

STATE OF SOUTH CAROLINA
COUNTY OF BERKELEY

COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

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Case No. 2023-CP-08-00499 **Mar 26 2026**

SC Court of Appeals

NextGear Capital, Inc.,
Plaintiff,
vs.
Annette D. Walker,
Defendant.

**ORDER DENYING DEFENDANT’S
MOTION FOR RELIEF FROM
FOREIGN JUDGMENT**

Presiding Judge: Deadra L. Jefferson
Plaintiff’s Attorney: Lucas Fautua, Esq.
Defendant’s Attorney: Donald J. Budman, Esq.¹
Date of Hearing: N/A
Court Reporter: N/A

This matter comes before the Court on Defendant’s Motion for Relief from Judgment or Order under Rule 60(B), SCRPC filed April 10, 2024. The Court received the Motion on April 17, 2024. Defendant filed a Memorandum in Support on April 10, 2024. Plaintiff did not file a memorandum and relies on its previous responsive filings. This matter previously came before the Court on August 9, 2023, on Defendant’s Motion to Vacate Foreign Judgment filed March 23, 2023, and Plaintiff’s Motion to Enforce Foreign Judgment filed April 27, 2023. The Motions were heard on August 9, 2023. The Court issued its Order Denying Defendant’s Motion to Vacate Foreign Judgment on August 11, 2023, and its Order Granting Plaintiff’s Motion to Enforce Foreign Judgment on August 17, 2023. For the reasons set forth herein, the Defendant’s Motion for Relief from Foreign Judgment is Denied.²

¹ The Defendant appeared pro se on her Motion to Vacate Foreign Judgment filed March 23, 2023, and heard on August 9, 2023.

² This Motion is disposed of without the necessity of a hearing and decided on the record and briefs. Rule 59(f), SCRPC; *Pollard v. City of Florence*, 314 S.C. 397, 401–402, 444 S.E.2d 534, 536 (Ct. App. 1994). *SC Dept. Social Services V. Basnight*, 346 S.C. 241, 551 S.E.2d 274 (Ct. App. 2001). The Defendant’s Rule 60(b), SCRPC is clearly an attempt to have the Court reconsider its previous rulings. However, the Defendant attempts to use the vehicle of a 60(b) motion due to the significant passage of time since the Court’s initial rulings.

BACKGROUND AND PROCEDURAL FACTS

On March 30, 2006, Defendant entered into a Demand Promissory Note and Security Agreement with Dealer Services Corporation, who through merger became NextGear Capital, Inc., and Defendant defaulted under the Agreement. On March 23, 2010, Plaintiff filed a Complaint against Defendant in the Marion County Superior Court for the State of Indiana (“Indiana Action”). In the Indiana Action, Defendant was served with the Summons and Complaint by process server on August 24, 2010,³ and Defendant did not respond or otherwise plead to the Complaint. On June 13, 2011, the Marion County Superior Court for the State of Indiana entered Default Judgment against the Defendant. Despite the entry of default judgment in Plaintiff’s favor, and Plaintiff’s demand for payment, Defendant has failed and refused to pay the same. Plaintiff filed a Notice of Filing of Foreign Judgment with this Court on February 17, 2023, which was supported by a filed and stamped copy of the subject foreign judgment, a certificate of merger, and an affidavit in support. The Notice of Filing of Foreign Judgment was served on the Defendant March 7, 2023, by the Berkeley County Sheriff, as evidenced by the Affidavit of Service filed with this Court on March 20, 2023.⁴ The Notice alerted Defendant to her thirty (30) day statutory right to respond to the Notice or Judgment or Judgement would be entered against her. Defendant filed her Answer and Motion to Vacate Foreign Judgment on March 23, 2023. An Order denying Defendant’s Motion to Vacate Foreign Judgment was filed on August 11, 2023. The Defendant has taken no action to challenge the Default Judgment in the Indiana Courts.

³ The Affidavit of Service was filed April 27, 2023, verifying that the Defendant was personally served with the Indiana Summons and Complaint on August 24, 2010, at 2:33 pm at 407 Barreling Ct., Moncks Corner, SC 29461.

⁴ The Affidavit of Service was filed March 20, 2023, verifying that the Defendant was served with the Notice of Filing of Foreign Judgment on March 7, 2023, at 10:53 am at 407 Barreling Ct., Moncks Corner, SC 29461.

STANDARD OF REVIEW

“The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief.” Nelson v. Nelson, 428 S.C. 152, 173, 833 S.E.2d 432, 443 (Ct. App. 2019). Rule 60(b), SCRCF requires a particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation or other misconduct of an adverse party. Tobias v. Rice, 386 S.C. 306, 310, 688 S.E.2d 552, 554 n.3 (2010). A memorandum in support of a motion is not evidence. McClurg v. Deaton, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011). The movant in a 60(b) motion has the burden of presenting evidence, usually provided by affidavits, proving the facts essential to entitle him to relief. Bowers v. Bowers, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct. App. 1991). The decision to grant or deny a motion made pursuant to Rule 60(b) is within the sound discretion of the trial judge. May v. May, 428 S.C. 131, 136, 833 S.E.2d 78, 80 (Ct. App. 2019). Accordingly, the appellate standard of review is limited to determining whether there was an abuse of discretion. Id.

CONCLUSIONS OF LAW

I. Jurisdiction

A judgment is deemed “void” under Rule 60(b)(4) if the rendering court lacked subject matter or personal jurisdiction, or if it violated due process. Belle Hall Plantation Homeowner’s Ass’n, Inc. v. Murray, 419 S.C. 605, 618, 799 S.E.2d 310, 316 (Ct. App. 2017). The gravamen of Defendant’s Motion is that the Indiana judgment is void *ab initio* for lack of personal jurisdiction. The Defendant argues that the South Carolina judgment, which are based upon the Indiana Default Judgment, is void as well. Defendant asserts that the facts leading up to the issuance of the 2011 Default Judgment in Indiana, and the facts subsequent thereto, are outrageous, and bear scrutiny in order to avoid a gross injustice such that it is no longer equitable that the judgment should have prospective application.

South Carolina Code Ann. §§ 15-35-900 – 960 encompass the Uniform Enforcement of Foreign Judgments Act (“UEFJA”). “The judgment creditor has the burden of proving that the foreign judgment is entitled to full faith and credit.” S.C. Code Ann. § 15-35-940(B). “Full Faith and Credit shall be given in each State to the . . . judicial Proceedings of every other State.” U.S. Const. art. IV, § 1. So long as a judgment “appears on its face to be a record of a court of general jurisdiction, a judgment presumes jurisdiction over the subject matter and over the persons unless disproved by extrinsic evidence or the record itself.” Taylor v. Taylor, 229 S.C. 92, 97, 91 S.E.2d 876, 879 (1956), L. Firm of Paul L. Erickson, P.A. v. Boykin, 383 S.C. 497, 501, 681 S.E.2d 575, 577 (2009) (citing Taylor v. Taylor, 229 S.C. 92, 97, 91 S.E.2d 876, 879 (1956)).

Defendant is a citizen of Berkeley County. Plaintiff properly complied with the notice requirements when serving Defendant with the Notice of Filing of Foreign Judgment on February 17, 2023.⁵ Moreover, the Defendant has failed to present extrinsic evidence, and no portion of the record disproves the presumption that the Indiana Court in issuing a Default Judgment had jurisdiction over the subject matter and the Defendant. Based on these facts, this Court finds it has proper jurisdiction to hear this matter.⁶

II. Rule 60(b)(1), SCRPC

Rule 60(b)(1) of the South Carolina Rules of Civil Procedure states that a party may obtain relief from a final judgment, order, or proceeding based on mistake, inadvertence, surprise, or excusable neglect. Rule(b)(1), SCRPC. When determining whether to grant relief from judgment based on mistake, inadvertence, surprise, or excusable neglect, the court must consider the

⁵ “[T]he judgment creditor shall serve the notice of filing provided for in subsection (B) on the judgment debtor and shall attach a filed, stamped copy of the foreign judgment and affidavit to the notice.” S.C. Code Ann. § 15-35-930(A).

⁶ This issue was addressed in detail. (Court's August 17, 2023 Order 3.).

following factors: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party. Nelson v. Nelson, 428 S.C. 152, 173, 833 S.E.2d 432, 443 (Ct. App. 2019) (citing Rouvet v. Rouvet, 388 S.C. 301, 309, 696 S.E.2d 204, 208 (Ct. App. 2010)). A meritorious defense does not require certainty of prevailing at trial. Graham v. Town of Lorris, 272 S.C. 442, 453, 248 S.E. 2d 594, 599 (1978). Rather, it must merely be one that justifies a hearing or judicial inquiry by presenting a legitimate question of law or a real factual dispute supported by conflicting or doubtful evidence. Id. The Rule requires that the motion shall be made within a reasonable time and for reasons (1), (2), and (3) not more than one year after the judgment, order or proceeding was entered or taken. Rule 60(b), SCRCF. A motion under Rule 60(b)(1) is an improper vehicle for obtaining a modification of a final judgment based on a change in or a mistaken understanding of the law. Saro Invs. v. Ocean Holiday P'ship, 314 S.C. 116, n. 9, 441 S.E.2d 835, n. 9 (Ct. App. 1994) (citing Wright v. Cordesville Pentecostal Holiness Church, 310 S.C. 321, 426 S.E.2d 772 (1993) and Greenville Income Partners v. Holman, 308 S.C. 105, 417 S.E.2d 107 (Ct.App.1992)).

This Court finds that the judgments issued following the August 9, 2023, hearing were not rendered against the Defendant as a result of mistake, inadvertence, surprise, or excusable neglect. Defendant asserts that the Judgments issued August 11 and 17, 2024, should be vacated due to mistake, inadvertence, surprise, or excusable neglect citing her lack of preparedness and evidence caused by attending her brother's funeral in New York on the date of the hearing. She further explains that she had no time to properly organize her evidence and was forced to participate in the hearing via a cell phone with a poor connection. While the Court is sympathetic to the

Defendant’s personal circumstances, the Defendant had notice of the hearing,⁷ which was conducted virtually.⁸ Defendant’s physical location in New York⁹ at the time of the hearing is immaterial to the Court’s decision. The Defendant has failed to allege circumstances that rise to the level of a meritorious defense.¹⁰ However, even if so, this factor alone is insufficient to grant relief. Finally, the Court must balance any potential prejudice to the opposing party if relief is granted. Declining to enforce a valid Indiana judgment would essentially deprive Plaintiff of their sole remedy and result in substantial prejudice to Plaintiff. Balancing all these factors, the Court concludes that the relief sought under Rule 60(b)(1) is not warranted in this case.

III. Challenge to Indiana Default Judgment

Rule 60(b)(5), SCRCF, provides, “On motion and upon such terms as are just the court may relieve a party... from a final judgment, order, or proceeding... if it is no longer equitable that the judgment should have prospective application.” Thompson v. Thompson, 428 S.C. 142, 148, 833 S.E.2d 274, 278 (Ct. App. 2019). Defendant’s assertion that the facts leading to and following the issuance of the default judgment in Indiana in 2011 are “outrageous” and warrant

⁷ The Berkeley County Clerk of Court sent notice of the August 9, 2023, motion hearing to the Defendant by regular USPS to 407 Barreling Ct., Moncks Corner, SC 29461 on July 27, 2023.

⁸ The virtual Webex recording is clear. The Defendant is clearly visible and easily heard. The internet connection is clear and stable without interruption.

⁹ The Defendant never indicates to the Court that she is in New York, that she has just attended her brother’s funeral and does not at any point seek a continuance or indicate that she is in distress and unable to proceed with the hearing. The Defendant clearly articulates the basis of her motion during the sixty-one (61) minute hearing.

¹⁰ In December 2005, Defendant and her fiancée, Mr. Mark Gentles, organized A-1 Quality Auto, LLC, a used car lot, operating at 2700 Ashley Phosphate Road in Charleston, South Carolina. Aff. 2. Defendant admits that she was provided the financing paperwork for Dealer Services Corporation and that she signed as the Guarantor. Id. at 3. Mr. Gentles was killed in a car accident in 2006. Id. Defendant states that she was never served any papers and never knew about the default judgment against her. Id. at 4. Defendant states that she first learned of the Indiana Judgment in 2015 or 2016 when she pulled her credit report. Id. However, Defendant believed that the judgment had been satisfied. Id. Two days before the scheduled hearing date on August 9, 2023, Defendant’s brother passed away, forcing her to travel to New York to grieve and care for her family. Id. at 5. Defendant further claims that she “was not in [her] correct state of mind when Judge Jefferson called the hearing to order.” Id. Defendant claims that her brother’s passing “deprived” her of the opportunity to show that the court should vacate the judgment. Id. The uncontroverted record reflects that the Defendant was cognizant of the proceeding, was able to proceed and was cogent in the presentation of her arguments.

scrutiny to avoid a gross injustice is unsubstantiated. The record contains no credible evidence or factual basis to support such a claim. The Defendant was properly served with the Indiana cause of action, failed to answer or otherwise plead, did not take any action to challenge the relief in Indiana, and the record is void of any evidence that the Indiana Default Judgement was entered improperly or is not entitled to full faith and credit by the SC Courts. Consequently, the Court rejects Defendant's argument.

IV. Expiration of Indiana Judgment Lien

The Defendant's claim that the judgment "expired as a lien" is generally a question of enforceability, not a jurisdictional defect that would make the judgment void from the start. The record shows that the Indiana court had proper service, indicating personal jurisdiction was established. To succeed on a void-judgment argument, the Defendant would need to show a fundamental jurisdictional flaw in the original Indiana case, which the record does not support.

Defendant further argues that Rule(60)(b)(5) offers relief where judgment has been "satisfied, released, or discharged," or where its 'prospective application is no longer equitable.'" Enforcement of a foreign judgment is governed by the catch-all statute of limitations set forth in S.C. Code Ann. § 15-3-600, which provides a ten-year period for actions not otherwise provided for. Abba Equip., Inc. v. Thomason, 335 S.C. 477, 483, 517 S.E.2d 235, 238 (Ct. App. 1999). The limitations period for enforcing a foreign judgment generally begins when the cause of action accrues in South Carolina (typically upon filing) rather than on the original judgment date in another jurisdiction. Id. Here, the Indiana judgment was entered on June 13, 2011, but Plaintiff did not file its Notice of Filing of Foreign Judgment in South Carolina until February 17, 2023. Accordingly, the filing of the foreign judgment in February 2023 falls within the ten-year period, and the Plaintiff's action to enforce the judgment is therefore timely. Based on the foregoing,

IT IS ORDERED, AJUDGED, AND DECREED that the Defendant's Motion for Relief from Foreign Judgment pursuant to Rule 60(b), SCRCP is Denied.¹¹

IT IS SO ORDERED.

Hon. Deadra L. Jefferson
Presiding Judge
Ninth Judicial Circuit

Charleston, South Carolina
At Chambers
February 25, 2026

¹¹ In the time between the filing of the motion and the issuance of this Order the Court had several status conferences with the parties due to concerns regarding the status of the case at the time of the filing of the Defendant's 60(b) motion and the intervening referral to the Master In Equity on December 20, 2023, for supplemental proceedings. Ultimately, the Master in Equity dismissed the referral and returned the case to the nonjury roster for disposition on August 21, 2024. Additionally, the parties requested, and the Court allowed, additional time for the parties to determine if a resolution was possible.



Berkeley Common Pleas

Case Caption: Nextgear Capital, Inc. , plaintiff, et al VS Annette D. Walker

Case Number: 2023CP0800499

Type: Order/Relief

IT IS SO ORDERED.

s/D.L. Jefferson Ninth Judicial Circuit Judge 2128