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STATE OF SOUTH CAROLINA COUNTY OF HORRY Flagstar Bank, N.A., PLAINTIFF, VS. Nicholas Wilson a/k/a Nicholas F. Wilson, SoFi Lending Corp., Wells Fargo Bank, N.A. and Midland Credit Management, Inc., DEFENDANT(S).	IN THE COURT OF COMMON PLEAS CASE NO. 2024-CP-26-00567 ORDER DENYING DEFENDANT WILSON'S MOTION TO LIFT DEFAULT

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SC Court of Appeals

(241063.00006)

This is a foreclosure action as to certain real property located in Horry County. This action was commenced by a Lis Pendens, Summons and Complaint filed January 23, 2024. A Certification of Service and Default was filed April 23, 2024. An Order of Reference was filed April 24, 2024. Defendant Nicholas Wilson filed a Notice of Motion and Motion for Relief from Default on June 21, 2024. The motion appeared on the court's roster for December 9, 2024, and a hearing on the motion was held on January 14, 2025.

Appearing at the hearing were Wesley D. Few as attorney for Defendant Nicholas Wilson and Allison E. Heffernan as Plaintiff's counsel. The court heard arguments from both parties and requested the parties submit memoranda of law.

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial court." *Richardson v. P.V., Inc.*, 383 S.C. 610, 614, 682 S.E.2d 263, 265 (2009). "An abuse of discretion . . . 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." *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997). "Rule 55(c), [of the South Carolian Rules of Civil Procedure (SCRCP)], allows the circuit court to set aside an entry of default 'for good cause shown." *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 510, 602 S.E.2d 99, 102 (Ct. App. 2004) (quoting Rule 55(c). "Whether good cause is established is within the sound discretion of the [trial] court." *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

A review of the record shows that the pleadings were served on Nicholas Wilson a/k/a Nicholas F. Wilson at the subject property on March 21, 2024, by substitute service on Kenneth Bryant, a person of suitable age and discretion residing at the property. Defendant's motion cites Rule 4(d)(1), SCRCP and argues that the affidavit of service as to Nicholas Wilson is defective as the "person served did not reside at Wilson's 'dwelling

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house or usual place of abode,' and, arguably, is not of 'suitable . . .. discretion.'" No affidavit was filed with the motion. Defendant Wilson subsequently submitted an affidavit in the form of a "Declaration" in support of the motion on January 15, 2025. The affidavit by Nicholas Wilson stated that he was out of town when the pleadings were served and the person served, Kenneth Bryant, was living temporarily in a guest house at the property. The affidavit further stated that Kenneth Bryant was of "diminished capacity" and was never authorized to accept service on behalf of him. Plaintiff submitted a memorandum of law opposing the motion as well as the affidavit of attorneys Blake T. Williams and H. Guyton Murrell.

This court has carefully reviewed the pleadings, evidence presented at the January 14, 2025 hearing on the Defendant's Motion to Set Aside Default and memoranda and has determined that Defendant Wilson's Motion to Set Aside Default is denied. This court finds that service of process upon Mr. Wilson proper under the South Carolina Rules of Civil Procedure (Rule 4(d)(1). The Summons and Complaint were served at Mr. Wilson's "dwelling house or usual place of abode with a person of suitable age and discretion then residing therein". The Affidavit of Service and Mr. Wilson's Affidavit in support of his Motion to Set Aside Default confirms the place of service as his residential address. This address is also noted in the filed Lis Pendens and Complaint. Mr. Wilson presented no independent evidence that the occupant of an accessory building on his property was of diminished capacity and lacked discretion to receive service of process. He also presented no independent evidence to indicate the accessory building was sufficiently disassociated with the main house to render it a separate dwelling house/abode or address apart from his property.

South Carolina has not defined "dwelling house or place of abode." Based on a review of federal case law, it appears that one's dwelling or place of abode is determined by the particularized facts of each case. *Karlsson v. Rabinowitz,* 318 F.2d 666, 668 (4th Cir. 1963) (finding no set definition of dwelling or place of abide and that it must be determined by the facts of the particular case"; 62B Am. Jur. 2d Process 209 (1990) ("No hard and fast definition can be laid down as to what constitutes a defendant's dwelling house or place of abide.) *Fassett v. Evans,* 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2005).

There is a presumption of proper service when the civil rules of process are followed. *Moore v. Simpson,* 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). "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." *Id.* "Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to 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.* Further, an officer's return of process creates the legal presumption of proper service that cannot be "impeached by the mere denial of service by the defendant." *Richardson Constr. Co. v. Meek Eng'g and Constr.,* 274 S.C. 307, 311, 262 S.E.2d 913, 916 (1980); *Fassett v. Evans,* 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2005).

Service of process occurred March 21, 2024. Credible evidence was presented that Mr. Wilson's attorney was notified February 2, 2024, of the pending foreclosure that was filed January 23, 2024. Ongoing communication between the respective attorneys thereafter included an offer to allow Mr. Wilson to answer the

pleadings with certain stipulations. No Answer on behalf of Mr. Wilson was ever filed and his Motion to Set Aside Default ("Motion") was not filed until June 21, 2024. Further, it was not until the December 9, 2024 Horry County Master in Equity roster meeting that this case progressed to the point of scheduling a Motion hearing on January 14, 2025. Significant delay occurred between service of the pleadings, the filing of the motion to Set Aside Default and the January 14, 2025 Motion hearing. This court finds no evidence of good cause to set aside the default and note that equitable maxims "Delay defeats equity" and "Equity aides the vigilant, not the indolent" support this ruling.

THEREFORE, IT IS HEREBY ORDERED that Defendant Wilson's Motion to set Aside Default is denied.

IT IS SO ORDERED.

JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW

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Horry Common Pleas

Case Caption: Flagstar Bank Na VS Nicholas Wilson , defendant, et al

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Type: Master/Order/Other

So Ordered

s/Alan D. Clemmons 3088 Master in Equity