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**Jun 24 2026**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CLARENDON COUNTY  
Court of Common Pleas

The Honorable Bryan S. Doby and Honorable R. Kirk Griffin  
Clarendon County  
Trial Court Case No. Case No. 2024-CP-14-00106

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Appellate Case No. 2025-002568

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Elgin M. Selbee

Respondent,

v.

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

Appellants.

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**INITIAL BRIEF OF APPELLANTS**

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## **ISSUES ON APPEAL**

1. Did the Trial Court abuse its discretion in denying Appellants' motion for relief from Default based on improper service rendering the judgment void under South Carolina Rule of Civil Procedure 60(b)(4)?
2. Did the Trial Court abuse its discretion in denying Appellants' motion for relief from Default due to mistake pursuant to South Carolina Rule of Civil Procedure 60(b)(4)?
3. Did the Trial Court abuse its discretion in denying Appellants' motion to dismiss pursuant to South Carolina Rule of Civil Procedure 4(d)(3)?

## **STATEMENT OF THE CASE**

This appeal arises from orders denying Appellants' motion for relief from default judgment based on improper service rendering the judgment void, a denial of Appellants' motion for relief from default judgment based on mistake and a denial of Appellants' motion to dismiss.

On March 6, 2024, Elgin M. Selbee ("Respondent" or "Selbee") filed a Summons and two-count Complaint against Palmetto Shores Management, LLC and Palmetto Shores RE Holdings alleging assault and battery and negligent supervision [Compl.]. Respondent attempted service on Appellants on three separate occasions. [3/11/24 Affidavit of Non-Service; 5/27/24 Affidavit of Non-Service; 6/24/24 Affidavit of Non-Service].

Respondent first attempted service on Appellants on March 11, 2024, by mailing a copy of the Summons and Complaint, via United States Postal Service, return receipt requested to the registered agent, George McLaughlin using the address on the South Carolina Secretary of State, 105 E. North Street Ste 201 Greenville, South Carolina, 29601. [3/11/24 Affidavit of Non-Service]. This mailing was returned unsigned. [3/11/24 Affidavit of Non-Service]. Respondent then attempted to effectuate personal service of the Summons and Complaint on Appellants on

May 27, 2024. [5/27/24 Affidavit of Non-Service]. Respondent received an affidavit of non-service which provided, “George is 74 years old and in a wheel chair. He stated that he moved from Fayetteville, NC to Myrtle Beach and has no idea what Palmetto Shores RE holdings, LLC or Palmetto Shores RV Management is. Unable to locate the subject at the address provided.” [5/27/24 Affidavit of Non-Service].

On June 20, 2024, Respondent conducted a second attempt of personal service on Appellants at the address listed with the South Carolina Secretary of State. [6/24/24 Affidavit of Non-Service]. Respondent received an affidavit of non-service, which included the following statement from Respondent’s process server:

[a]ttempted service at the address provided. I spoke to a receptionist at the front desk whom stated George McLaughlin does not work at this business. The business in that building is Viking Mergers & Acquisitions of Greenville, SC. Unable to locate the subject at the address provided.

[6/24/24 Affidavit of Non-Service].

On July 12, 2024, after learning the Respondent’s registered agent was not located at address listed on the South Carolina Secretary of State, Respondent attempted service on Appellants by and through the South Carolina Secretary of State. [7/12/24 Affidavit of Service]. Respondent sent a copy of the summons and complaint to the South Carolina Secretary for the South Carolina Secretary of State to serve upon Appellants at the address listed on the South Carolina Secretary of State. [7/12/24 Affidavit of Service].

On September 11, 2024, Respondent filed an Affidavit of Default and motion for Judgment by Default. [Affidavit of Default]. On April 21, 2025, the Honorable R. Kirk Griffin entered an order of default judgment in favor of the Respondent in the amount of One Hundred Thousand

Four Hundred Thirty-Four and 00/100 Dollars (\$100,434.00) (“Judgment”) [Judgment Order at 6].

Thereafter, on May 1, 2025, Appellants filed a Motion to Dismiss Pursuant to South Carolina Rule of Civil Procedure Rule 4(d)(3). [Def.’s Mot. Dismiss]. On July 28, 2025, following a hearing by the Honorable S. Bryan Doby a form four was issued denying Appellants’ Motion to Dismiss. [Order Def.’s Mot. Dismiss].

On July 20, 2025, Appellant filed a Motion for Relief from Judgment Pursuant to Rule 60(b) of the South Carolina Rules of Civil Procedure. [Def.’s Mot. For Relief from Judgment]. On December 4, 2025, following a hearing, an order was entered into denying Defendants Motion for Relief from Judgment. [Ord. Denying Def.’s Mot. Relief from Default].

On December, 5, 2025, Appellants timely filed a notice of appeal and on December 15, 2025, Appellants timely filed an amended notice of appeal.

### **STANDARD OF REVIEW**

Whether to grant or deny a motion under Rule 60(b), SCRCPP, lies within the sound discretion of the trial judge. *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006). “An abuse of discretion occurs when the conclusions of the trial court are either controlled by an error of law or are based on unsupported factual conclusions.” *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 20, 675 S.E.2d 439, 445 (2009). The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005). The trial court’s decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Id.* An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of

law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *Id.*

## ARGUMENTS

This appeal presents a narrow but dispositive question: whether the trial court abused its discretion in granting default based on a procedural defect instead of an adjudication of claims on their merits when this court's longstanding principles favor resolving disputes based on substance rather than procedural irregularities.

**I. The Trial Court abused its discretion when it denied Appellants' motion for relief from judgment under Rule 60(b)(4) of South Carolina Rule of Civil Procedure because Respondent failed to properly serve the Appellants.**

The trial court abused its discretion in denying the Appellants' motion for relief from judgment under Rule 60(b)(4) of the South Carolina Rule of Civil Procedure based on a purely procedural defect and an intentional circumvention aimed to not provide notice of the proceeding to Appellants.

South Carolina Rule of Civil Procedure 60(b)(4) provides, "[o]n a motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order or proceeding for the following reasons . . . .(4) the judgment is void." "[A] judgment is void . . . if a court acts without [personal] jurisdiction." *South Carolina Dep't of Revenue v. Elliott*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002). Service of a summons grants a court personal jurisdiction. *Id.* Pursuant to Rule 4(d)(3) of South Carolina Rule of Civil Procedure:

[u]pon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy other summons and complaint to an officer, a managing or general agent or to any other agent authorized by appointment or by law to receive service and if the agent is one

authorized by statute to receive service and the statute so requires by also mailing a copy to the defendant.

“Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action.” *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Exacting compliance with the rules is not required to effect service of process. *Roche*, 318 S.C. at 209-10, 456 S.E.2d at 899. “Rather, [the Court must] 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.” *Id.* at 210, 456 S.E.2d at 899. “The principal object of service of process is to give notice to the defendant corporation of the proceedings against it.” *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30-31 (2010).

Pursuant to section 15-9-210(b) of the South Carolina Code, corporations “may be served . . . by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or the office of the secretary of the corporation at its principal office.” *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 31 (2010). “To interpret the statute as only allowing plaintiffs to serve process on registered agents at the address listed with the Secretary of State would lead to an absurd result” *Id.* at 487. (finding the registered agent being served in an office in New York and not the office listed under the Secretary of State to be sufficient as the Defendant was put on notice of the proceeding).

After three unsuccessful attempts at service, Appellants had no notice of the claims brought forth by the Respondents. [Def.’s Mem. In Supp. Def.’s Mot. for Relief from Default at 8-9]. The affidavits of non-service confirmed what Respondent’s already knew – that the address was wrong. [3/11/24 Affidavit of Non-Service; 5/27/24 Affidavit of Non-Service; 6/24/24 Affidavit of Non-Service]. Rather than correct that defect, Respondent proceeded to serve the Appellants by and

through the South Carolina Secretary of State while relying on the same address. [7/12/24 Affidavit of Service]. Respondents made no effort to identify a correct address before resorting to serving through the Secretary of State while continuing to rely on information they knew to be inaccurate. [Def.'s Mem. In Supp. Def.'s Mot. for Relief from Default]. Proceeding in this manner was not reasonably calculated to provide notice and cannot constitute valid service. [Def.'s Mem. In Supp. Def.'s Mot. for Relief from Default]. Simply put, this was not a good-faith effort at service. [Def.'s Mem. In Supp. Def.'s Mot. for Relief from Default].

In *Mull*, the court affirmed default judgment finding “the principal object of service was achieved.” 387 S.C. 486-487, 693 S.E.2d 27, 31 (2010). The plaintiff learned an attempt at personal service to a limited liability defendant by and through the address on the South Carolina Secretary of State had failed, when the return receipt which accompanied the summons returned unsigned. *Id.* After the plaintiff’s failure to serve the registered agent at the address listed on the South Carolina Secretary of State, Plaintiff conducted due diligence and located the registered agent as a resident of New York state. *Id.* The plaintiff served the registered agent in New York, even though the address on the South Carolina Secretary of State’s website was located in South Carolina. *Id.* The court found the principal object of service was achieved as the service put Defendant on notice of the claims. *Id.* As such, the court affirmed the default.

*Mull* is applicable to the facts of this case. Here, Respondent, *knew* the address listed on the South Carolina Secretary of State was incorrect by and through actual knowledge. [3/11/24 Affidavit of Non-Service; 5/27/24 Affidavit of Non-Service; 6/24/24 Affidavit of Non-Service]. However, Respondent did not conduct any diligence to make any attempt to serve the Appellants outside of the known incorrect address. [Def.'s Mem. In Supp. Def.'s Mot. for Relief from Default.]. Rather, Respondent did the opposite and “served” Appellants with the summons and

complaint by and through the South Carolina Secretary of State, at an address Respondent knew to be incorrect. [Hr’g Transcript Def.’s Mot. to Dismiss]. Respondent knew the address listed on the South Carolina Secretary of State’s website was the same address Respondent attempted to serve by and through a process server. [Def.’s Mem. In Supp. Def.’s Mot. for Relief from Default]. However, Respondent did not attempt any further due diligence searching to locate Appellants until after the Judgment had been entered. [Hr’g Transcript Def.’s Mot. to Dismiss 5-6]. Thereby, resulting in Appellants failing to have notice of this proceeding and defeating the intention and principles of South Carolina Rule of Civil Procedure 4(d)(3), which is to ensure proper notice and service is given. [Def.’s Mem. In Supp. Def.’s Mot. for Relief from Default].

Despite knowing its prior service attempts had failed and that the address on record was incorrect, Respondent made no meaningful effort to locate Appellants. Respondents did not even conduct a basic internet search until after securing a judgment. This frustrates the fundamental purpose of Rule 4(d)(3), which is to ensure service is reasonably calculated to apprise parties of the action. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30-31 (2010). Moreover, courts favor a resolution the merits. *Micronics, Inc. v. South Carolina Dep’t of Revenue*, 345 S.C. 506, 511, 548, S.E.2d 223, 226 (2001).

The South Carolina Supreme Court held, “personal service of process should not become a game of wiles and tricks” *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006) (finding mere speculation of notice and service enough to grant relief from default). Yet, Respondent had actual knowledge the address to which Respondent was serving Appellants was factually incorrect.

Without proper service, a court cannot possess proper personal jurisdiction over a defendant. *South Carolina Dep’t of Revenue v. Elliott*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct.

App. 2002). A judgment issued without personal jurisdiction, is void. *Id.* Respondent failed effectuate proper service on Appellants, rendering the judgment void.

For these reasons, the trial court abused its discretion when denying Appellants motion for relief from default. Accordingly, this court should reverse the Trial Court's denial of the Appellants' motion for relief from default, vacate the Judgment in the amount of \$100,434.00 and remand for the case to proceed on the merits.

**II. The Court should reverse the Trial Court's denial of Appellants' motion for relief from default because Appellants' met all factors required for relief under South Carolina Rule of Civil Procedure (60)(b)(1).**

The trial court abused its discretion in denying Appellants' motion from default as Appellants met all factors required under Rule 60(b), SCRPC.

Pursuant to Rule 60(B), SCRPC,

[o]n a motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it no longer equitable that the judgment should have prospective application.

Further, "[t]he 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." *Id.*

When determining whether to grant relief, the factors to consider are: (1) the timing of the motion for relief, (2) whether the party requesting relief has a meritorious defense, and (3) the degree of prejudice to the opposing party if relief is granted. *BB & T v. Taylor*, 369 S.C. 548, 553

n.1, 633 S.E.2d 501, 503 n.1 (2006) (citations omitted); *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989).

**A. Appellants made a good faith and understandable mistake.**

Rule 60(b)(1) is an appropriate remedy for “good faith mistakes of fact” if all other applicable factors are met. See *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986). However, a party may not generally use Rule 60(b)(1) as a vehicle for relief from a mistake of law. See *Savage v. Cannon*, 204 S.C. 473, 30 S.E.2d 70 (1944).

To obtain relief, a defaulting party must demonstrate that their failure to respond was “excusable” rather than merely negligent. *ITC Commer. Funding, LLC v. Crerar*, 393 S.C. 487, 713 S.E.2d 335 (2011). Under *ITC Commercial Funding*, the court found that the mistake made by defendant did not amount to “excusable” neglect but rather negligence, as defendant received the summons and complaint and failed to answer. *Id.* The defendant was properly served with the summons in her home via service from the sheriff’s department and communicated with an attorney who promptly and correctly communicated that he could not represent her. *Id.* at 393 S.C. 496, 713 S.E.2d at 339. The defendant then failed to answer the complaint, failed to show she did not receive the complaint and failed to show there was a mental incapacity that prevented her from answering the complaint. *Id.* As such, the court ruled defendant’s neglect was not “excusable” but rather negligence. *Id.* at 393 S.C. 495-96, 713 S.E.2d 339.

Here, Appellants were never even served and therefore lacked notice of service or the timeline or opportunity to respond. The defendant in *ITC Commer. Funding* simply failed to respond after receiving proper notice of the summons. *Id.* at 393 S.C. 496, 713 S.E.2d at 339. Unlike the defendant in *ITC Commer. Funding*, Appellants did not have proper notice of the proceeding, were not served with the summons and complaint and filed a responsive pleading

within ten days of receipt of the judgment. This does amount to excusable neglect and a good faith mistake.

Under *Columbia Pools, Inc., v. Galvin*, the Court of Appeals concluded the trial court did abuse its discretion in failing to find excusable neglect when a date miscalculation caused defendant to fail to file a responsive pleading. 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986). The Court concluded this did amount to an inadvertent mistake and excusable neglect. *Id.*

Furthermore, Appellants' registered agent, George McLaughlin, is the registered agent for nineteen active businesses in South Carolina. [Def.'s Memo in Supp. for Def.s' Mot. for Relief from Default at 5-6]. Mr. McLaughlin made a good faith mistake in failing to update his office address with the South Carolina Secretary of State for Appellants.

Here, Appellants did not even have notice to miscalculate a deadline for a responsive pleading. Appellants' failure to file amounts to excusable neglect and a good faith mistake, not negligence. *See ITC Commer. Funding, LLC v. Crerar*, 393 S.C. 487 (2011); *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524, (Ct. App. 1986). As such, a good faith mistake and excusable neglect exist for Appellants failure to answer the summons and complaint.

**B. Appellants acted promptly once Appellants learned of a default judgment.**

South Carolina Rule 60(b) provides, "[t]he 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." South Carolina Rule of Civil Procedure 60(b).

The Judgment was entered in on April 21, 2025. [Judgment Order]. Despite Respondent's inability to serve or locate Appellants at Appellants' primary business location, within days after the Judgment was entered, Respondent delivered a copy of the Judgment to Appellants' primary

business location. [Transcript Hr'g Def.'s Relief Default Judgment at 24]. As soon as Appellants were noticed of a default judgment, they notified their attorney who filed a notice of appearance. [Def.'s Mot. to Dismiss]. Then, less than ten days after entry of judgment, Appellants filed a responsive pleading. [Def.'s Mot. to Dismiss]. Relief was promptly sought and thus Appellants satisfy this factor.

**C. Appellants possess a good reason for failing to act promptly prior to receiving notice of the default judgment.**

The Appellants have good reasons for failing to act because registered agent for Palmetto Shores made a good faith mistake in failing to update its address with the South Carolina Secretary of State. [Def.'s Memo in Supp. for Def.s' Mot. for Relief from Default].

Furthermore, Respondents attempted to perfect service in such a manner that Appellants were not put on notice of any proceeding, thereby circumventing the intent of Rule 4 of the South Carolina Rules of Civil Procedure. [3/11/24 Affidavit of Non-Service; 5/27/24 Affidavit of Non-Service; 6/24/24 Affidavit of Non-Service]. Appellants did not have notice of any proceeding until after an order of judgment had been entered. [Def.'s Memo in Supp. for Def.s' Mot. for Relief from Default]. Within ten days of Appellants receiving notice of judgment, Appellants promptly filed a responsive pleading. [Def.'s Mot. to Dismiss]. Appellants have a good reason for failing to respond to the suit and therefore satisfy this factor. [Def.'s Memo in Supp. for Def.s' Mot. for Relief from Default].

**D. Appellants possess a meritorious defense.**

To establish a meritorious defense, the party does not have to show he would prevail on the merits. *McClurg v. Deaton*, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008). Rather, a meritorious defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to

real facts arising from conflicting or doubtful evidence.” *Id.* at 575, 671 S.E.2d at 94 (quotations and citations omitted).

Respondent alleged in their complaint that damages amounting to \$100,434.00 were caused due to the actions of an employee of Appellants. [Complaint]. However, this is a bald and unsupported allegation. Appellants possess a strong meritorious defense to the causes of action for assault which requires the defendant to place the plaintiff in reasonable bodily harm and battery which requires the infliction of any forcible contact on the person by another. *Gathers v. Harris-Teeter Supermarket*, 282 S.C. 220, 317 S.E.2d 748, 754-55 (Ct. App. 1984) (defining assault); *Jones v. Winn-Dixie Greenville, Inc.*, 318 S.C. 171, 456 S.E.2d 429 (Ct. App. 1995) (defining battery). A party seeking relief from default need not prove its defense conclusively, but must present a meritorious defense that raises a question for adjudication on the merits. *Micronics, Inc. v. South Carolina Dep’t of Revenue*, 345 S.C. 506, 511, 548, S.E.2d 223, 226 (2001).

First, Appellants possess a meritorious defense to the assault and battery claim. [Def.’s Memo in Supp. for Def.s’ Mot. for Relief from Default at 5-6]. The record will show that Appellant did not initiate any infliction of forcible contact or place the Respondent in reasonable bodily harm. [Def.’s Memo in Supp. for Def.s’ Mot. for Relief from Default at 5-6]. Rather, it will show Respondent was the initial aggressor. Specifically, after 10:00 p.m. on July 26, 2021, Respondent, who was intoxicated, became loud and belligerent and the general manager of Palmetto Shores RV Park asked him to return to his camper. [Def.’s Memo in Supp. for Def.s’ Mot. for Relief from Default at 5-6]. When Respondent failed to comply, the police were called. *Id.* While waiting for the police to arrive, Respondent became louder and even more uncooperative. *Id.* As a result, a

member of Appellant's maintenance staff,<sup>1</sup> who was not working at the time, who was also a long-term resident at Palmetto Shores RV Park, exited his camper and attempted to peacefully diffuse the situation. *Id.* Respondent became aggressive and initiated a physical altercation between the Respondent and Chris and then with police officers. *Id.* That night, officers arrested Respondent based on his conduct. The record will show Appellants are not liable for the conduct of Chris because the act did not occur within the scope of Chris' employment with Appellants. *Id.* Chris' act was not committed in furtherance of his employment and under the theory of respondeat superior Appellant is not liable. *Id.*

Thus, Appellants did not commit an assault and battery. Likewise, for these same reasons the record is devoid of evidence sufficient to establish a claim of negligent supervision. *Lane v. Modern Music, Inc.*, 244 S.C. 299, 304 136 S.E.2d 713, 716 (1964) (finding plaintiff must establish that the relationship existed between master and servant at the time of the injuries, and that the servant was acting within the scope of his employment); *Armstrong v. Food Lion, Inc.*, 371 S.C. 271, 277, 639 S.E.2d 50, 53 (2006) (finding the tortious conduct of defendant's employees when the employees acted for their own reasons outside the scope of their employment and those reasons were not in furtherance of the business). Appellants possess and pose a meritorious defense as the allegations contained in Respondent's complaint arise from conflicting facts and doubtful evidence.

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<sup>1</sup> Chris was not a security guard for the property as alleged in Respondent's complaint, nor was he acting in any capacity on behalf of the Appellants. *Id.* Chris was acting in his personal and individual capacity as a long-term resident of the property whose peace and quiet was disturbed because The events took place late at night and Chris was not clocked in nor was he directed to take action by any member of Appellant's staff. *Id.*

**III. The Trial Court abused its discretion in denying Appellant's motion to dismiss pursuant to South Carolina Rule of Civil Procedure 4(d)(3).**

The trial court abused its discretion in denying Appellants' motion to dismiss pursuant to South Carolina Rule of Civil Procedure (4)(d)(3) as Respondent solely relied on a procedural defect to claim the Appellants were "served." Rule 4(d)(3), SCRPC, provides that service may be made:

upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

South Carolina Rule of Civil Procedure 4(d)(3). Furthermore, the Secretary of State shall forward one of the copies by registered or certified mail, return receipt requested, to the company at its designated office. SC Code Ann. § 33-44-111(c)(3). However, "[t]o interpret the statute as only allowing plaintiffs to serve process on registered agents at the address listed with the Secretary of State would lead to an absurd result." *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 31 (2010). "The principal object of service of process is to give notice to the defendant corporation of the proceedings against it." *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30-31 (2010). Further, South Carolina courts have long held that a resolution on the merits of a case is preferred rather than a decision based on a procedural defect. *Micronics, Inc. v. South Carolina Dep't of Revenue*, 345 S.C. 506, 511, 548, S.E.2d 223, 226 (2001).

Here, Respondent did not achieve the principal purpose of service resulting in the adjudication of this proceeding based off a procedural defect rather than the merits of the claims, allegations and defenses. Respondent knowingly failed to serve Appellants after three attempts of service before throwing in the towel and serving Appellants by and through their incorrect address

at the South Carolina Secretary of State. [3/11/24 Affidavit of Non-Service; 5/27/24 Affidavit of Non-Service; 6/24/24 Affidavit of Non-Service]. Respondent knew the address on the South Carolina Secretary of State to be factually incorrect yet proceeded with “service” to leverage a procedural defect. Respondents relied on a procedural defect to obtain a judgment in the amount of \$100,434.00 in a case with meritorious defenses.

Despite Respondent’s inability to achieve service for the summons and complaint but through the South Carolina Secretary of State, days after receiving the Order of Judgment, Respondent was able to serve Appellants at their primary business location. Respondent failed to achieve the principal object of service and chose to rely on a procedural defect for adjudication rather than an adjudication on the merits.

For these reasons, the trial court abused its discretion when denying Appellants motion to dismiss. Accordingly, this court should reverse the Trial Court’s denial of the Appellants’ motion to dismiss, vacate the Judgment in the amount of \$100,434.00 and remand for the case to proceed on the merits

### **CONCLUSION**

For these reasons, Appellants respectfully request this court reverse the Trial Court’s orders granting Respondent’s motion for default and default judgment, vacate the judgment in the amount of \$100,434.00 and remand the case to the Trial Court for a decision on the merits. The Trial Court latched on to a procedural defect resulting in this case being adjudicated on “service” without notice rather than on the merits as South Carolina has long favored.

*[Signature Page to Follow.]*

Very Respectfully Submitted,

*s/ J. Caroline Lista*

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