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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CLARENDON COUNTY
Court of Common Pleas

The Honorable S. Bryan Doby, Circuit Court Judge
The Honorable R. Kirk Griffin, Circuit Court Judge

Appellate Case No. 2025-002568

Elgin M. Selbee, Respondent,

v.

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

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INITIAL BRIEF OF RESPONDENT

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July 24, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Court Rules

STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court correctly denied Appellants' Rule 60(b)(4) motion on the basis of its finding that Respondent duly effected statutory service through the Secretary of State under S.C. Code § 33-44-111.

II. Whether the circuit court acted within its discretion in rejecting Rule 60(b)(1) relief where Appellants' stated reason for default was their own failure to maintain current statutory service information and they offered no competent evidence establishing a meritorious defense.

III. Whether Appellants' separate challenge to the denial of their Rule 4 motion to dismiss is duplicative of the Rule 60(b)(4) issue and, in any event, contrary to the statutory service record.

STATEMENT OF THE CASE

Respondent commenced this action on March 6, 2024 by the filing of a Summons and Complaint, alleging causes of action for assault and battery and negligent supervision arising out of acts of an employee of Appellants.

As reflected by the records of the South Carolina Secretary of State, throughout the period of attempted service of this action, both Appellants maintained George McLaughlin and 105 E. North Street, Suite 201, Greenville, SC, 29601 as their registered agent and address for service of process. (Aff. of Non-Service 3/11/24, p. 3-4; Memo in Opp. Ex. E 7/10/25).

Respondent first attempted service of process upon Appellants by certified mail, restricted delivery, return receipt requested, deposited March 11, 2024, addressed to the registered agent at the address then maintained by Appellants' with the Secretary of State. (Aff. of Non-Service 3/11/24).

After receipts of Respondent's certified mail to the registered agent were returned unsigned, Respondent engaged an independent process service company, Whitesell Process Services of Greenville, SC to effectuate service. (Aff. of Non-Service 3/11/24; Affs. of Non-

Service 5/27/24; Affs. of Non-Service 6/24/24). Respondent then attempted personal service through the process server at the designated address for the registered agent as well as a separate suspected Myrtle Beach address identified through the process server's search. (Affs. of Non-Service 5/27/24; Affs. of Non-Service 6/24/24). However, neither attempt located the registered agent. (Affs. of Non-Service 5/27/24; Affs. of Non-Service 6/24/24).

Respondent then delivered duplicate copies of its Summons and Complaint to the South Carolina Secretary of State to effect statutory service of process pursuant to S.C. Code Ann. § 33-44-111. (Aff. of Service 9/11/24). The Secretary of State accepted service and forwarded copies of the filed pleadings to Appellants at their then-designated office by mail deposited July 12, 2024 and July 9, 2024 as to each Appellant, respectively. (Aff. of Service 9/11/24). On September 11, 2024, neither Appellant having filed an Answer or other responsive pleading, Respondent filed an Affidavit of Default and Motion for Judgment by Default. (Aff of Default 9/11/24; Mot. for Judgment by Default 9/11/24).

On March 28, 2025, a damages hearing was held before the Honorable R. Kirk Griffin, out of which arose an Order of Judgment against Appellants issued April 21, 2025, awarding Respondent $67,434.04 in actual damages and $33,000.00 in punitive damages. (Ord. 4/21/25).

On May 1, 2025, Appellants filed a Motion to Dismiss Pursuant to Rule 4, SCRCP. (Mot. to Dismiss 5/1/25). A hearing on Appellants' Motion to Dismiss was held on July 11, 2025 before the Honorable S. Bryan Doby, out of which arose a Form 4 Order dated July 28, 2025 denying the motion and directing counsel to prepare a proposed formal order. (Ord. 7/28/25). On August 6, 2025, Judge Doby issued a detailed Order Denying Defendants' Motion to Dismiss, concluding that:

> **"[Respondent] properly effected service on [Appellants], by and through the South Carolina Secretary of State, as [Appellants]' designated agent for**

service of process, in accordance with Rule 4(d)(3) and (7), SCRCP, and S.C. Code Ann. § 33-44-111." (Ord. 8/6/25).

On July 30, 2025, following notice of the denial of their Motion for dismissal pursuant to Rule 4, SCRCP, Appellants filed a Motion for Relief from Judgment Pursuant to Rule 60(b), SCRCP. (Mot. for Relief from Judgment 7/30/25). A hearing on the second motion was held before the Honorable R. Kirk Griffin on September 26, 2025, out of which arose an Order dated December 4, 2025 denying Appellants' requests for relief pursuant to Rule 60(b), SCRCP. (Ord. 12/4/25). Pursuant to Judge Griffin's Order, the Court held that Appellants "failed to show they are entitled to relief from the default judgment under Rule 60(b), SCRCP" and likewise concluded that Respondent properly effected service on Appellants pursuant to Rule 4(d)(3) and (7), SCRCP, and S.C. Code Ann. § 33-44-111. (Ord. 12/4/25).

Appellants timely filed Notice of Appeal on November 21, 2025 and December 5, 2025, and an Amended Notice of Appeal on December 15, 2025.

ARGUMENT

Appellants' argument rests on the flawed premise that this appeal arises from a procedurally defective default judgment; that premise disregards Appellants' own neglect of a legal duty and the statutory authority and record supporting effective service of process and the resulting judgment.

I. Respondent properly effected service of process on Appellants upon and through the Secretary of State as their statutory agent pursuant to Rule 4(d)(3) and (7), SCRCP and S.C. Code § 33-44-111.

Rule 4, SCRCP, directs that service of process shall be made as follows:

(d)(3) Corporations and Partnerships. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, ***or to any other agent authorized*** by appointment or ***by law to receive***

> ***service of process*** and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.
>
> **(d)(7) Statutory Service.** Service upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule is also sufficient if the summons and complaint are served ***in the manner prescribed by statute***." (emphasis added).

A limited liability company authorized to do business in this State is required by statute to "designate and continuously maintain in this State (1) an office, which need not be a place of business in this State; and (2) an agent and street address for service of process on the company." § 33-44-108 (2003, as amended). Further, Section 33-44-111 provides that "if a limited liability company … fails to appoint or maintain an agent for service of process … or the agent for service of process cannot with reasonable diligence be found at the agent's address, the Secretary of State ***is an agent of the company*** upon whom process, notice, or demand may be served." S.C. Code Ann. § 33-44-111(b) (2003, as amended). (emphasis added).

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

The record in this matter clearly demonstrates Respondent's exercise of reasonable diligence in attempting service of process on Appellants' designated agent at the address maintained by Appellants' for service of process. As evidenced by the Secretary of State's records attached to Plaintiff's Affidavits of Non-Service filed September 11, 2024 (Aff. of Non-Service

3/11/24, p. 3-4), Appellants then maintained a shared registered agent at the same designated address. Respondent first attempted service of process upon the agent by certified mail properly addressed to the agent at the designated address, said mailings having been returned unsigned. (Aff. of Non-Service 3/11/24). The record indicates that Respondent then attempted personal service upon the registered agent through an independent process server at the agent's designated address as well as a separate potential address for the registered agent, obtained by skip trace search, in Myrtle Beach. (Affs. of Non-Service 5/27/24; Affs. of Non-Service 6/24/24). Only after these attempts did Respondent effect statutory service upon the Secretary of State.

Notably, the statute permitting service upon the Secretary of State requires only as a prerequisite that the plaintiff exercise "reasonable diligence" to locate the company's designated agent for service of process "*at the agent's address*" maintained by the company. S.C. Code Ann. § 33-44-111(b) (emphasis added). The statute does not require that a plaintiff attempt to locate the registered agent at locations other than the address designated by the company. In asserting their "basic internet search" theory, Appellants have failed to identify any legal authority requiring a plaintiff to substitute an independently located business address for statutory service upon the Secretary of State after fulfillment of the conditions of S.C. Code Ann. § 33-44-111(b). (AIB p.7). Respondent went above and beyond the requirement of the statute by requesting the process server attempt to locate and effect service on the agent at an address *other* than that designated by Appellant.

Appellants' reliance on *Mull v. Ridgeland Realty, LLC* in support of its lack of reasonable diligence argument is misplaced. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 693 S.E.2d. 27 (Ct. App. 2010). In *Mull*, the court was confronted with the issue as to "whether service via certified mail to a registered agent sent to the agent's out-of-state address constitutes service 'to the office of the registered agent' " as provided by S.C. Code Ann. § 15-9-210(b). *Id.* at 486, 693 S.E.2d at 30. Stated differently, the question posed was whether a corporation ***may*** be served through its registered agent at an address other than that which it maintains for the agent with the Secretary of State. The *Mull* ruling cannot be read as to impose a requirement on a plaintiff to locate the registered agent at any place other than that address maintained with the Secretary of State. Moreover, Respondent attempted to effect service on Appellants in the manner approved by *Mull* by personal service at the Myrtle Beach address. Unfortunately, its efforts were unsuccessful. That failure neither detracts from Respondent's diligent efforts to serve the agent at his designated address, nor required further search for the agent elsewhere.

Appellants' assertion that Respondent's service upon the Secretary of State was invalid because Respondent then knew the registered agent could not be located at his designated address ignores a key distinction in the registration requirements of a limited liability company. S.C. Code Ann. § 33-44-108 provides that a limited liability company is required to designate and continuously maintain

"(1) an office, which need not be a place of business in this State; ***and***

(2) an agent and street address of the agent for service of process on the company..."

S.C. Code Ann. § 33-44-108(a) (emphasis added).

The statute requires the company maintain *both* a designated office *and* a registered agent and address for service of process. S.C. Code Ann. § 33-44-108. There is no requirement that the two addresses be the same and, in fact, in practice it is commonly the case that they are not. Moreover, only the registered agent's name and address is published by the Secretary of State. When the agent cannot be located at the designated address, the statute provides that service is permissible upon the Secretary of State, as a designated agent, who then is required to forward the pleadings to the company's designated office in accordance with its records. S.C. Code § 33-44-111(c). As a result, it was not only proper but in keeping with the applicable rules and all due diligence for Respondent to effect service on the Secretary of State once the agent could not be found at its registered address, with the expectation that the Secretary of State would then forward the pleadings on to Appellants' designated offices. As Respondent later discovered upon receipt of the Secretary of State's record of mailing to Appellants, Appellants just so happened to have then maintained stale addresses for both its registered agent and its designated offices. (Aff. of Service 9/11/24).

Contrary to Defendants' assertions, the Secretary of State is not merely a conduit through which a plaintiff may attempt actual delivery upon a limited liability company defendant. Instead, by statute, "the Secretary of State *is an agent of the company* upon whom process, notice, or demand may be served." S.C. Code Ann. § 33-44-111(b) (emphasis added). This is consistent with the Rules of Civil Procedure which permit service of process upon a company defendant by "delivering a copy of the summons and complaint to an … *agent authorized* by appointment or ***by*** *law to receive service of process.*" Rule 4(d)(3), SCRCP. (emphasis added). This point was made clear by the Court in the *Holman* case, cited above. In that case, our Supreme Court, in interpreting S.C. Code Ann. § 15-9-245 which provides the manner for service of process on a foreign corporation not authorized to do business in South Carolina, which statute includes similar language stating that such an entity "is considered to have designated the Secretary of State as its agent upon whom process against it may be served," ruled that "once a summons and complaint are delivered to the secretary of state, service is complete, regardless of whether the corporation actually receives notice of the suit." *Holman*, 456 S.E.2d at 896, 318 S.C. at 204 (1995) (emphasis added). The Court then affirmed "the general rule that service upon an agent designated by law is permissible without any need to personally serve the defendant." *Id.* (*citing* 62B Am.Jur.2d Process § 239).

S.C. Code Ann. § 33-44-111 further expands upon the above-stated rule by extending the date of effectiveness of service to "the earliest of: (1) the date the company receives the process, notice, or demand; (2) the date shown on the return receipt, if signed on behalf of the company; or (3) five days after its deposit in the mail, if mailed postpaid and correctly addressed. S.C. Code Ann. § 33-44-111(c). Here, the Secretary of State accepted service of the Summons and Complaint on July 11, 2024 and July 5, 2024, respectively, as to each Appellant, and deposited the same in the mail on July 12, 2024 and July 9, 2024. Under the rules, service became effective five days thereafter.

The statutory service process exists precisely for those companies, like Appellants, that fail to maintain an agent or workable address. Appellants' attempt to characterize Respondent's use of the statutory service procedure as "an intentional circumvention aimed to not provide notice" is contrary to the record and statutory framework. (AIB p.4). As Appellants have failed to show any jurisdictional defect, the circuit court correctly rejected their assertion that the judgement was void under Rule 60(b)(4), SCRCP.

II. The circuit court acted within its discretion in denying Rule 60(b)(1) relief.

Appellants' alternative Rule 60(b)(1) theory fails independently of their service challenge. Once a default judgment has been entered, a movant must satisfy Rule 60(b)'s more rigorous standard, rather than the good-cause standard that may govern relief from an entry of default under Rule 55(c). *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 608–09, 681 S.E.2d 885, 888–89 (2009). The circuit court correctly applied that heightened standard and acted within its discretion in denying relief.

a. Appellants' failure to maintain correct statutory service information was neither a mistake of fact nor excusable neglect.

Appellants' stated "mistake" was their registered agent's failure to update the address listed with the Secretary of State. (Ord. 12/4/25, p.4-5; Def. Mem. Supp. Rule 60 Mot., p. 3–4). That was a failure to maintain the statutory service information required of an LLC, not a good faith factual error. See S.C. Code Ann. §§ 33-44-108, 111. The consequence of Appellants' failure to maintain that information cannot be shifted to Respondent, who used the statutory process that became available when the registered agent could not be found at the address Appellants themselves had provided. See S.C. Code § 33-44-111.

The circuit court found that Appellants presented no evidence that a factual mistake resulted in their failure to maintain a usable designated office and registered agent address. (Ord. 12/4/25, p.6). Further, the court correctly ruled that "a party may not use Rule 60(b)(1) as a vehicle for relief from a mistake of law." *Id. citing Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992).

Appellants have provided no factual or legal justification for their neglect beyond the assertion that the registered agent served nineteen other entities. (Ord. 12/4/25 p.6; Appellants' Mem. Supp. Rule 60 Mot. p. 3–4.) That explanation does not amount to a particularized showing of mistake, inadvertence, or excusable neglect that warrants disturbing a final judgment. *See ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 496–97, 713 S.E.2d 335, 339–40 (Ct. App. 2011) (affirming denial of Rule 60(b) relief where the movant failed to establish excusable neglect).

South Carolina jurisprudence supports Rule 60(b)(1) relief on the basis of objectively reasonable good-faith factual mistakes. *See Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009) (finding a litigant reasonably relied on a separate court-issued roster in not attending the scheduled trial); *also see Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001) (finding a good-faith mistake of fact existed when a party recorded an incorrect hearing date and failed to appear at the scheduled trial); *also see Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (1988) (finding landowners who had given notice of their opposition to a road closure and secured county council's commitment to oppose the action, were entitled to relief when council later reversed course and the landowners did not receive notice of council's change in position or the hearing date). Those cases involved parties who acted with diligence before default or judgment was entered and were nonetheless prejudiced by objectively reasonable factual mistakes. This case is clearly distinguishable. Appellants' default resulted not from a documented good-faith factual error beyond their control, but from their own carelessness, inattention or disregard of a legal duty.

b. Post-judgment promptness alone does not merit Rule 60(b) relief.

The fact that Appellants promptly filed for relief after entry of judgment does not itself establish entitlement to relief. Promptness is considered alongside the reason for the default, the existence of a meritorious defense, and prejudice; it does not displace the requirement that the movant first demonstrate a recognized and adequately supported Rule 60(b) ground. *Sundown*, 383 S.C. at 608–09, 681 S.E.2d at 888–89. Here, the circuit court reasonably determined that post-judgment promptness did not cure Appellants' failure to maintain an effective registered-agent address or supply an evidentiary basis for mistake or excusable neglect. (Ord. 12/4/25). Appellants have therefore shown no abuse of discretion on such grounds.

c. Appellants failed to establish a meritorious defense with competent evidence.

A Rule 60(b) movant must present evidence proving the facts essential to relief, including a prima facie meritorious defense where relief is sought from a default judgment under Rule

60(b)(1). *ITC Commercial Funding*, 393 S.C. at 497–98, 713 S.E.2d at 340. Unverified allegations and arguments of counsel are not evidence. *Bowers v. Bowers*, 304 S.C. 65, 67–68, 403 S.E.2d 127, 128–29 (Ct. App. 1991). While Appellant attempted to assert factual defenses related to the underlying altercation in its memorandum signed by counsel, the circuit court correctly ruled that Appellants presented no affidavit or other competent evidence establishing those facts. (Def. Mem. Supp. Rule 60 Mot. p. 5–8; Ord. 12/4/25). The court was not required to set aside a final judgment on unsupported factual assertions. *Bowers*, 304 S.C. at 67–68, 403 S.E.2d at 128–29. This Court need not decide the merits of Appellants' proposed defenses. The dispositive point is procedural: Appellants did not carry their burden to make the evidence-based showing Rule 60(b) requires. The circuit court accordingly acted within its discretion in denying relief.

III. The circuit court's denial of Appellant's Rule 4 motion provides no independent basis for reversal.

Appellants' third issue is a restatement of their first. Both the Rule 4 motion and the Rule 60(b)(4) motion challenge the same statutory service issues. (Mot. to Dismiss 5/1/25; Mot. for Relief from Judgment 7/30/25). The circuit court rejected that challenge in its August 6, 2025 order denying Appellants' Rule 4 motion to dismiss, expressly concluding that Respondent exercised reasonable diligence and properly effected statutory service. (Ord. 8/6/25). When Appellants renewed the same challenge in their Rule 60(b) motion, the court again concluded that service through the Secretary of State complied with Rule 4 and § 33-44-111. (Ord. 12/4/25). For the reasons set out in Argument I, those determinations are correct. Section 33-44-111 makes the Secretary of State an LLC's agent for service when the registered agent cannot with reasonable diligence be found at the agent's address. It then prescribes the procedure for statutory service. S.C. Code § 33-44-111. The record supports the circuit court's findings that Respondent attempted certified-mail and personal service at the designated address, undertook an additional attempt to locate the agent, and then used the statutory method. (Aff. of Service 9/11/24; Order 8/6/25).

Appellants identify no separate defect in the Rule 4 ruling beyond the same alleged lack of valid service addressed in Argument I. The third issue therefore adds no independent basis for reversal.

CONCLUSION

The circuit court correctly held that Respondent effected valid statutory service through the South Carolina Secretary of State and that Appellants failed to establish any basis for relief from the resulting judgment. Appellants showed neither a jurisdictional defect under Rule 60(b)(4) nor a factual or legal justification for relief under Rule 60(b)(1), and their Rule 4 challenge presents no separate ground for reversal. Respondent therefore respectfully requests that this Court affirm the August 6, 2025 Order denying Appellants' Motion to Dismiss and the December 4, 2025 Order denying Appellants' Motion for Relief from Judgment.

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