:</p> <p>H. McCloy, as RA for Service of Process for All Season' Healthcare Inc. 7142 Woodrow St Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4955 28</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>												
<p>2. Article Number (Transfer from service label) 7017 0660 0000 1954 2299</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
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EXHIBIT D

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2023-CP-40-03086
Representative of the Estate of Phyllis)
Gee,)

Plaintiff,)

v.)

PROOF OF SERVICE

All Season's 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.)

I, Elizabeth C. Moultrie, do hereby certify that on the **26th day of June 2023**, I served upon Defendant **ALL SEASONS HEALTHCARE, LLC**, a true and correct copy of the **SUMMONS & COMPLAINT and Plaintiff's First Discovery Requests** by Certified Mail, Return Receipt Requested, Restricted Delivery to **H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, LLC**, as evidenced by United States Postal Form 3811, postmarked **26 June 2023**, and received in my office on **28 June 2023**, attached hereto and incorporated herein by reference.



Elizabeth C. Moultrie

June 30, 2023

Columbia, South Carolina.

ELECTRONICALLY FILED - 2024 Mar 12 5:18 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086
ELECTRONICALLY FILED - 2023 Jun 30 10:37 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

USPS TRACKING #

9590 9402 7396 2055 4958 87

United States Postal Service

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

* Sender: Please print your name, address, and ZIP+4® in this box*

Elizabeth C Moultrie, Senior Paralegal
KASSEL McVEY ATTORNEYS
P O Box 1476
Columbia SC 29202-1476

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12-147676

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY												
<ul style="list-style-type: none">Complete items 1, 2, and 3.Print your name and address on the reverse so that we can return the card to you.Attach this card to the back of the mailpiece, or on the front if space permits.	<p>A. Signature* <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) C. Date of Delivery</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No If YES, enter delivery address below:</p>												
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<input type="checkbox"/> Collect on Delivery Restricted Delivery													
<p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0001 3098 4858</p>	<p>PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt</p>												

ARGUMENT AND LAW

Rule 4(d)(8) of the South Carolina Rules of Civil Procedure states service is effective when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery restricted to the addressee.” Plaintiff mailed the Notice of Intent using the United States Postal Service’s “Certified Mail Restricted Delivery” option. As shown below, the United States Postal Service explains that Restricted Delivery “allows the mailer to direct delivery only to the addressee or the addressee’s authorized agent.” As a result, Certified Mail Restricted delivery complies with Rule 4(d)(8).



What is Restricted Delivery?

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

Defendant cites to a case in the Court of Common Pleas in Charleston County, *Zanin v. Carolina Specialty Products Inc.* In *Zanin*, the Court granted summary judgment in favor of the defendant because service of the Amended Complaint was “defective because it was not served by restricted delivery.” In that case, Plaintiff Zanin filed a Memorandum in Opposition to Summary Judgment on August 27th, 2012, with exhibits (See, Exhibit A). In that memorandum, Plaintiff

admits they did not check the “restricted delivery” box, located in the bottom right of the green card, when they sent the Amended Complaint by certified mail. (Ex A, pg 3). Because the restricted delivery box was not checked, Plaintiff Zanin did not comply with Rule 4(d)(8).

The facts in *Zanin* are wholly inconsistent with the facts in this matter. As shown below, Plaintiff checked the “restricted delivery” box when the Notice of Intent was mailed to Defendant All Season’s Healthcare, Inc, and pursuant to the United States Postal Services’ definition of restricted delivery, Plaintiff fully complied with Rule 4(d)(8). Defendant mistakenly asserts it is the sender’s job to check “addressee” in the top right box of the green card when sending the mail Certified, Restricted Delivery. However, as you can see in the photo below, the directions for that box are to “complete this section on delivery.” Thus, the recipient fills out that box and identifies themselves as agent or addressee. When the recipient signed this card on December 16th, 2022, service was effective.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY															
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> <i>H. McCloy</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>															
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	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>															
	<p>3. Service Type</p> <table style="width: 100%; border: none;"> <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></td> </tr> <tr> <td><input type="checkbox"/> Restricted Delivery</td> <td></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	
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<p>2. Article Number (Transfer from service label) 7017 0660 0000 1954 2299</p>																
<p>PS Form 3811, July 2020 PSN 7530-02-000-9053 Domestic Return Receipt</p>																

“When the civil rules on service are followed, there is a presumption of proper service.” *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995). Because Plaintiff in this case met the requirements for service of process, it is presumed Defendant All Season’s Healthcare, Inc. was properly served. “Under Rule 4(d)(8) the defendant, not the plaintiff, must prove that the receipt was signed by an unauthorized person. The plaintiff need only show compliance with the rules.” *Id.* In this case, Defendant All Season’s cannot prove the receipt was signed by an unauthorized person, as exhibited by their admission in their memorandum in support filed March 12, 2024, and their response to the interrogatory seen below.

9. Identify by names, address and title the All Season’s Healthcare, LLC employees and/or agents who accepted and signed the certified letter serving the Notice of Intent on December 16th, 2022.

ANSWER: Unknown.

It is important to note that when Defendant All Season’s Healthcare, Inc. was served with the Summons and Complaint on June 26th, 2023, the recipient of the Summons and Complaint wrote “All Seasons” on the signature line and marked the “agent” box, identical to the signature and check mark as the recipient had done when served with the Notice of Intent. We know the service of the Summons and Complaint was effectuated because Ms. McCloy contacted her insurance carrier, was denied coverage, and ultimately requested an extension to answer the complaint. Now this Defendant is claiming the identical proof of service of the Notice of Intent did not put the Defendant on notice.

This is not the first time Ms. McCloy has attempted to evade service. Ms. McCloy and her husband, Dr. McCloy, failed to pay over \$150,000.00 in federal taxes between the years of 2011 and 2015. Beginning in 2018, the IRS attempted to levy these owed taxes. Dr. and Ms. McCloy

failed to pay back the taxes and in March of 2020, the IRS filed an action against them in South Carolina District Court. The United States of America attempted to serve Ms. McCloy at her place of business located at 8142 Woodrow St, Columbia, South Carolina- the same location the Plaintiff in this matter served the Notice of Intent and, later, Summons and Complaint. Ms. McCloy notified the process server she would not accept service, despite service being effectuated. The IRS then served Ms. McCloy at her personal residence out of an abundance of caution. (see, Exhibit B) This repeated behavior of attempting to dodge service and liabilities should not be rewarded.

Because the defendant cannot meet their burden in proving the receipt was signed by an unauthorized person, the presumption of proper service cannot be refuted. As a result, defendant's Motions for Summary Judgment and Dismissal should be denied.

Respectfully submitted,

s/Jamie Rae Rutkoski
Jamie Rae Rutkoski (SC Bar No.: 103270)
jrutkoski@kassellaw.com
Theile B. McVey (SC Bar No.: 16682)
tmevey@kassellaw.com
John D. Kassel (SC Bar No.: 3286)
jkassel@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
803-256-4242
803-256-1952 (Facsimile)
Other email: cmoultrie@kassellaw.com

April 15, 2024

Columbia, South Carolina.

FILED

STATE OF SOUTH CAROLINA)
2012 AUG 27 PM 2: 15)
COUNTY OF CHARLESTON) IN THE COURT OF COMMON PLEAS
JULIE J. ARMSTRONG)
CLERK OF COURT)

BY ) Civil Action No. 2010-CP-10-1515
Frank Zanin and Mary Zanin,)

)
)
) Plaintiffs,)

) vs.)

) Carolina Specialty Products, Inc., Earthcore)
) Industries, LLC and American Building)
) Products, LLC)

)
)
) Defendants.)

MEMORANDUM IN OPPOSITION TO
DEFENDANT AMERICAN BUILDING
PRODUCTS, LLC'S MOTION FOR
SUMMARY JUDGMENT

Plaintiffs hereby submit this Memorandum in opposition to Defendant American Building Products, LLC's (hereafter "American Building") Motion for Summary Judgment on the grounds that the Amended Complaint was timely served upon American Building, American Building was fully aware and notified of the pending complaint in October 2011, as evidenced by its repeated contact with Plaintiffs' counsel, and, accordingly, summary judgment is not proper.

Factual Background

On January 21, 2009, a fire occurred at the Plaintiffs' home which originated in the area behind the fireplace in the home. On September 1, 2011, the Amended Complaint was filed in this Court, adding American Building as a party Defendant. On October 14, 2011, Plaintiffs served American Building with a copy of the Summons and Complaint via Certified Mail, Return Receipt at its place of business in Myrtle Beach, South Carolina. On October 21, 2011, Plaintiffs' counsel spoke with Scott P. Amaral, the owner of American Building. Amaral stated

that he had received the Summons and Complaint and requested that American Building be dismissed from the case for reasons relating to the manner in which American Building acquired Defendant Carolina Specialty Products, Inc. (See Affidavit of Attorney Goodwyn, attached as **Exhibit 1**). Mr. Amaral also forwarded an unsigned Letter of Intent to Attorney Goodwyn on that same day, which Amaral asserted was evidence of the terms and conditions of American Building's acquisition of Carolina Specialty. In response, Attorney Goodwyn requested that Mr. Amaral forward a signed copy of the purchase and sale agreement. See **Exhibit 1**. Despite having received the Summons and Complaint, American Building filed no response to the Amended Complaint, and Plaintiffs moved for an Order of Default Judgment on December 14, 2011. On April 2, 2012, Mr. Amaral contacted Attorney Goodwyn via e-mail to inquire as to why he was receiving default motions and asserting that the purchase of Carolina Specialty was an "asset only" purchase. Mr. Amaral stated that "my assumption was that you received the document I sent you [on October 21, 2011] and had dropped us from the case." See **Exhibit 1**.

Legal Standard

Summary judgment is appropriate if "there is no genuine issue as to any material fact." Rule 56(c), SCRC. In determining whether a triable issue of material fact exists, the Court must construe all facts and inferences in the light most favorable to the non-movant. Wogan v. Kunze, 379 S.C. 581, 585, 666 S.E.2d 901, 903 (2008).

Argument

1. The owner of American Building was on notice of, and in receipt of, the Summons and Complaint as of October 21, 2011, and therefore Plaintiffs' claims are not time-barred.

American Building argues that the Plaintiffs' claims are barred by the Statute of Limitations because an Acceptance of Service was signed by American Building's counsel on May 21, 2012.¹ This argument completely ignores that service of the Amended Complaint was made on October 14, 2011 on an American Building employee, who promptly informed American Building's owner, Mr. Amaral. Mr. Amaral had actual and/or constructive knowledge of service of the pleadings on October 14, 2011, and had possession of the pleadings by October 21, 2011, when he telephoned Plaintiffs' counsel. Despite such awareness, American Building failed to answer the Amended Complaint or otherwise appear in any way until May 2012. To now assert that service was not perfected until May 2012 is beyond the bounds of reasonableness.

It is undisputed that Rule 4(d)(8), SCRCP, requires that service made by mail shall be certified, return receipt requested, and restricted delivery. In the instant case, service was by certified mail, but the restricted delivery box was not checked.² Despite this technical deficiency, it is undisputed that the American Building was in actual and constructive receipt of the Plaintiffs' claims by October 21, 2011 - well within the statute of limitations. American Building's owner, Mr. Amaral, simply failed to respond - relying upon his position that his statements to Mr. Goodwyn regarding an "asset only" sale, and the blank Letter of Intent, were sufficient to allow him to ignore this pending action. Such reliance is misplaced.

¹ American Building, upon notice of the motion for default judgment, proceeded to hire counsel to appear at the motion hearing on May 14, 2012 and filed an answer to the Amended Complaint and served discovery on the Plaintiffs.

² Plaintiffs' motion for default judgment was denied in part as a result of this inadvertent technical error.

Our Supreme Court has noted that "Rule 4, SCRPC, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action. *We have never required exacting compliance with rules to effect service of process.* Rather we inquire whether the 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.*" Roche v. Young Brothers, Inc. of Florence, 318 S.C.207, 456 S.E.2d 897, 899 (1995) (internal citations omitted) (emphasis added); See also Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009) (holding that hotel owner who was absent from premises when process was served upon front desk clerk could not be relieved from default on grounds of ineffective service where owner spoke to process server on the phone and acknowledged he was aware of service; where owner instructed clerk to fax the summons and complaint to his insurance agent; and where owner failed to follow up on litigation).

There is no dispute that American Building's employee accepted service of the Amended Complaint on October 14, 2011 and that by October 21, 2011, American Building's owner, Mr. Amaral, had received the pleadings and contacted Plaintiffs' counsel to discuss the case and his position as to American Building's liability (or lack thereof) under the Letter of Intent. To now argue that service was not effected until May 21, 2012 is simply not supportable. Much like the hotel owner in Richardson, supra, Mr. Amaral was aware that the pleadings had been served; was in possession of the pleadings in October 2011; and simply failed to do anything about it. To now assert that the Plaintiffs' claims are barred by the statute of limitations is simply not supported by the law or the facts. "A party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney....[W]here the [party] was duly served with the

summons and complaint, it was his duty to answer the complaint...." Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894, 897-898 (Ct. App. 2001).

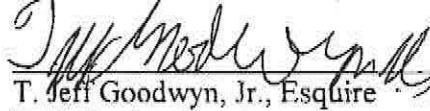
A. Allowing American Building to Avoid the Plaintiffs' Claims Would Be Inequitable

Even assuming for purposes of this Memorandum that Plaintiffs' claims are time-barred, which is expressly denied, the statute of limitations should be equitably tolled in order to allow the case to go forward. "In order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." Hooper v. Ebenezer Senior Services, 687 S.E.2d 29, 32, 386 S.C. 108 (2009). "The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Id. at 33 (citing Hausman v. Hausman, 199 S.W.3d 38 (Tex. App. 2006). "Unlike equitable estoppel, equitable tolling does not require a showing that the defendant has made a misrepresentation to the plaintiff." Magnolia North Property Owner's Assoc. v. Heritage Communities, Inc., 725 S.E.2d 112, 397 S.C. 348 (Ct. App. 2012) (noting that equitable tolling is judicially created and stems from the judiciary's inherent power to formulate rules of procedure where justice demands it .)

In Hooper, the plaintiff "diligently pursued service" on what turned out to be a non-existent registered agent for the corporate defendant, but was unable to effect service in a timely manner -- the plaintiff was one week past the 120 day time period outlined in Rule 3(a)(2), SCRCP. The South Carolina Supreme Court, in equitably tolling the statute of limitations, noted that "public policy and the interests of justice weigh heavily" in favor of allowing her claims to proceed. Id. at 34.

Similarly, to allow American Building to avoid this litigation would work a severe injustice on the Plaintiffs. Plaintiffs' counsel attempted to serve American Building in a timely fashion and proceeded to communicate with Mr. Amaral via telephone and email on October 21, 2011. This communication with Mr. Amaral – where Mr. Amaral clearly and unequivocally indicated that he was aware of the lawsuit having been served on his employee- indicates that American Building simply chose to ignore this lawsuit without any further inquiry or appearance. To reward American Building's disinterest is to work a drastic consequence – dismissal – on the Plaintiffs. Such a result is clearly against public policy and not in the Court's interest in seeing claims actually litigated.

GOODWYN LAW FIRM, LLC


T. Jeff Goodwyn, Jr., Esquire

2519 Devine Street

Suite A

Columbia, SC 29205

(803) 251-4517

Attorney for Plaintiff

Columbia, South Carolina

August 24, 2012

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON)

Frank Zanin and Mary Zanin,) Civil Action No. 2010-CP-10-1515
)

Plaintiffs,)

vs.)

AFFIDAVIT OF
T. JEFF GOODWYN, JR., ESQ.

Carolina Specialty Products, Inc., Earthcore)
Industries, LLC, and American Building)
Products, LLC,)

Defendants.)

PERSONALLY APPEARED before me, T. Jeff Goodwyn, Jr., Esquire, who, being duly sworn, deposes and says the following:

1. I am the attorney for Plaintiffs in the above-captioned matter.

2. That the Amended Complaint was served upon Defendant American Building Products, LLC via Certified Mail, Return Receipt Requested, on October 14, 2011, as evidenced by the Proof of Service filed with this Court on December 14, 2011 and attached hereto as **Exhibit A.**

3. Shortly thereafter, I received a phone call from Scott Amaral, the owner of American Building, and I spoke with him on October 21, 2011, as evidenced by the e-mails attached hereto as **Exhibit B.**

4. During my conversation on October 21, 2011, Mr. Amaral stated that he had received the Summons and Complaint and requested that American Building Products, LLC be dismissed from the case for reasons relating to the manner in which American Building Products, LLC acquired Defendant Carolina Specialties – specifically that it was his position that the acquisition of Carolina Specialties by American Building was an “asset only”




purchase.

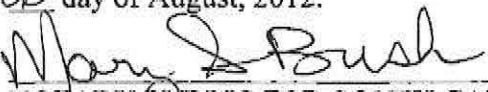
5. Mr. Amaral sent me a blank Letter of Intent, attached to his e-mail, purporting to support his position that American Building Products should be dismissed. See Exhibit B.

6. American Building Products never responded to the Amended Complaint and I proceeded to file an Affidavit of Default and Motion for Default Judgment.

7. On April 2, 2012, Scott Amaral sent me another e-mail acknowledging that he had received the Summons and Complaint and default documents and that he had assumed that I had dismissed American Building Products, LLC from the suit after he sent me the Letter of Intent on October 21, 2011 (see email dated April 2, 2012 attached as Exhibit C).


T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, SC 29205
(803) 251-4517
Attorney for Plaintiffs

SWORN to before me this
23rd day of August, 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 10-19-2019

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Frank Zanin and Mary Zanin,

Civil Action No. 2010-CP-10-1515

Plaintiffs,

PROOF OF SERVICE

vs.

Carolina Specialty Products, Inc., Earthcore Industries, L.L.C. and American Building Products, L.L.C.

Defendants.

FILED
2011 DEC 14 PM 1:32
CLERK OF COURT

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <i>[Signature]</i> <input type="checkbox"/> Addressee</p> <p>B. Received by (Printed Name) <i>D. Reilly</i> C. Date of Delivery <i>11/10/14</i></p>
<p>1. Article Addressed to: <i>Scott Amaral, Owner American Building Products, LLC 4706 F Northgate Blvd. Myrtle Beach, SC 29577</i></p>	<p>D. Is delivery address different from item 1? <input checked="" type="checkbox"/> Yes if YES, enter delivery address below: <input type="checkbox"/> No <i>4706 F Northgate Blvd Myrtle Beach, SC 29577</i></p> <p>3. Service Type <input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail <input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise <input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p>
<p>2. Article Number <i>7009 0960 0000 8368 0857</i></p>	



Jeff Goodwyn

From: Jeff Goodwyn [jgoodwyn@goodwynlaw.com]
Sent: Friday, October 21, 2011 5:22 PM
To: 'Scott P Amaral'
Subject: RE: File no. 2000-0002
Scott -

It was good to talk to you today too. Please send me the executed version of the purchase agreement when you get back to SC.

Thanks -

T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, S.C. 29205
Telephone: (803) 251-4517
Facsimile: (803) 251-4527
www.Goodwynlaw.com

CONFIDENTIAL & PRIVILEGED

Unless otherwise indicated or obvious from the nature of the following communication, the information contained herein is attorney-client privileged and confidential information/work product. The communication is intended for the use of the individual or entity named above. If the reader of this transmission is not the intended recipient, you are hereby notified that any dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Scott P Amaral [mailto:samaral@abp-llc.net]
Sent: Friday, October 21, 2011 4:41 PM
To: jgoodwyn@goodwynlaw.com
Subject: File no. 2000-0002

Jeff,

Thank you for returning my call today. Attached please find the LOI/Purchase agreement entered into by ABP, LLC and CSP, Inc. June, 2008. If you have further questions please give



10/21/2011

me a call.

Thanks,

Scott P Amaral
c: 843-241-0368
f: 508-355-0058
samaral@abp-llc.net

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10/21/2011

ROA 120

dissemination, distribution or copying of this communication is strictly prohibited. If you have received this communication in error or are not sure whether it is privileged, please immediately notify us by return e-mail and destroy any copies, electronic, paper or otherwise, which you may have of this communication.

From: Scott P Amaral [mailto:samaral@abp-llc.net]
Sent: Monday, April 02, 2012 3:30 PM
To: jgoodwyn@goodwynlaw.com
Subject: Re: File no. 2000-0002

Mr. Goodwyn,

I am writing you because I received a package a week ago from my office in SC in regards to the Zanin Case against Carolina Specialty Products, Inc. below is the email in which I sent you the purchase agreement between ABP and CSP which states that it was an asset only purchase. at that time you said you'd get back to me, which I never received a response and now I'm getting default motions. Carolina Specialty Products Inc. went out of business when we acquired their assets and we did not assume their liabilities as I stated to you before. and as I also mentioned to you, I do not work in that office and did not personally sign for any of these services as you can see in the proof of service it was signed for by a local employee who did not get it to me until recently. My assumption was that you received the document i sent you and had dropped us from the case. Could you please let me know what is going on.

Thanks,

Scott P Amaral
c: 843-241-0368
f: 508-355-0058
samaral@abp-llc.net

On Oct 21, 2011, at 4:41 PM, Scott P Amaral wrote:

Jeff,

Thank you for returning my call today. Attached please find the LOI/Purchase agreement entered into by ABP, LLC and CSP, Inc. June, 2008. If you have further questions please give me a call.

Thanks,



STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Frank Zanin and Mary Zanin,)
)
)
Plaintiffs,)

Civil Action No. 2010-CP-10-1515

vs.)


CERTIFICATE OF SERVICE

Carolina Specialty Products, Inc., Earthcore)
Industries, LLC and American Building)
Products, LLC)

Defendants.)

This is to certify that a copy of the foregoing **Memorandum in Opposition to Defendant American Building Products, LLC's Motion for Summary Judgment and an Affidavit of T. Jeff Goodwyn, Jr.** along with **exhibits** have been served upon the following party(s) by depositing a copy of the same in the United States Mail, postage prepaid, addressed as shown below on this 24th day of August, 2012.

James D. Smith, Esquire
McAngus, Goudelock & Courie, LLC
P.O. Box 650007
Mt. Pleasant, SC 29465



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
Goodwyn Law Firm, LLC
2519 Devine Street, Suite A
Columbia, S.C. 29205
(803) 251-4517

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,)	
	)	Case No.: 3:20-00639-JMC
)	
Plaintiff,)	
v.)	
)	
ALL SEASONS HEALTHCARE, INC.)	
a/k/a ALL SEASONS MEDICAL)	
ASSOCIATES, LLC,)	
)	
Defendant.)	
_____)	

REQUEST FOR ENTRY OF CLERK’S DEFAULT AGAINST DEFENDANT

The United States of America, by and through undersigned counsel, files this application for an entry of default against defendant All Seasons Healthcare, Inc. a/k/a All Seasons Medical Associates, LLC (“All Seasons”) pursuant to Fed. R. Civ. P. 55(a) and as grounds therefore states as follows:

1. The United States commenced this action to enforce an Internal Revenue Service levy served on All Seasons to collect the outstanding federal income tax liabilities of Dr. Stanley McCloy and Heather Wood a/k/a Heather McCloy (“Heather McCloy”) who are employed by the company. (ECF Entry No. 1).
2. As established by the return of service filed with the Court on May 18, 2020, a summons and complaint were originally served on All Seasons on March 24, 2020, by leaving the summons and complaint with Heather McCloy, All Seasons’s owner and designated agent for service of process in South Carolina, at All Seasons’s place of business located at 7142 Woodrow Street, Columbia, South Carolina. (ECF Entry No. 6-1). However, Heather McCloy informed the process server that she would not accept service. (*Id.*). Thus, in an abundance of

caution, the summons and complaint were personally served on Heather McCloy at her residence located at 10 Ferrell Lane, Columbia, South Carolina on April 22, 2020. (ECF Entry No. 6-2).

3. Pursuant to Fed. R. Civ. P. 12(a)(1)(A)(i), All Seasons was to serve an answer or other response under Rule 12 of the Federal Rules of Civil Procedure by May 13, 2020. However, pursuant to the Court's Standing Order entered on March 16, 2020 (Standing Order, Misc. Number: 3:20-mc-105), all deadlines in civil cases "are [] extended by 21 days from the current deadline sent." (See also Amended Standing Order, Misc. Number: 3:20-mc-139). Therefore, the deadline for All Seasons to file its response to the complaint was extended until June 3, 2020.

4. To date, All Seasons has failed to file either an answer nor any other motion or response within the deadline provided by the Court's Standing Order. Accordingly, All Seasons is in default and the United States is entitled to the entry of a default pursuant to Fed. R. Civ. P. 55(a).

5. The United States knows of no reason why a default should not be entered against All Seasons.

WHEREFORE, the United States prays that the Clerk enters the default against All Seasons in accordance with Fed. R. Civ. P. 55(a).

Respectfully submitted,

June 23, 2020

RICHARD E. ZUCKERMAN
Principal Deputy Assistant Attorney General
Tax Division

Pascale Guerrier
Trial Attorney, Tax Division
U.S. Department of Justice
555 4th Street, N.W., Room 6223
Washington, D.C. 20001
Phone: (202) 353-1978
Telecopier: (202) 514-4963
Pascale.Guerrier@usdoj.gov

PETER M. MCCOY, JR.
United States Attorney
District of South Carolina

By: s/ Robert Sneed
Robert Sneed
Assistant United States Attorney (AUSA)
Civil Division
U.S. Attorney's Office, District of
South Carolina
55 Beattie Place, Suite 700
Greenville, SC 29601
(864) 282-2100, robert.sneed@usdoj.gov

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UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,)	
	)	Case No.: 3:20-00639-JMC
)	
Plaintiff,)	
v.)	
)	
ALL SEASONS HEALTHCARE, INC.)	
a/k/a ALL SEASONS MEDICAL)	
ASSOCIATES, LLC,)	
)	
Defendant.)	
_____)	

CERTIFICATE OF SERVICE

The undersigned hereby certifies that she is an employee of the Office of the United States Attorney for the District of South Carolina and is a person of such age and discretion as to be competent to serve papers.

That on June 23, 2020, she served a copy of the attached:

**UNITED STATES' REQUEST FOR ENTRY OF CLERK'S
DEFAULT AGAINST DEFENDANT**

by placing said copy in an postpaid envelope addressed to the person(s) hereinafter named, at the places(s) and address(es) stated below, which is/are the last known address(es), and by depositing said envelope and contents in the United States Mail at Greenville, South Carolina.

All Seasons Healthcare, Inc.
a/k/a All Seasons Medical Associates, LLC
7142 Woodrow Street
Irmo, SC 29063

s/Jennifer Ludwiczak
Jennifer Ludwiczak
Legal Assistant

Plaintiff mailed letters to both Defendants notifying them of pre-suit mediation, as required by S.C. Code Ann. § 15-79-125. On March 27th, 2023, “Trish” from All Season’s Healthcare called Plaintiff’s counsel’s office to discuss the contents of the letter. Plaintiff’s counsel’s office confirmed the date of the mediation with Trish and requested an email address to send the relevant information. Immediately after that phone call, Elizabeth Moultrie emailed Trish at trish@allseasonshealthsc.com with the relevant documentation to attend the scheduled pre-suit mediation. (*see*, Exhibit A). Neither Defendant appeared at mediation.

Once the mediator filed the ADR paperwork in Greenwood County, Plaintiff transferred the Greenwood County case to Richland County. Plaintiff then filed the Complaint in Richland County and served both All Season’s Healthcare, Inc. and TWG Polo Rd., L.L.C.

Law

Defendants assert that failure to file the Notice of Intent in the proper venue negates the tolling of the statute of limitations and, as such, should result in dismissal of this case. S.C. Code Ann. § 15-79-125 states: “the plaintiff shall contemporaneously file a Notice of Intent to File Suit and affidavit of an expert witness . . . in a county in which venue would be proper for filing or initiating the civil action.” However, the statute does not specify the consequence for failure to strictly comply with the directions in the statute. Nowhere in the statute does the legislature suggest that strict compliance is required to toll the statute of limitations and nowhere in the statute does the legislature suggest that failure to strictly comply should result in dismissal of a potentially meritorious claim.

The South Carolina Supreme Court has addressed the purpose and intention of S.C. Code Ann. § 15-79-125 in *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013). In

Ross, plaintiffs failed to complete the pre-suit mediation within 120 days as prescribed by the statute. Just as the statute states that the Notice of Intent “shall” be filed in the proper venue, the statute also states mediation “shall” take place within 120 days. However, the Supreme Court found that failure to strictly comply with the statute should not result in dismissal of the claim. *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013).

The Court found that the legislature in no way meant for S.C. Code Ann. § 15-79-125 to be a “trap” to confuse litigants and result in dismissal of meritorious claims. *Id.*, at 63, 550. Instead, the Court found that “[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.*

Rule 82(b) of the South Carolina Rules of Civil Procedure states: “when 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.” If this were a case that didn’t require the filing of a Notice of Intent, and a complaint was filed in this case in Greenwood County on November 11th, 2023, the remedy would be that the case be transferred to the proper venue. The case could not be dismissed for filing a complaint in an improper venue. The idea that the enactment of S.C. Code Ann. § 15-79-125 creates a new procedural hurdle, as opposed to the statute’s intention of culling unmeritorious cases and encouraging resolution, is contrary to the Supreme Court’s ruling in *Ross v. Waccamaw* and contrary to the intention of the legislature.

The Court’s decision in *Ross v. Waccamaw* in conjunction with Rule 82 of the South Carolina Rules of Civil Procedure can lead to only one reasonable conclusion: the remedy for filing a Notice of Intent in an improper venue is to transfer the case to the proper venue, not to

dismiss the case. The purpose of S.C. Code Ann. § 15-79-125 is to cull malpractice claims with no merit. It is not meant to be a procedural trap for Plaintiffs who otherwise would be able to move forward with meritorious claims.


Respectfully submitted,

s/Jamie Rae Rutkoski
Jamie Rae Rutkoski (SC Bar No.: 103270)
jrutkoski@kassellaw.com
Theile B. McVey (SC Bar No.: 16682)
tmcvey@kassellaw.com
John D. Kassel (SC Bar No.: 3286)
jkassel@kassellaw.com
KASSEL McVEY ATTORNEYS AT LAW
1330 Laurel Street
Post Office Box 1476
Columbia, South Carolina 29202-1476
803-256-4242
803-256-1952 (Facsimile)
Other email: emoultrie@kassellaw.com

April 18, 2024


Columbia, South Carolina.

(no subject)

 Elizabeth Moutrie
To: trish2@casenotes.com
Cc: Jamie Palka <jamie.palka@casenotes.com>

Reply Reply All Forward

 Letter covering FOIA on McCloy as RA for All Seasons's HealthCare.pdf
 Filed FOI - See.pdf

 Proof of Service on All Seasons.pdf

Dear Trish:

Attached please find my cover letter, the filed Notice of Intent, and my Proof of Service of service on Mr. McCloy who you confirmed to me works in your office. I want to make sure you have anything you should to send to your liability carrier and your attorney. You advised that trishly you received your notice of Pre-Suit Mediation. Please provide me with the name of your attorney and I will be happy to provide him or her with all of the documents and information you have been provided with.

Yours very truly,



Elizabeth C. Moutrie
Senior Paralegal
1330 Laurel Street | P.O. Box 1478
Columbia, South Carolina 29203
Phone: (803) 256-4242
Fax: (803) 256-1952
emoutrie@kasveilaw.com
www.kasveilaw.com

KASVEILAW McVEY
PERSONAL INJURY LAWYERS

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1330 Laurel Street, Columbia, SC 29203 | (803) 256-4242 | www.kasveilaw.com

Exhibit A

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) FOR THE FIFTH JUDICIAL CIRCUIT

Jennifer Murphy, as Personal) Civil Action No.: 2023-CP-40-03086
Representative of the Estate of Phyllis)
Gee,)

Plaintiff,)

v.)

Plaintiff's Motion to Alter or Amend the
Order Granting Summary Judgment to
Defendant All Season's Healthcare, Inc.

All Season's Healthcare, LLC, All)
Seasons Healthcare, Inc., and TWG)
Polo Road, LLC d/b/a Mill Creek)
Manor, LLC. f/k/a Amara Place,)

Defendants.)

Plaintiff, by and through undersigned counsel moves this Court to alter or amend the order granting summary judgment to defendant All Season's Healthcare, Inc., pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

I. Factual background and discrepancies

Plaintiff brought this action against Defendants for breaching the standard of care in providing hospice and comfort care to the decedent, Phyllis Gee while she was admitted to All Season's Healthcare and receiving hospice care from All Season's Healthcare, Inc. Plaintiff has alleged Defendants failed to provide medication while Phyllis Gee was actively dying. In the Court's Order from May 13th, 2023, the Court made a finding of fact that an Amara Place nurse "refused" to provide medication to Ms. Gee. There is no basis for this finding in the record.

The statute of limitations in this case fell on December 30th, 2022. Plaintiff filed the Notice of Intent in Greenwood County on November 11th, 2022. Defendant All Season's Healthcare,

Inc, was served on December 16th, 2022, through certified mail, restricted delivery, return receipt requested. The return receipt was returned to Plaintiffs signed "All Seasons Healthcare."

Defendant All Season's Healthcare, Inc., did not have an attorney appear on the record. Plaintiffs notified Defendant All Season's Healthcare, Inc., of the pre-suit mediation by way of letter. On March 1st, 2023, Elizabeth Moultrie, a paralegal employed by Plaintiff's counsel, took a phone call from "Trish," an employee of All Season's Healthcare, Inc., regarding the pre-suit mediation. Ms. Moultrie then provided the documents related to the Notice of Intent to "Trish" after the phone call. Still, no attorneys appeared for Defendant. Plaintiff moved forward with pre-suit mediation.

Plaintiff then transferred the Notice of Intent to Richland County, the undisputed proper venue, on June 13th, 2023. Plaintiff then filed the Summons and Complaint in this case in Richland County on June 13th, 2023. Defendant All Season's Healthcare, Inc., was served in the same manner as the Notice of Intent. Again, the return receipt was returned with the signature line reading "All Seasons Healthcare." Defendant's insurance company was notified by Defendant All Seasons' Healthcare, Inc., and denied the claim. Heather McCloy, registered agent and owner of All Season's Healthcare, Inc., requested a continuance to answer the complaint. Plaintiff granted the request.

- II. South Carolina law shifts burden to Defendant to prove improper service when Plaintiff meets the service requirements of Rule 4 of the South Carolina Rules of Civil Procedure.

Rule 4(d) of the South Carolina Rules of Civil Procedure sets out the process with which defendants must be served. "When the civil rules on service are followed, there is a presumption

of proper service.” *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995). In *Roche*, Plaintiff sued Young Brothers, Inc., a corporation which owned and operated the hotel where Plaintiff was injured. Plaintiff filed their Summons and Complaint and served Young Brothers, Inc., by mailing the summons and complaint certified mail, return receipt requested addressed to the Registered Agent Mr. Edward L. Young. The return receipt was signed by J.N. Young. Defendants never answered the complaint. Plaintiff filed a Motion for Default, underwent a default hearing, and was granted a judgment. Plaintiff served Young Brothers, Inc., with the judgment in the same manner with which the complaint was served. Again, J.N. Young signed the return receipt. At that point, Young Brother’s Inc. finally made an appearance in an effort to set aside the default.

Although J.N. Young was not the Registered Agent named on the certified mail, the record showed that he signed for the mail and distributed it throughout the facility. The Supreme Court of South Carolina found that Plaintiff had met the requirements of Rule 4(d)(3). Further the Supreme Court specifically articulated that it was not Plaintiff’s burden to prove that an agent signed the return receipt. Instead, the burden shifts to the defendant to prove that whoever signed as an agent of the defendant corporation was not granted authority to do so. *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

This matter is similar to *Roche v. Young Brothers* in three important aspects: 1) Plaintiff met the requirements proper service as described in Rule 4(d)(8) of the South Carolina Rules of Civil Procedure, 2) service was effected twice, in the same manner, on the same defendant, and Defendant chose only to respond the second time, and 3) Defendant cannot prove the return receipt was signed by an unauthorized agent, as required by South Carolina law.

Rule 4(d)(8) notes service on a corporation is effective when the summons and complaint are sent “by registered or certified mail, return receipt requested and delivery restricted to the addressee.” In this case, Plaintiff mailed the Notice of Intent using the United States Postal Service’s “Certified Mail Restricted Delivery” option.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY															
<ul style="list-style-type: none"> ■ Complete items 1, 2, and 3. ■ Print your name and address on the reverse so that we can return the card to you. ■ Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature</p> <p>X <i>H. McCloy</i> <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>															
<p>1. Article Addressed to:</p> <p>H. McCloy, as RA for Service of Process for All Season' Healthcare Inc. 7142 Woodrow St Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4955 28</p>	<p>B. Received by (Printed Name)</p> <p><i>H. McCloy</i></p>	<p>C. Date of Delivery</p> <p><i>12-16</i></p>														
<p>2. Article Number (Transfer from service label)</p> <p>7017 0660 0000 1954 2299</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No If YES, enter delivery address below:</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></td> </tr> <tr> <td><input type="checkbox"/> Restricted Delivery</td> <td></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>PS Form 3811, July 2020 PSN 7530-02-000-9053</p>		<p>Domestic Return Receipt</p>														

As shown below, the United States Postal Service explains that Restricted Delivery “allows the mailer to direct delivery only to the addressee or the addressee’s authorized agent.”¹ As a result, Certified Mail Restricted delivery complies with Rule 4(d)(8).

¹ <https://faq.usps.com/s/article/What-is-Restricted-Delivery>



What is Restricted Delivery?

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


Further, Rule 4(d)(3) of the South Carolina Rules of Civil Procedure permits service of the Summons and Complaint on “an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of process.” Although Heather McCloy was the Registered Agent of All Season’s Healthcare, Inc., at the time the Notice of Intent was served, she is not the only individual who had authority to accept service on behalf of the company. Thus, relying on an affidavit indicating Ms. McCloy did not sign the return receipt is improper because the evidence is insufficient to prove the return receipt was not signed by an authorized agent, as required under the Supreme Court’s ruling in *Roche. Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

Plaintiff in this case met the requirements for service of process, so it is presumed Defendant All Season’s Healthcare, Inc. was properly served. “Under Rule 4(d)(8) the defendant, not the plaintiff, must prove that the receipt was signed by an unauthorized person. The plaintiff need

only show compliance with the rules.” *Roche v. Young Bros.*, 318 S.C. 207, 456 S.E.2d 897 (1995).

Defendant cited to, and the Court’s order relied on, a case in the Court of Common Pleas in Charleston County, *Zanin v. Carolina Specialty Products Inc.* In *Zanin*, the Court granted summary judgment in favor of the defendant because service of the Amended Complaint was “defective because it was not served by restricted delivery.” In that case, Plaintiff Zanin filed a Memorandum in Opposition to Summary Judgment on August 27th, 2012, with exhibits. In that memorandum, Plaintiff admits they did not check the “restricted delivery” box, located in the bottom right of the green card, when they sent the Amended Complaint by certified mail. Because the restricted delivery box was not checked, Plaintiff Zanin did not comply with Rule 4(d)(8).

The facts in *Zanin* are wholly inconsistent with the facts in this matter. As shown on the return receipt below, Plaintiff checked the “restricted delivery” box when the Notice of Intent was mailed to Defendant All Season’s Healthcare, Inc, and pursuant to the United States Postal Services’ definition of restricted delivery, Plaintiff fully complied with Rule 4(d)(8). Defendant mistakenly asserts it is the sender’s job to check “addressee” in the top right box of the green card when sending the mail Certified, Restricted Delivery. However, as you can see in the photo below, the directions for that box are to “complete this section on delivery.” Thus, the recipient fills out that box and identifies themselves as agent or addressee. When the recipient signed this card on December 16th, 2022, service was effective.

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY													
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee <i>X H. McCloy</i></p>													
	<p>B. Received by (Printed Name) <i>H. McCloy</i></p>	<p>C. Date of Delivery <i>12-16</i></p>												
<p>1. Article Addressed to:</p> <p>H. McCloy, as RA for Service of Process for All Season's Healthcare Inc. 7142 Woodrow St Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4955 28</p>	<p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>													
<p>2. Article Number (Transfer from service label) 7017 0660 0000 1954 2299</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></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"/> 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														
PS Form 3811, July 2020 PSN 7530-02-000-9053	Domestic Return Receipt													

In this case, Defendant All Season's cannot prove the receipt was signed by an unauthorized person, as exhibited by their admission in their memorandum in support filed March 12, 2024, and their response to the interrogatory seen below.

9. Identify by names, address and title the All Season's Healthcare, LLC employees and/or agents who accepted and signed the certified letter serving the Notice of Intent on December 16th, 2022.
ANSWER: Unknown.

It is important to note that when Defendant All Season's Healthcare, Inc. was served with the Summons and Complaint on June 26th, 2023, the recipient of the Summons and Complaint wrote "All Seasons" on the signature line and marked the "agent" box, identical to the signature and check mark as the recipient had done when served with the Notice of Intent. We know the service of the Summons and Complaint was effectuated because Ms. McCloy contacted her insurance carrier, was denied coverage, and ultimately requested an extension to answer the

complaint. Now this Defendant is claiming the identical proof of service of the Notice of Intent did not put the Defendant on notice.

This is not the first time Ms. McCloy has attempted to evade service. Ms. McCloy and her husband, Dr. McCloy, failed to pay over \$150,000.00 in federal taxes between the years of 2011 and 2015. Beginning in 2018, the IRS attempted to levy these owed taxes. Dr. and Ms. McCloy failed to pay back the taxes and in March of 2020, the IRS filed an action against them in South Carolina District Court. The United States of America attempted to serve Ms. McCloy at her place of business located at 8142 Woodrow St, Columbia, South Carolina- the same location the Plaintiff in this matter served the Notice of Intent and, later, Summons and Complaint. Ms. McCloy notified the process server she would not accept service, despite service being effectuated. The IRS then served Ms. McCloy at her personal residence out of an abundance of caution. (see, Exhibit B) This repeated behavior of attempting to dodge service and liabilities should not be rewarded.

Because the defendant cannot meet their burden in proving the receipt was signed by an unauthorized person, the presumption of proper service cannot be refuted. As a result, this Court should reverse the Order granting Defendant All Season's Healthcare Inc.'s Motions for Summary Judgment and Dismissal on these grounds.

III. Filing a Notice of Intent in an improper venue is not grounds for dismissal.

Defendants assert that failure to file the Notice of Intent in the proper venue negates the tolling of the statute of limitations and, as such, should result in dismissal of this case. S.C. Code Ann. § 15-79-125 states: "the plaintiff shall contemporaneously file a Notice of Intent to File Suit and affidavit of an expert witness . . . in a county in which venue would be proper for filing or initiating the civil action." However, the statute does not specify the consequence for failure to

strictly comply with the directions in the statute. Nowhere in the statute does the legislature suggest that strict compliance is required to toll the statute of limitations and nowhere in the statute does the legislature suggest that failure to strictly comply should result in dismissal of a potentially meritorious claim.

The South Carolina Supreme Court has addressed the purpose and intention of S.C. Code Ann. § 15-79-125 in *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013). In *Ross*, plaintiffs failed to complete the pre-suit mediation within 120 days as prescribed by the statute. Just as the statute states that the Notice of Intent “shall” be filed in the proper venue, the statute also states mediation “shall” take place within 120 days. However, the Supreme Court found that failure to strictly comply with the statute should not result in dismissal of the claim. *Ross v. Waccamaw Cmty. Hosp.*, 404 S.C. 56, 744 S.E.2d 547 (2013).

The Court found that the legislature in no way meant for S.C. Code Ann. § 15-79-125 to be a “trap” to confuse litigants and result in dismissal of meritorious claims. *Id.*, at 63, 550. Instead, the Court found that “[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.*

Rule 82(b) of the South Carolina Rules of Civil Procedure states: “when 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.” If this were a case that didn’t require the filing of a Notice of Intent, and a complaint was filed in this case in Greenwood County on November 11th, 2023, the remedy would be that the case be transferred to the proper venue. The case could not be dismissed for filing a complaint in an improper venue. The idea that the enactment of S.C. Code Ann. § 15-79-125 creates a new procedural hurdle, as

opposed to the statute's intention of culling unmeritorious cases and encouraging resolution, is contrary to the Supreme Court's ruling in *Ross v. Waccamaw* and contrary to the intention of the legislature.

The Court's decision in *Ross v. Waccamaw* in conjunction with Rule 82 of the South Carolina Rules of Civil Procedure can lead to only one reasonable conclusion: the remedy for filing a Notice of Intent in an improper venue is to transfer the case to the proper venue, not to dismiss the case. The purpose of S.C. Code Ann. § 15-79-125 is to cull malpractice claims with no merit. It is not meant to be a procedural trap for Plaintiffs who otherwise would be able to move forward with meritorious claims.

Based on the foregoing, Plaintiff respectfully requests this Court reverse the Order of May 13th, 2024, and deny Defendant All Season's Healthcare, Inc's. motion for summary judgment.

Respectfully submitted,

s/Jamie Rae Rutkoski
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May 23, 2024

Columbia, South Carolina.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENWOOD	)	FOR THE EIGHTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2022NI2400012
)	
)	
Plaintiff,)	
)	
v.	)	ORDER GRANTING
	)	Ex Parte
	)	MOTION TO CHANGE VENUE
)	
All Season's 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.)	

This matter comes before the Court on Plaintiff's Motion pursuant to the *South Carolina Code of Laws* § 15-7-30 and Rule 12(b)(3) of the South Carolina Rules of Civil Procedure, for an Order changing the venue from Greenwood County to Richland County. Defendants are residents of and/or have a principal place of business in Richland County and the subject alleged medical malpractice/negligence occurred in Richland County. Similarly, Plaintiff's decedent was a resident of Richland County at the time of her passing.

This Motion having come on this day upon the *ex parte* Motion of Plaintiff for a change of venue, and the Court having considered the Motion and attachments thereto submitted, find that proper venue for this action is Richland County; and, therefore,

IT IS HEREBY ORDERED that this matter be transferred to Richland County.

[Signature appears on the following page.]



Greenwood Common Pleas

Case Caption: Jennifer Murphy , plaintiff, et al VS All Season'S Healthcare Llc ,
defendant, et al
Case Number: 2022NI2400012
Type: Order/Change of Venue

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167

Electronically signed on 2023-06-12 10:41:35 page 2 of 2

ELECTRONICALLY FILED - 2023 Jun 12 4:11 PM - GREENWOOD - COMMON PLEAS - CASE#2022NI2400012

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Jennifer Murphy, as Personal Representative)
 of the Estate of Phyllis Gee,)
)
 Plaintiff,)
)
 v.)
)
 All Season's 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.)
 _____)

IN THE COURT OF COMMON PLEAS
 C/A NO.: 2023-CP-40-03086

**ORDER GRANTING
 MOTION FOR SUMMARY JUDGMENT
 ON BEHALF OF THE DEFENDANT,
 ALL SEASONS HEALTHCARE, INC.**

This matter comes before the Court on April 17, 2024, on Defendant All Season's Healthcare, Inc.'s Motion for Summary Judgment and Motion to Dismiss, filed March 12, 2024, pursuant to Rules 3, 4, 5 and 12(b)(1), 12(b)(2), 12(b)(4), 12(b)(5), 12(b)(6) and 56 of the South Carolina Rules of Civil Procedure, and S.C. Code §15-79-125 and §15-36-100. The grounds for said Motion are that Defendant All Season's Healthcare, Inc. was not properly served with the Notice of Intent to File Suit or Summons and Complaint pursuant to Rule 3 SCRCPP, that there was improper service pursuant to Rule 4 SCRCPP and that if this action were properly served, it is barred by the statute of limitations.

The pleadings, documents, and affidavits filed in this matter establish the following uncontested facts: All Seasons Healthcare, Inc., is a South Carolina corporation with its principal place of business in Irmo, South Carolina, which is in Lexington County. It provides nursing hospice care services to patients who have been deemed appropriate for end-of-life hospice care.

Its employees work at various healthcare facilities and also serve clients/patients at their home. It is not an employee or agent of Co-Defendant Amara Place but did provide hospice care to patients there.

At all times, Heather McCloy was registered agent for All Seasons Healthcare, Inc.

Phyllis Gee had been diagnosed with late onset Alzheimer's disease and was a resident at Amara Place. In September 2018, Ms. Gee and her family elected hospice care and agreed to be administered pain medication and requested a DNR (Do Not Resuscitate). All Seasons Hospice nurses do not carry pain medications or schedule drugs, as those were kept in the Amara Place under control of their staff.

In the afternoon of December 29, 2019, the hospice nurse for All Seasons Healthcare, Inc., advised Amara Place to administer Ativan to help alleviate the patient's anxiety. The family called the hospice nurse at 11:42 p.m., stating the patient's condition was not relieved and the hospice nurse returned to the facility approximately at 12:15 a.m. The nurse arrived, questioned the med tech if the patient received any medication since she left, and the med tech stated that the patient had not. She requested that the Amara Place med tech administer medications, but they refused. Plaintiff's decedent passed away on December 30, 2019, less than thirty minutes after the hospice nurse arrived.

Plaintiff filed a Notice of Intent to File Suit on November 11, 2022, in Greenwood County. None of the parties are domiciled in Greenwood County, and Defendant administered no care to the Decedent in Greenwood County. Plaintiff attempted to serve Defendant with the Notice of Intent on December 16, 2022, but the certified mail receipt shows that delivery was not restricted to the addressee and was instead ostensibly received by someone who signed "All Seasons" on the return receipt.

Plaintiff then sought to move their own action to Richland County on or about June 6, 2023. On or about June 12, 2023, the “Notice of Intent” action was initiated in Richland County under a new case number; three years and 164 days after the death of the Decedent. Plaintiff then filed the Summons and Complaint on June 13, 2023, and attempted to serve Defendant on June 26, 2023. The return receipt was not signed by registered agent H. McCloy.

DISCUSSION

Plaintiff failed to serve Complaint as required by Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. Proper service by certified mail under SCRCP Rule 4(d)(8) is effected when Plaintiff serves process “by registered or certified mail, return receipt requested and delivery **restricted to the addressee.**” Rule 4(d)(8) SCRCP. Service by mail is defective where either an unauthorized person signed the receipt or if delivery was not restricted to the addressee. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). The burden of showing compliance is upon the party asserting proper service. *Roche v. Young Brothers, Inc., of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In *Zanin v. Carolina Specialty Products, Inc.*, the Court of Common Pleas in Charleston County addressed a very similar situation. In *Zanin*, the plaintiff attempted service by mail upon defendant ABP. *Zanin v. Carolina Specialty Products, Inc.*, 2012WL9490703 (Civil Action No. 2010-CP-10-01515 in Charleston County Ct. of Common Pleas). The plaintiff’s certified mailing was addressed to ABP’s owner Scott Amaral, but the mailing was not restricted to the addressee and the return receipt was signed by a “D. Reilly.” *Id* at 1.

The Court in *Zanin* ruled that the plaintiff’s attempt to serve the defendant pursuant to Rule 4(d)(8), which requires service by certified mail be done with return receipt requested and delivery restricted to the addressee, was defective. *Id* at 2. The plaintiff did not comply with the plain

meaning of Rule 4(d)(8) which firmly requires restricted delivery to the addressee only. *Id.* The Court granted defendant ABP's Motion for Summary Judgment because the plaintiff's attempt at service by mail, in which an unauthorized person signed the receipt and delivery not restricted to the addressee, was defective and therefore the Court had no personal jurisdiction over ABP.

The present case is nearly identical to *Zanin*. Here, Plaintiff's filed Proof of Service for the Notice of Intent for the Greenwood County case dated December 16, 2022, contains a scan of a return receipt addressed to "H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc." This return receipt, though marked for restricted delivery, is clearly not marked for restricted delivery *to the addressee* as required by Rule 4(d)(8) as shown by the top right checkboxes on the return receipt. Plaintiff made this same error in their attempt to serve the Richland County Summons and Complaint on the return receipt dated June 26, 2023, where the delivery was not restricted to the addressee. The affidavit of Elizabeth C. Moultrie confirms that counsel for Plaintiff did not restrict delivery to the addressee only.

Further, Defendant's registered agent Heather McCloy did not sign the return receipt, and Defendant does not know who signed the return receipts. The signature block only reads "ALL SEASONS." This occurred because Plaintiff did not serve either the Notice of Intent or the Summons and Complaint as required by Rule 4 and *Langley*; as a result, Defendant was never properly put on notice of Plaintiff's claims. The goal of Rules 3 and 4 of the South Carolina Rules of Civil Procedure, and service of process rules in general, is to require the plaintiff to provide sufficient notice to the defendant of what their claims are and the basis for those claims. Here, Plaintiff's failure to adhere to SCRCP Rule 4(d)(8) thwarted this goal, and Defendant would now suffer prejudice in having to defend claims served out of time due to Plaintiff's own error.

The Notice of Intent to File Suit must be served upon all named defendants in accordance

with the service rules for a summons and complaint outlined in the South Carolina Rules of Civil Procedure. S.C. Code § 15-79-125(a). If a Summons and Complaint are not served within the statute of limitations, actual service must be accomplished no later than 120 days after filing. Rule 3(a) SCRPC. Emailing process to an employee of a defendant is not sufficient service under the civil rules. *See Rule 4 SCRPC generally.*

Here, it is uncontested that the three-year statute of limitations ran on December 30, 2022. It is uncontested that Plaintiff filed their Notice of Intent to File Suit less than two months before the expiration of their statutory period in an improper county where no party was domiciled, and no events related to the allegations occurred. S.C. Code § 15-79-125(a) requires Plaintiff to file in a county in which venue would be proper for filing or initiating the civil action. This action was not filed in Richland County until June 12, 2023; 164 days after the running of the statute of limitations.

Also, since Plaintiff did not serve the Notice prior to December 30, 2022, Plaintiff was required to serve it within 120 days of filing; in this case, before April 29, 2023. Plaintiff filed her Richland County Summons and Complaint on June 13, 2023, and since the statute of limitations expired on December 30, 2022, Plaintiff had 120 days to serve this as well.

Plaintiff fails to show that any officer, managing or general agent, or any other agent authorized to receive service of process actually received and “signed” for the Complaint. Neither the Notice of Intent to File Suit nor the Summons and Complaint have been properly served on Defendant. Plaintiff, as the party asserting proper service, bears the burden of proving such proper service. Plaintiff asserts that Defendants must prove non-service; the Defendants have met this burden and have shown that there is no genuine issue of material fact that Defendant was not served in compliance with the South Carolina Rules of Civil Procedure.

Plaintiff failed to restrict delivery of their Notice of Intent to File Suit and Complaint to the addressee as shown by the return receipt, and thus created the scenario where no addressee listed on Plaintiff's initial service attempt, registered agent of Defendant, nor proper agent authorized to accept service on behalf of Defendant received any timely notice of Plaintiff's claims or filing. Plaintiff also cannot provide any evidence that the addressee herself ever received the mailed Notice of Intent or Summons and Complaint or wrote "ALL SEASONS" in the signature block due to failure to sufficiently restrict delivery. Plaintiff could have rectified the situation by hiring a process server when it became evident that Defendant was not properly served.

IT IS THEREFORE ORDERED that Defendant's Motion for Summary Judgment is GRANTED, and Plaintiff's claims are dismissed due to failure to comply with Rule 4(d)(8), and dismissal must be with prejudice as Plaintiff's claims are barred by the applicable statute of limitations.

IT IS FURTHER ORDERED that Plaintiff's Motion to Compel Discovery is DENIED AS MOOT as a result of the Court's Dismissal of Plaintiff's action.

IT IS SO ORDERED.

Jocelyn Newman
Chief Administrative Judge
Fifth Judicial Circuit

April __, 2024.



Richland Common Pleas

Case Caption: Jennifer Murphy , plaintiff, et al vs All Seasons Healthcare Llc ,
defendant, et al
Case Number: 2023CP4003086
Type: Order/Summary Judgment

So Ordered

Jocelyn Newman

Electronically signed on 2024-05-11 11:51:48 page 7 of 7

ELECTRONICALLY FILED - 2024 May 13 9:20 AM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

STATE OF SOUTH CAROLINA
COUNTY OF Richland
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2023CP4003086

Jennifer Murphy et al
PLAINTIFF(S)

All Seasons Healthcare Inc et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion to Alter or Amend (filed on 5/23/24) is DENIED.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/25/2024 .

Jennifer Murphy Prs
Estate Of Phyllis Gee
Amar Place At Columbia
Mill Creek Manor Llc

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.



Richland Common Pleas

Case Caption: Jennifer Murphy , plaintiff, et al vs All Seasons Healthcare Llc ,
defendant, et al
Case Number: 2023CP4003086
Type: Order/Electronic Form 4

So Ordered

Jocelyn Newman

Electronically signed on 2024-09-25 12:05:00 page 3 of 3

ELECTRONICALLY FILED - 2024 Sep 27 4:03 PM - RICHLAND - COMMON PLEAS - CASE#2023CP4003086

STATE OF SOUTH CAROLINA) IN THE RICHLAND COUNTY FAMILY COURT
COUNTY OF RICHLAND) C.A. NO. 2023-CP-40-03086

JENNIFER MURPHY)
AS PERSONAL REPRESENTATIVE)
OF THE ESTATE OF PHYLLIS GEE)
Plaintiff,)
versus)
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)
Defendant.)

H E A R I N G

DATE: April 17, 2024
TIME:
LOCATION: South Carolina Circuit Court 5
JUDGE: Jocelyn Newman

TRANSCRIBED BY: Lynda Monroe

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(THIS TRANSCRIPT MAY CONTAIN QUOTED MATERIAL. SUCH MATERIAL IS REPRODUCED AS READ OR QUOTED BY THE SPEAKER.)

1 PROCEEDING

2 THE COURT: Numbers 18, 19 and 20 on the roster. 2023-
3 CP-40-03086, Murphy versus All Seasons Healthcare. There's a
4 Motion to Compel, Motion for Summary Judgment and Motion to
5 Dismiss.

6 MS. RUTKOSKI: Good morning, Your Honor, or, I'm sorry,
7 good afternoon, Your Honor.

8 THE COURT: Good afternoon.

9 MS. RUTKOSKI: I'm Jamie Rutkoski here on behalf of the
10 Plaintiffs in this case. We have the Motion to Compel. I
11 think the first one listed is the Motion to Dismiss by TWG
12 Polo Road, but I'm happy to go in whatever order is
13 preferential to you.

14 THE COURT: Which party does the Motion to Compel
15 concern? All Seasons?

16 MS. RUTKOSKI: Yes, ma'am. All Seasons.

17 THE COURT: It doesn't really matter. The Motion to
18 Dismiss is listed first. Let's start there.

19 MS. RUTKOSKI: Okay.

20 THE COURT: TWG Polo Road Motion to Dismiss.

21 MR. KNOWLTON: Your Honor, this is Robert Knowlton. I
22 represent TWG Polo Road, LLC in this matter.

23 THE COURT: Okay. Can you turn your video on?

24 MR. KNOWLTON: Okay. Sorry about that. Here we go.

25 THE COURT: Okay.

1 MR. KNOWLTON: When you see my face you might ask me to
2 turn it off, I don't know.

3 THE COURT: Yes, sir. I can see you just fine and
4 let's do this. Let me hear your motion.

5 MR. KNOWLTON: Thank you, Your Honor. TWG moves to
6 dismiss the complaint as to it based on the applicable
7 statute of limitations. There may be two that are relevant;
8 15-3-545 applies to the med mal cases and the general statute
9 of limitations is 15-3-530. Both have a three-year
10 limitations period.

11 The facts that are relevant to my motion are undisputed
12 and I believe it warrants dismissal based on the expiration
13 of the statute of limitations.

14 A little bit of background. TWG is a Delaware LLC that
15 was formed in 2016. In April of 2019, it entered into a
16 management agreement with - who is now named a party or
17 attempted to name a party FHC Property Management. So FHC
18 essentially managed the entire facility and there were some
19 outside folks (inaudible) services.

20 It is undisputed the incident involved occurred on
21 December 30th of 2019. It is also undisputed that the
22 statute would expire on December 30th of 2022. TWG was a
23 failed business venture. It became insolvent, sold the
24 facility and was dissolved in 2021. It had a negative net
25 worth, it has no assets and it has no insurance available for

1 this client. It really does have a whole lot in this case
2 anyway.

3 There's no dispute that a lawsuit was not filed before
4 the expiration of the statute of limitations. There was a
5 Notice of Intent to file a lawsuit under the med mal statute
6 that was filed not in Richland County, where the incident
7 occurred and where the facility was located, but in Greenwood
8 County and section 15-79-125 really, I guess, was controlling
9 on this motion.

10 That statute requires a plaintiff in the med mal case
11 to file a notice of intent to file suit and it will
12 (inaudible) the statute of limitations for a short period of
13 time if you do that but it requires two things that did not
14 happen here. One, you have to file it in the venue -- the
15 county in which the venue would be proper for filing or
16 initiating the civil action. Richland County was the proper
17 action, so they failed to do that and there's no question
18 that they failed to do that prior to the expiration of the
19 statute. They filed that about a month before the statute
20 expired, in November of 2022.

21 The second thing they failed to do was name TWG as a
22 party which the statute requires you must, obviously, name
23 all parties --

24 THE COURT: Hang on, Paul.

25 MR. KNOWLTON: Yes.

1 THE COURT: Sorry. Hang on. Sorry, I was doing two
2 things at once. I need to pause you real quick. I'm coming
3 back to you.

4 (Pause in the proceedings.)

5 THE COURT: I'm sorry, I needed to handle something
6 real quick. Back to you, Mr. Knowlton.

7 MR. KNOWLTON: No problem, whatsoever. I may try to
8 share screen. I'll probably fail to do that. I'll give it a
9 try.

10 Here is, if I'm doing this correctly, 15-79-125. It
11 requires two things that did not happen here. One, you have
12 to file the notice in the venue where the lawsuit would be
13 appropriate. That is not Greenwood County for this claim.
14 The second thing you must do is name all adverse parties as
15 defendants. Not Notice of Intent did not name TWG as a
16 defendant.

17 And I'll also try to share screen with what was
18 actually filed. Can you see that Your Honor? Here is the
19 November 2022 Notice of Intent to file suit. It was filed in
20 Greenwood County. It names two All Seasons defendants and an
21 entity called Mill Creek Manor, LLC formally known as Amara
22 Place. It does not mention TWG.

23 So my argument is pretty straightforward and simple.
24 This insolvent-dissolved entity was not served with a Notice
25 of Intent to file suit that was filed in the proper county.

1 It did not name it as a party and there's no question that
2 (inaudible) was not filed until the expiration of the statute
3 of limitations. Notice of Intent to file suit is the only
4 saving possibility for the Plaintiff in this case. And the
5 lawsuit was finally filed in Richland County I believe on
6 March 8th, 2024. Of course, at that point, the statute had
7 expired. The statute expired on December 30th of 2022. So
8 it was too late to add that as a party.

9 And one other interesting note is that Plaintiff
10 recently added a memo with the Court asking that amend the
11 complaints to change Amara Place to FHC which, again, would
12 still leave TWG out as a party. TWG, essentially it
13 outsources management through a management agreement and it
14 had no role in the actual provision of medical services. So
15 there's a question about whether the med mal statute applied
16 to it, in any event, but there was no proper notice to my
17 client or compliance with the statutory requirements before
18 the expiration of the statute with respect to TWG.

19 THE COURT: Thank you, sir. Ms. Rutkoski.

20 MS. RUTKOSKI: Yes. Thank you, Your Honor. I want to
21 address the venue issue first. Rule 82(b) states that when
22 an action is brought in the wrong county or in the wrong
23 court, the Court shall not dismiss the action but shall
24 transfer it to any proper county or court in which it could
25 have been brought. So I don't think that failure to

1 initially bring it in the correct venue is reason for
2 dismissal, it's reason for transfer which we did and that was
3 in error on our part.

4 And as far as (inaudible) not being named as a party,
5 we were recently sent a change of name form filed with, and I
6 guess I can try and share this with you, it shows that TWG
7 Polo Road was formally doing business as Summers Landing Polo
8 Road and requested for its new name to be TWG Polo Road doing
9 business as Amara Place at Columbia. So Amara Place was the
10 Defendant and they were doing business as Amara Place. While
11 the naming of the company is not perfect, they were doing
12 business as Amara Place, they knew they were Amara Place, and
13 so when we sued Amara Place in November or on November 11th
14 of 2023, we initially served, just as some background
15 information, Mill Creek Manor because that was who owned that
16 facility at the time that we -- our Notice of Intent.

17 I got a call from Ned Wares (phonetically) who produced
18 the purchase agreement that shows that they excluded
19 liabilities from the purchase in October of 2020, and that's
20 the first time I understood that TWG Polo Road was the owner
21 of this facility at the time that Ms. Gee was a resident
22 there.

23 We served them within 120 days, I think March 9th -- or
24 we served them with a Notice of Intent. I can pull up the
25 proof of service. I don't think there's any disagreement

1 that they were served with a -- on February 9th, 2023, I
2 apologize. Thereafter, we notified them of the (inaudible)
3 mediation which we underwent and then we -- the statutes of
4 limitations was told from the filing of the Notice of Intent
5 pursuant to the statute. We filed the complaint and had TWG's
6 name correctly even though we didn't have corrective Notice
7 of Intent that they had notice. They were doing business as
8 Amara Place and they owned the facility in which my client
9 was a resident at.

10 (Inaudible) I want to answer every question you can
11 have but I don't think there's a disagreement on the time
12 line things. My understanding, at least, argument mainly
13 focuses on the venue issue and then the fact that whether
14 they were not notified of the lawsuit in time which I believe
15 they were.

16 THE COURT: Yeah, and I'm trying to determine what
17 question I want to ask because, I mean, you mentioned
18 (inaudible), too, which, you know, the Court is well aware of
19 but that would tell if TWG had been named as a party in that
20 Notice of Intent. You're saying that TWG should have known
21 that they were the real party at interest?

22 MS. RUTKOSKI: Yes (inaudible) Amara Place and, you
23 know, asked to be Secretary of State business service center
24 which (inaudible) business service center (inaudible) as
25 doing business as Amara Place. Just, again, Amara Place,

1 that's what the sign said, that's what their medical records
2 say, that's where these folks thought that they were
3 (inaudible) to and (inaudible) was not a business that's
4 registered with the Secretary of State of South Carolina.

5 So we filed the Notice of Intent against Amara Place.
6 That's the only way we would (inaudible). There's no other
7 way for us at the time to understand who owned it.
8 (Inaudible) new owner but the previous owners that were, you
9 know, almost three years prior, we had no way to attain that
10 information without first getting the Mill Creek Manor
11 purchase agreement. (Inaudible) it happens very frequently
12 that we don't get the right (inaudible) name on the sign and
13 the medical records do not match the (inaudible).

14 So it very frequently have to file our complaint
15 (inaudible) defendant because (inaudible) to them. It's a
16 completely different name.

17 THE COURT: Okay. Mr. Knowlton.

18 MR. KNOWLTON: Well, briefly, Your Honor. First of
19 all, (inaudible). We have a statute that requires you to do
20 two different thing. It's a different animal with respect to
21 transferring the venue on a lawsuit. To obtain the statute
22 of limitations (inaudible), you've got to comply with this
23 very clear requirements of the statute. One, you have to
24 file in the right county and they've admitted that was not
25 the proper county. Two, is you have to name the proper

1 parties and it says Mill Creek Manor f/k/a/ Amara Place.
2 That is not TWG. Mill Creek Manor is an entity and is not
3 TWG. Amara Place was a d/b/a, the facility. There was also
4 another -- if I can try to share screen, again, which I don't
5 know if it worked the last time properly but in Plaintiff's
6 response -- can you see this, Your Honor, by chance?

7 THE COURT: Not yet.

8 MR. KNOWLTON: All right. I may not have the proper
9 thing up. So I'll just acknowledge defeat on the screen
10 sharing but in the memo that Plaintiff filed in response to
11 FHC's Motion to Dismiss asked if FHC be -- the complaint be
12 amended to name FHC as defendant in place of Amara Place
13 which, I think, is inconsistent with the argument made with
14 respect to (inaudible).

15 The service of the Notice of Intent was after the
16 expiration of the statute that was still in the wrong county.
17 They did not file anything in Mission (phonetically) County
18 is my understanding until March of 2024, at which point it
19 was too late.

20 THE COURT: Okay. Ms. Rutkoski.

21 MS. RUTKOSKI: Ma'am, my understanding of (inaudible)
22 have it transferred. I think we filed the Notice of Intent
23 within the statute of limitations and served them within 120,
24 which is compliant. They were doing business as Amara Place.

25 To address the FHC issue which is kind of hanging in

1 the wind here, FHC Property Management was apparently
2 managing this facility so I have two -- the owner of the
3 facility and I have both say that they managing the facility.
4 Neither of whom I could have -- TWG I did know and served
5 within the statute and that's our position on that. We later
6 find out, through their management agreement, that they would
7 only give us under confidentiality agreement, of course, that
8 FHC is managing. FHC didn't have their name on any of the
9 document. There would have been no way for the Plaintiff to
10 ever discover that FHC Property Management was managing the
11 facility with discovery. So that's on the shelf.

12 I don't know which of them is operating as Amara Place
13 but they are. They're both operating as Amara Place and in
14 my view because that's what's on the sign, that's what their
15 patients know, that's what's on their medical records, that's
16 how they advertise and so when you Google Amara Place, the
17 address, the facility that they owned and managed, however
18 they did show, is what shows up. So when you have a trade
19 name that you're operating under and that you (inaudible)
20 yourself out of it is that should have pulled some weight as
21 to when someone is injured due to your negligence.

22 THE COURT: Just out of curiosity, did anybody call
23 Amara Place and say, "Hey, who owns this place?"

24 MS. RUTKOSKI: I mean, I talked to their lawyers but
25 when we talked to the people at Mill Creek Manor (inaudible)

1 2022. (Inaudible) that Amara Place was running as Amara
2 Place as opposed to Mill Creek Manor. So none of the folks
3 that we could contact have any information about it. When I
4 served Mill Creek Manor's registered agent then got a call
5 from their attorney who provided the purchase agreement.
6 (Inaudible) website to say, you know, this is no longer a
7 company. This is who they used to be. This is who their
8 registered agent is. There was no way for me to act without
9 the purchase agreement from Mill Creek Manor.

10 MR. KNOWLTON: Your Honor, with respect to TWG, it had
11 been dissolved and is long gone when they filed their claim
12 and --

13 MS. RUTKOSKI: I have to interrupt you (inaudible) but
14 the (inaudible) the website even dissolve -- when you search
15 a name you can dissolve how many's come up. So it will show
16 you when it was dissolved and you can get that information,
17 so didn't mean to interrupt you but --

18 MR. KNOWLTON: Well, I guess the point I was making is
19 there call to TWG and it had no notice, it had no -- I didn't
20 even know this had occurred. I mean, it had been dissolved
21 and closed up and insolvent for a couple of years when this
22 claim arose.

23 MR. DURNOVICH: And, Your Honor, this is J.M.
24 Durnovich. I represent FHC. I don't know if this will be
25 the appropriate time for me to just in and address FHC's

1 Motion to Dismiss or if you'd like to defer that until later?

2 THE COURT: It's on different grounds or the same
3 grounds?

4 MR. DURNOVICH: So all of the grounds that Mr. Knowlton
5 just argued apply equally to FHC but I think that our
6 situation is hopefully a bit of an easier task for Your Honor
7 because not only were we not named in any of the original
8 papers in the wrong county, we weren't named in any of the
9 current papers. In fact, you may notice that we're still not
10 in the caption and we're not a party to this case. We're
11 sort of in a weird situation that we have had to move to
12 dismiss in part because the Plaintiffs sought an entry of
13 default against us which the Court rightly denied before we
14 even had a chance to respond since we weren't a party. But
15 we have also moved to dismiss and on the exact same bases in
16 addition to the fact that we continue to not be named in this
17 lawsuit and, in fact, have not and aren't, never have been
18 doing business as Amara Place as the document that Ms.
19 Rutkoski just shared with the Court in the case.

20 THE COURT: Okay. All right. Put a pin in that. Let
21 me focus back on TWG. I mean, sir, you're almost making a
22 like a relation back amendment that I -- I don't know that
23 that gets it here and when I tell you I don't know I mean, I
24 don't know. But my instinct tells me that Mr. Knowlton is
25 right. That you have to name the right party and right

1 county in the Notice of Intent to toll the statute of
2 limitation. I don't know that there's here, there, would,
3 should be a relation back after some discovery is done and
4 TWG should've known that by Amara Place being sued in
5 Greenwood County that -- yeah, that it should know that --

6 MS. RUTKOSKI: Your Honor.

7 THE COURT: Go ahead, go ahead.

8 MS. RUTKOSKI: I was just going to say I mean the
9 Notice of Intent has a factual basis that talks about the
10 location of the facility, where she was (inaudible), nurses
11 and, you know, doctors that are associated with her, the
12 administrator which TWG Polo Road, as owner of the facility
13 should have known. So it's not just looking at the caption.
14 I think reading the entire document that was served on them
15 gives them proper notice that this is their facility that
16 they owned in Columbia and the Greenwood caption error is
17 unfortunate, of course, but I think voided, too, at the
18 change of venue (inaudible) our side in that.

19 THE COURT: Yeah, but then I've still got to look at
20 1579125 (formatting) and this just doesn't meet the
21 requirements of the statute and the appellate court may tell
22 me I'm wrong and then all of us will be elucidated on this
23 topic. But I just don't think -- yeah, I don't think it
24 meets the requirements of the statute and Rule 82 can't fix
25 that and I mean I'm saying relation back and I -- that's

1 interesting because I'm not analyze that in the context of
2 med mal with a Notice of Intent. Typically we're talking
3 about amendments of pleadings and not a Notice of Intent. So
4 I don't even know that relation back, as it were, would save
5 this because, yeah, it's a separate document. It's a Notice
6 of Intent, not amendment of pleadings. I think you just kind
7 of missed the mark here and so I'm going to grant TWG's
8 Motion to Dismiss and ask Mr. Knowlton to prepare an order in
9 that regard for my signature.

10 MR. KNOWLTON: Thank you, Your Honor.

11 THE COURT: Okay. Now, let's get over to FHC again.
12 Let's pick up where you kind of left off Mr. Durnovich.

13 MR. DURNOVICH: Thank you, Your Honor. And I think
14 that, you know, if Your Honor's granting TWG's motion that
15 necessarily would grant FHC's as well because we weren't
16 named in any of the original actions. No related entities of
17 ours were either and, in fact, we still are not named in the
18 lawsuit.

19 We're approaching -- we're over four years since this
20 incident occurred and, you know, this is the point of
21 statutes of limitations. I mean, these entities are no
22 longer even in existence for the most part it sounds like and
23 there has to come an end to this at some point in time.

24 Because, Your Honor, we are not named in the lawsuit,
25 itself, to this date, there are additional grounds to grant

1 the motion as to FHC, including that no action was ever
2 commenced against us. We're not named in any summons. A
3 lawsuit under Rule 3 has to be served within 120 days of
4 filing or the statute of limitations. It is conceded that
5 neither of those things occurred in this case. So, again, no
6 action has been commenced against us.

7 And with respect to the Motion to Amend, I suppose that
8 would impact us most directly since it sounds like the
9 Plaintiff would seek to add FHC to the lawsuit at this stage,
10 you know, more than a year and four months after the statute
11 of limitations expired.

12 Judge, as a preliminary matter that motion, it was
13 served less than 48 hours before this hearing. That's reason
14 enough to deny it. In addition, Your Honor, there aren't any
15 grounds set forth in that motion that would suffice to
16 constitute good grounds for an amendment at this stage. I
17 think especially considering the time that has passed, the
18 fact that for all of this time, FHC has not been named in
19 anything. The first time that FHC's name appears in this
20 lawsuit was when an entry of default was sought against us
21 even though we weren't a party and the Court correctly denied
22 that again.

23 So, Your Honor, we would ask for the Motion to Dismiss
24 of FHC be granted as well.

25 MS. RUTKOSKI: And, Your Honor, this motion wasn't

1 actually on the docket so me filing a motion two days ago is
2 not me trying to play any tricks on defense counsel.

3 I would agree that if you're -- based on your ruling
4 with TWG, if you're going to be consistent with that, I don't
5 think -- you know, we stand on our motion, our written
6 motion, if that's how you're viewing it. I don't think that
7 is -- I think it's a little bit of a waste the Court's time
8 to go through the same fact patterns because we are
9 (inaudible) statute and all of that based on our inability to
10 identify FHC. But if your opinions on this fact pattern are
11 consistent with those with TWG, I really don't know if it's
12 worth going through the same fact pattern again.

13 THE COURT: Sure. But tell me this. FHC was the
14 property management company, correct?

15 MS. RUTKOSKI: Yes. So they -- I think last week maybe
16 you received from TWG Polo Road after entry of the
17 confidentiality order, the agreement, the management
18 agreement, that showed that FHC was the property management
19 company. We filed -- when we showed them the entry of
20 default I also withdrew that motion because we served the
21 wrong entity. Not fun to come in here and make multiple
22 errors in one hearing but so we're through that and going
23 forward (inaudible) to make the complaint (inaudible) Amara
24 Place based on (inaudible) it was absolutely -- I mean, it's
25 out of the Plaintiff's control for us to be able to identify

1 who was actually providing care and treatment (inaudible) not
2 in the medical records, not in any of the admission
3 documents, all that. So, again, that's how we got here but I
4 think if we go by what you've already ruled and (inaudible) I
5 don't know how much (inaudible).

6 THE COURT: Right. No, I agree. I just was wondering
7 how we got to the d/b/a. How FHC was doing business as
8 (inaudible).

9 MS. RUTKOSKI: (Inaudible) documents say (inaudible)
10 and the medical records say (inaudible) and (inaudible) but
11 based on this (inaudible) entities that are, you know,
12 difficult to find out that information I don't know how
13 (inaudible) FHC to the general public which they were
14 serving, so.

15 THE COURT: Okay. That may be more out of curiosity.
16 I mean, my ruling is going to be the same on this. That I
17 actually almost think this is slightly more egregious just
18 because with (inaudible), assisted living, et cetera, et
19 cetera, they're very, very often some management company a
20 separate entity. I mean, that's sort of routine.

21 MS. RUTKOSKI: (Inaudible).

22 THE COURT: So I, for sure, I mean, even if the name on
23 the wall says one thing and maybe the true owner of the
24 building or facility maybe takes a little more digging or
25 maybe is not so intuitive. The management of such a

1 facility, in my mind, and, of course, I'm (inaudible), right.
2 This is what I do for a living. And my family actually used
3 to own an assisted living home so that gives me some
4 additional knowledge but I just -- you know, that's something
5 you should be sort of seeking out any time. But that's why I
6 was asking. Just out of curiosity. Did this d/b/a come from
7 some document or this is not an official d/b/a. I don't
8 know, but this is -- I'm going to grant FHC's Motions to
9 Dismiss which is kind of weird because they're not a party
10 but sort of. Because really they're not properly in the case
11 yet.

12 MS. RUTKOSKI: I understand.

13 THE COURT: So it's not even really a dismissal. I
14 mean, I don't know. It's a denial of the Motion to Amend to
15 bring FHC in. We'll call it granting their Motion to Dismiss
16 even though that's a little weird because how can a nonparty
17 have the allegations dismissed but it's a pseudo Motion to
18 Dismiss. We'll call it that. Okay.

19 MR. DURNOVICH: Thank you, Your Honor.

20 THE COURT: And, sir, if you'll prepare a proposed
21 order, as well, or if you'd like to collaborate with Mr.
22 Knowlton on a single order that's fine, too. Doesn't matter
23 to me.

24 MR. DURNOVICH: Thank you, Your Honor.

25 THE COURT: Okay. Let's talk about All Seasons' Motion

1 for Summary Judgment.

2 MR. MCKAY: Yes, ma'am, Your Honor. My name is Jay
3 McKay. I'm an attorney in Columbia and I represent All
4 Season's Healthcare, Incorporated or Inc.

5 The facts of this case not that they're that relevant
6 because it feels more of a (inaudible). In any event, All
7 Seasons provides hospice care both in home and in various
8 assisted living facilities. They don't -- Amara Place or
9 whatever their appropriate name is, they don't work for them
10 but they occasionally will have hospice patients who are in
11 that facility or in another facility. They're totally
12 separate and different entities.

13 Now, Ms. Gee, the decedent, unfortunately was diagnosed
14 with Alzheimer's disease. Several years before she died, she
15 entered into an agreement to go into hospice care. That she
16 would be a no code. Things of that nature. She had
17 Alzheimer's which medically is the death of your brain. It's
18 a disease that causes your brain to die and that's what she,
19 unfortunately, had.

20 But the facts of the case, as far as my clients are
21 concerned, is that there -- on December 30th their hospice
22 nurse was in the facility, late afternoon, checked on Ms. Gee
23 and apparently said if she gets agitated give her the, I
24 think, Ativan, it might be (inaudible), one or the other,
25 it's in my brief, and you know, and she left.

1 The drugs and all that are in the possession of the
2 facility, not my clients. Ms. Gee has scheduled medications,
3 morphine, sedatives, things like that. They're locked in a
4 safe appropriately at Amara Place (inaudible). Well, the
5 hospice nurse gets called before midnight that Ms. Gee is not
6 doing well, guess, say around 12:15, and she's agitated and
7 she asked the nurse on call to get her meds and there's some
8 conversations.

9 The bottom line is that the nurse apparently wasn't
10 qualified to give multiple-dose medications and refused to
11 give them and refused to let my client's employee give the
12 medication and Ms. Gee died less than 30 minutes later and
13 whether the medications would've made any difference or not,
14 my client had no ability to get the medications or administer
15 them without -- on their own. They just didn't have access.

16 In any event, as far as the lawsuit's concerned, Mr.
17 (Inaudible) very appropriately went over the requirements of
18 the medical malpractice (inaudible) statute section 15-79-
19 125, which requires that a suit be brought in the county
20 where the wrongful act occurred basically. Now, the
21 malpractice statute's kind of unusual. It's a two-step thing
22 and that is a prerequisite of, I would argue it's a
23 jurisdictional prerequisite, to filing a lawsuit. Well, it
24 was brought in the wrong county.

25 Now, sometime in late -- they filed the suit in

1 November of 2022, excuse me, the Notice of Intent, and then
2 they attempted to serve it on my client in December 16th of
3 2022, by certified mail but it was not signed by the
4 registered agent of the corporation. It was just someone
5 wrote All Seasons. We don't know who did that but any event,
6 this Greenwood County Notice of Intent, my client, I don't
7 believe, were really aware of it not signed by their
8 registered agent. It's unknown who signed it.

9 And then in June of -- June 12th of 2023, the lawsuit
10 was filed June 6th, 2023, and they attempted to file a Notice
11 of Intent on June 12th, 2023, a Summons and Complaint later
12 on my client. Well, this is three and-a-half years after the
13 date of death, six months after the statute of limitations
14 totally run and it's -- they failed to properly serve my
15 client with the documents and they were not done in a timely
16 manner.

17 So we submit we're entitled to the case being dismissed
18 or, alternatively, summary judgment of the statute 1579125
19 says that, you know, the summons and complaint, if they're
20 not served within the statute of limitations. That be filed
21 within the statutes. Actual service must be no later than
22 120 days (inaudible) which was never done in this case. It's
23 time barred and the -- my client was never properly served.
24 My client has no insurance. They've been around that with
25 their carriers and we submit we're entitled to be dismissed

1 from the action.

2 THE COURT: Yes, ma'am, Ms. Rutkoski.

3 MS. RUTKOSKI: Your Honor, we stand, again, by the fact
4 that the (inaudible) changed venue should be permitted. We
5 did file in Greenwood.

6 Heather McCoy, who is the owner of All Seasons
7 Healthcare, her and her husband, Dr. McCoy, I guess, own and
8 operate that entity or owned, past tense, I'm not sure. She
9 -- we followed the procedural rules to serve them at the
10 location to Heather McCoy, or her agent, by certified mail.
11 I went in-depth in this in our motion but when the procedural
12 rules are (inaudible) by the Plaintiff it is, then, the
13 burden of the Defendant to prove that the person who signed
14 the green card was not authorized to do so. They admittedly
15 can't tell us who signed the green card. So whether or not
16 service was effectuated, it's presumed that it was.

17 They were served in a timely manner. They contacted us
18 about mediation. We spoke with that (inaudible) mediation.
19 When we served them the exact same way with the exact same
20 signature on the green card with the complaint, they notified
21 their insurance carrier. So whether or not they were served,
22 I think it's pretty clear that since they cannot prove that
23 the Notice of Intent was not served on someone that was not
24 able to accept service then it's presumed that it was served.

25 We transferred it to Richland County, which was the

1 proper venue. I'm trying to find more case law, if there is
2 any, that discusses wrong venue, notice of intent, but I
3 think -- I mean, if the person operating the same way as the
4 summons and complaint, the change of venue should not stop
5 it. These entities had knowledge of the incoming complaint,
6 the incoming claim and its factual location should've been
7 told, they were properly served except FHC, which is a
8 different situation, within the prescribed time lines, and
9 the fact that it was filed in an improper venue should not be
10 grounds for dismissal.

11 THE COURT: Out of curiosity, how did it end up in
12 Greenwood County?

13 MS. RUTKOSKI: Clerical error.

14 THE COURT: Okay. So we all agree that Greenwood was
15 never a proper venue. I mean, --

16 MS. RUTKOSKI: No. All the (inaudible) are in Richland
17 County.

18 THE COURT: And that's why I asked. I was reading, and
19 I hadn't read anybody's answer or anything, but just the
20 allegations in the complaint put everyone in Richland County.
21 Oh, that's what I wanted to ask.

22 In Greenwood -- I have so many questions that I'm not
23 trying to pick on you or embarrass you.

24 MS. RUTKOSKI: No, no, no.

25 THE COURT: What triggered the realization that

1 Greenwood was not the right county?

2 MS. RUTKOSKI: When I -- (inaudible) throw anyone under
3 the bus.

4 THE COURT: Don't worry about it.

5 MS. RUTKOSKI: Yeah.

6 THE COURT: Because really that's more curiosity than
7 anything. I don't think that it matters to the decision.
8 Just because I'm looking at the record in Greenwood, the
9 Notice of Intent was filed November 11th, 2022. There's a
10 mediation that happened, pre-suit mediation, and the proof
11 of ADR filed in Greenwood. I don't know. Maybe at that
12 point. But also the only defendant there was Mill Creek
13 Manor even though All Seasons is named.

14 MS. RUTKOSKI: So All Seasons was notified. They
15 called our office. We sent them a letter notifying and
16 sending the (inaudible) link for mediation. They did not
17 show to that mediation and for some context of these folks, I
18 mean, Ms. McCoy, I put this in one of my responses, she had
19 issues with the IRS. She was constantly sending her
20 documentation of her having to pay unpaid taxes and ignored
21 all those, as well, and tried to evade service from the IRS
22 and I attached that as one of my exhibits. So this is not,
23 in my opinion, new behavior from her. So her failure to show
24 at the pre-suit mediation and the suggestion and the
25 suggestion that she wasn't served when the complaint service

1 and the (inaudible) service are identical, the exact same
2 handwriting said All Seasons and there's no complaint about
3 service with the complaint, she immediately notified her
4 carrier.

5 So whether or not the proper named parties with TWG and
6 FHC, I think that's a separate issue but I don't think that -
7 - and these folks were put on notice that the whole purpose
8 of Notice of Intent and complaint is that folks are on notice
9 of potential lawsuit against them or claim against them
10 within the statute of limitations and I don't see how -- I
11 don't see how justice is served when a clerical error
12 prevents you from -- especially when the verbiage of the
13 Notice of Intent puts you perfectly on notice of the factual
14 allegations and where it happened, but I understand that.

15 MR. MCKAY: Your Honor, there is no material of fact
16 that Heather McCoy, as registered agent for this corporation,
17 was served with this lawsuit. She was not. We got an
18 affidavit to that effect. When they tried to serve her last
19 summer, I mean, this thing is long gone. Three and-a-half
20 years after the patient's death. So we submit that we're
21 entitled to the case being dismissed.

22 MS. RUTKOSKI: And, Your Honor, if you don't mind
23 briefly. This is the green card that we got back. Here you
24 can see certified mail, restricted delivery, and when you
25 look up what that means on the USPS website, it follows the

1 rules that it has to be to the addressee. The addressee is
2 Heather McCoy, as registered agent, for All Seasons
3 Healthcare, Inc. And this is All Season -- they marked
4 themselves -- whoever signed this marked themselves as the
5 agent on December 16th, 2022. The service was even within
6 the statute of limitations.

7 The law in South Carolina says that I follow the
8 procedural rules, they have to -- it is now the Defendant's
9 job to prove that whoever signed this is not -- you know,
10 they get to register with the Secretary of State where I am
11 capable of serving them. They don't get to have it be a
12 messy situation that they get out of all the time.
13 Especially with someone who which attempted to be served at
14 the same location by the federal government and told them
15 that she refused to accept process.

16 Now, the Complainant was served and got the same All
17 Seasons -- this is the one in June, after the complaint.
18 Again, certified mail, restricted delivery, and Ms. McCoy
19 immediately notified her carrier because I was contacted by
20 her carrier. So service of process issue, what we needed to
21 do if they want to come up with -- and we attempted to depose
22 Ms. McCoy. It was scheduled -- I added topics to it so it
23 was delayed and I asked, again, to have it rescheduled before
24 this hearing and it didn't happen so I have not had an
25 opportunity to discuss this and get factual basis on it but

1 if some of the law is and the process that we abided by in
2 serving, she's presumed to be served.

3 MR. MCKAY: Your Honor, she is not served. There's no
4 presumption of service. Three and-a-half years after the
5 death, a year and a half after, excuse me, six months after
6 the statute of limitation folds. You know, a lawsuit, this
7 lawsuit died in 2022. In fact, it was never really properly
8 commenced. When they tried to re-file it in 2023, it was
9 long gone.

10 There's no question of fact that this matter is barred.
11 They haven't properly served my client. When they got that
12 whatever that All Seasons thing is, any lawyer looking at it
13 should've said well, this doesn't look right. Send a process
14 server out there. My client said she didn't sign it. She
15 hasn't authorized any third party to sign it. We don't know
16 how that occurred.

17 In any event, we submit that we're entitled to have the
18 case dismissed that hasn't properly commenced against us.
19 It's all set out in our briefs.

20 MS. RUTKOSKI: Well, to be clear, *Roche v Young*
21 *Brothers*, a Supreme Court case, states when the civil rules
22 on service are followed there is a presumption of proper
23 service. Because Plaintiffs, in this case, met their
24 requirement for service of process, it is presumed that
25 Defendant All Seasons Healthcare was properly served. Under

1 Rule 48, the Defendant -- and so this is, again, quoting the
2 *Roche v Young Brothers*. "Under Rule 48 the Defendant, not
3 the Plaintiff, must prove a receipt was signed by an
4 unauthorized person. The Plaintiff need only show compliance
5 with the rules." That's *Roche v Young Brothers* 318 SC 207.
6 So it is presumed, then, it was sent to the proper location
7 and was registered with the Secretary of State.

8 MR. MCKAY: Yes, Your Honor. Ms. McCoy entered an
9 affidavit, she didn't sign it. So there's no material issue
10 of fact created and we're entitled to have the case
11 dismissed.

12 MS. RUTKOSKI: But an agent can sign for it, Your
13 Honor. It doesn't have to be Heather McCoy. An agent for
14 Heather McCoy can also sign. So unless they can say, for
15 certain, who it is and that it's not an agent, service is
16 (inaudible).

17 MR. MCKAY: We submit it's a question of law, Your
18 Honor, and we believe that Plaintiff hasn't complied with the
19 necessary prerequisites to have it properly served on my
20 part.

21 THE COURT: I tend to agree with Mr. McKay if we even
22 get there because doesn't this present the same problem with
23 the Notice of Intent having been filed in Greenwood?

24 MR. MCKAY: Well, it does.

25 MS. RUTKOSKI: (Inaudible) filed in Greenwood.

1 THE COURT: Yeah. So when it was filed in Greenwood so
2 close to -- you know, whatever happened, happened. It
3 happened the way it did but so close to the tolling of the --
4 not the tolling, expiration of the statute of limitations,
5 that actually gave very little time to correct anything. But
6 it was filed in Greenwood so there is no tolling even. So
7 even if Ms. McCoy was properly served, and I'm not saying she
8 was because her affidavit -- I mean, yeah, her affidavit
9 indicates that the entity was probably not properly served
10 but even if it was properly served, it was served outside the
11 statute of limitations. I mean, the action was commenced
12 after the expiration of the statute of limitations.

13 So as an initial matter, I think it's got to be
14 dismissed on the same grounds as the other, TWG and FHC, but
15 secondary to that would be improper service of process.

16 Yeah, that's a strange thing to just write All Seasons
17 and check agent. Who is that? I have no -- okay. I guess
18 USPS doesn't do anything like UPS does and ask the person's
19 name so that they can jot it down. You know, when you
20 scribble on the UPS pad that they have, they'll ask what's
21 your name so that they have their record.

22 MS. RUTKOSKI: Right, right.

23 THE COURT: Obviously, USPS doesn't do that and that's
24 not your fault but that is just such an odd thing to scribble
25 All Seasons. They checked agent, not addressee so I believe

1 that it was not Ms. McCoy although we can --

2 MS. RUTKOSKI: (Inaudible) -- excuse me, Your Honor.

3 An agent can sign on behalf of the addressee for service
4 purposes.

5 THE COURT: Yeah, but nobody's name is All Seasons.
6 Who is that? Who, what is that, you know.

7 MS. RUTKOSKI: Um-hum. I don't know. I don't know.
8 But as an initial matter it will be dismissed anyway pursuant
9 to 1579125 (formatting). And is this -- are All Seasons an
10 LLC, All Seasons, Inc.?

11 MR. MCKAY: It's All Seasons, Inc. We don't know who
12 All Seasons, LLC is but there are a million entities named
13 All Seasons. A plumber was where I -- next door and they had
14 an All Seasons Plumbing sign but LLC -- my client has gotten
15 mail for LLC and I think they're in Ohio or California. It's
16 a healthcare company of some sort. But, you know, we don't
17 know who they are really.

18 THE COURT: Okay. Well, that motion is granted. Mr.
19 McKay, I'll ask you for a proposed order as well or, again,
20 you gentlemen can collaborate on a single order, two orders,
21 three orders, I don't care. Totally up to you.

22 Now, Ms. Rutkoski, where does that leave us with this
23 case because All Seasons, LLC is still a named party?

24 MS. RUTKOSKI: Oh, they can be dismissed. That's not a
25 real defendant. We didn't know which one it was when we were

1 initially serving them.

2 THE COURT: Gotcha. Okay. That's the LLC. The LLC is
3 also dismissed so that resolves this case then. Okay. Thank
4 you, folks.

5 MS. RUTKOSKI: Thank you.

6 THE COURT: Thank you.

7 MR. MCKAY: Thank you, Judge.

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24 (THERE BEING NO FURTHER QUESTIONS, THIS HEARING IS CONCLUDED

25 AT 1:17 p.m.)

CERTIFICATE OF TRANSCRIBER

I, Lynda Monroe, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in trial of the captioned case, relative to appeal, in the South Carolina Circuit Court 5, Richland County, South Carolina, on the 17th day of April, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 23, 2024

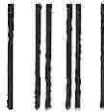
Lynda Monroe

Lynda Monroe, Transcriber

USPS TRACKING#



9590 9402 7396 2055 4955 28

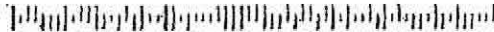


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Elizabeth C Moultrie, Senior Paralegal
KASSEL McVEY ATTORNEYS
P O Box 1476
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- Complete items 1, 2, and 3.
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1. Article Addressed to:

H. McCloy, as RA for Service of
Process for All Season' Healthcare
Inc.
7142 Woodrow St
Irmo, South Carolina 29063



9590 9402 7396 2055 4955 28

2. Article Number (Transfer from service label)

7017 0660 0000 1954 2299

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X *H. McCloy* Agent
 Addressee

B. Received by (Printed Name)

H. McCloy

C. Date of Delivery

12-16

D. Is delivery address different from item 1? Yes
If YES, enter delivery address below: No

3. Service Type

- 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™
- Signature Confirmation Restricted Delivery
- Restricted Delivery

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2023-CP-40-03086
)	
)	
Plaintiff,)	
)	
v.)	
	)	PROOF OF SERVICE
)	
All Season's 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.)	

I, Elizabeth C. Moultrie, do hereby certify that on the **26th day of June 2023**, I served upon Defendant **ALL SEASONS HEALTHCARE, INC.**, a true and correct copy of the **SUMMONS & COMPLAINT and Plaintiff's First Discovery Requests** by Certified Mail, Return Receipt Requested, Restricted Delivery to **H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, INC.**, as evidenced by United States Postal Form 3811, postmarked **26 June 2023**, and received in my office on **28 June 2023**, attached hereto and incorporated herein by reference.

Elizabeth C. Moultrie

June 30, 2023

Columbia, South Carolina.

USPS TRACKING #



9590 9402 7396 2055 4958 87

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

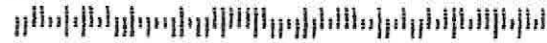
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Elizabeth C Moultrie, Senior Paralegal
KASSEL McVEY ATTORNEYS
P O Box 1476
Columbia SC 29202-1476

RECEIVED JUN 23 2023

2-147676



SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
<ul style="list-style-type: none"> Complete items 1, 2, and 3. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 	<p>A. Signature*</p> <p>X  <input checked="" type="checkbox"/> Agent <input type="checkbox"/> Addressee</p>
<p>1. Article Addressed to:</p> <p>H. McCloy, as Registered Agent for Service of Process for All Season' Healthcare, Inc. 7142 Woodrow St Irmo, South Carolina 29063</p>  <p>9590 9402 7396 2055 4958 94</p>	<p>B. Received by (Printed Name)</p> <p>C. Date of Delivery</p> <p>6/23</p> <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes If YES, enter delivery address below: <input type="checkbox"/> No</p>
<p>2. Article Number (Transfer from service label)</p> <p>7022 2410 0001 3098 4858</p>	<p>3. Service Type</p> <p><input type="checkbox"/> Adult Signature <input type="checkbox"/> Priority Mail Express®</p> <p><input type="checkbox"/> Adult Signature Restricted Delivery <input type="checkbox"/> Registered Mail™</p> <p><input type="checkbox"/> Certified Mail® <input type="checkbox"/> Registered Mail Restricted Delivery</p> <p><input checked="" type="checkbox"/> Certified Mail Restricted Delivery <input type="checkbox"/> Signature Confirmation™</p> <p><input type="checkbox"/> Collect on Delivery <input type="checkbox"/> Signature Confirmation Restricted Delivery</p> <p><input type="checkbox"/> Collect on Delivery Restricted Delivery <input type="checkbox"/> Restricted Delivery</p>

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENWOOD)
)
Jennifer Murphy, as Personal)
Representative of the Estate of Phyllis)
Gee,)
Plaintiff,)
)
vs)
)
All Season's Healthcare LLC, All)
Seasons Healthcare, Inc. and Mill Creek)
Manor, L.L.C. f/k/a Amara Place)
)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE EIGHTH JUDICIAL CIRCUIT

PROOF OF ADR

Docket No. 2022 NI 24 00012

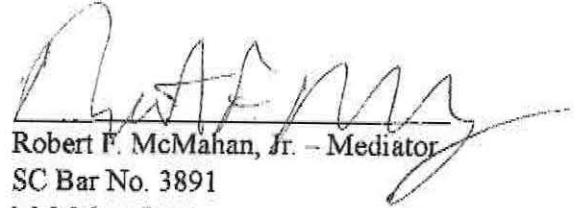
(Within 10 days of the conclusion of ADR and no later than 300 days after filing, an original must be filed with the Clerk of Court and a copy forwarded to the attorneys for the parties.)

PURSUANT to the South Carolina Alternative Dispute Resolution Rules (SCADR)

1. Alternative Dispute Resolution (ADR) was conducted on the 20th day of April, 2023 in the form of
 - a. mediation
 - b. non-binding arbitration
 - c. binding arbitration (attached appropriate order of dismissal)
2. The neutral was Robert F. McMahan, Jr.
3. Present at the ADR conference were:
 - a. Plaintiff
 - b. Defendant Stuart Mottern CFO of Mill Creek Manor, LLC
 - c. Lawyers for Plaintiff Jamie Rutkoski, Esq.
 - d. Lawyer for Defendant
 - e. Representative for Insurance Carrier
 - f. Guardian *ad litem*
 - g. Expert(s)
 - h. Others
4. As a result of ADR, this case should be considered (check one)
 - a. fully settled by Consent Judgment to be filed by _____
 - b. fully settled Voluntary Dismissal to be filed by _____

- c. Partially settled
- d. X at an impasse

Submitted this 20 day of April , 2023



Robert F. McMahan, Jr. - Mediator

SC Bar No. 3891

McMahan Law

PO Box 26314

Greenville, SC 29616

803-261-1299

rfm@robertmcmahanlaw.com


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF RICHLAND	)	FOR THE FIFTH JUDICIAL CIRCUIT
)	
Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,	)	Civil Action No.: 2023-CP-40-03086
)	
)	
Plaintiff,)	
)	
v.)	
)	
All Season’s 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,	)	AFFIDAVIT OF ELIZABETH C. MOULTRIE
)	
)	
Defendants.)	

I, Elizabeth C. Moultrie, being first duly sworn, hereby depose and state as follows:


1. I am over the age of eighteen (18) years.
2. I am an employee of Kassel McVey Attorneys at Law, attorneys for Plaintiff in the above-entitled matter.
3. After searching the Secretary of State’s website to identify the Registered Agent for Service of Process for All Seasons Healthcare, on December 9, 2022, I mailed a letter along with a Notice of Intent to File Suit and Expert Affidavit via Certified Mail, Return Receipt Requested, Restricted Delivery, with postage pre-paid and addressed to H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc., 7142 Woodrow St, Irmo, South Carolina 29063. (Exhibit 1.)
4. On December 19, 2022, I received PS Form 3811 (Return Receipt) signed on December 16, 2022, by “All Seasons” with the “Agent” box checked. (Exhibit 2.)

5. On March 16, 2023, I mailed a letter (erroneously dated March 16, 2022) to H. McCloy as Registered Agent for Service of Process for All Seasons Healthcare, Inc., informing her of the pre-suit mediation of this case scheduled for March 30, 2023, at 9:30 AM. In that letter I provided the Zoom link for the pre-suit mediation. (Exhibit 3.)
6. On March 27, 2023, I received a telephone call from "Trish" from All Seasons Healthcare who said she received my letter dated March 16, and confirmed Heather McCloy is Registered Agent for Service of Process but denied the entity had been served with our Notice of Intent to File Suit. Trish provided her email address, and on March 27, 2023, I emailed a copy of the PS Form 3811 dated December 16, 2022, along with a copy of my letter, the Notice of Intent to File Suit, and the Expert Affidavit. (Exhibit 4.)
7. On June 22, 2023, I mailed a letter along with a Plaintiff's previously filed Notice of Intent to File Suit and Expert Affidavit, Plaintiff's Summons and Complaint, Expert Affidavit, and Plaintiff's first discovery requests via Certified Mail, Return Receipt Requested, Restricted Delivery, with postage pre-paid and addressed to H. McCloy, as Registered Agent for Service of Process for All Seasons Healthcare, Inc., 7142 Woodrow St, Irmo, South Carolina 29063. On June 28, 2023, I received PS Form 3811 indicating service on June 26, 2023, to All Seasons with the "Agent" box checked. (Exhibit 5.)
8. On July 25, 2023, I received an email from H. McCloy acknowledging receipt of the documents mailed June 22, 2023, and requesting a 30-day extension to Answer. (Exhibit 6.)

FURTHER AFFIANT SAYTH NAUGHT.


Elizabeth C. Moultrie

SWORN TO BEFORE ME this
8th day of March 2023.


Notary Public for South Carolina
My Commission Expires: 12/11/2024

Page 2 of 2

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JAMIE R. RUTKOSKI
ATTORNEY AT LAW
JRUTKOSKI@KASSELLAW.COM

December 9, 2022

VIA CERTIFIED MAIL—RETURN RECEIPT REQUESTED—RESTRICTED DELIVERY
Article Number 7017 0660 0000 1954 2299

H. McCloy, as Registered Agent for Service of Process
for All Season' Healthcare, Inc.
7142 Woodrow St
Irmo, South Carolina 29063

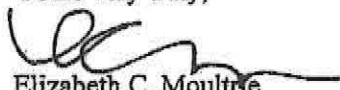
Re: *Jennifer Murphy, as Personal Representative of the Estate of Phyllis Gee,
deceased v. All Season's Healthcare, LLC, et al.*
C/A No.: 2022-NI-24-00012

Dear H. McCloy:

Enclosed herewith and served upon you as Registered Agent for Service of Process please find Plaintiff's Notice of Intent to File Suit against Defendants named in the pleadings. Please note that this matter must be mediated within 90 days, but no more than 120 days, of the date of filing. Please provide a copy of the enclosed immediately to your liability carrier and/or legal counsel.

Thank you for your kind consideration and cooperation. If you have any questions or concerns, please contact your attorney.

Yours very truly,



Elizabeth C. Moultrie
Senior Paralegal to John D. Kassel,
Theile B. McVey, and Jamie Rae Rutkoski

ECM:bmh

Enclosures



JOHN D. KASSEL, ATTORNEY AT LAW, LLC