

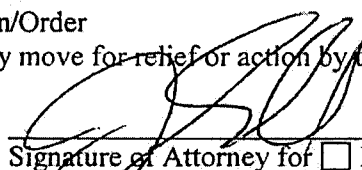
COPY

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF HORRY )  
 )  
 Anita Bacchi and Kristine Lomas, )  
 Plaintiff, )  
 vs. )  
 America's Source Consulting Agency, LLC, )  
 and Sergey Sokolovsky, )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 15th JUDICIAL CIRCUIT  
 CASE NO.: 08-CP-26-7586

MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET

14 APR 28 PM 1:26  
 CLERK'S OFFICE  
 15th JUDICIAL CIRCUIT

Plaintiff's Attorney: James Marshall Biddle, Bar No. 69471 Address: P.O. Box 50460, Myrtle Beach SC 29579 Phone: 843-903-1600 Fax 843-903-6209 E-mail: marshall@biddlelawfirm.net Other: _____		Defendant's Attorney: James R. Snell, Jr., Bar No. 72663 Address: 316 South Lake Drive, Lexington SC 29073 Phone: 803-359-3301 Fax 803-359-7691 E-mail: jamesnell@snelllaw.com Other: _____	
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: _____		Court Reporter Needed: <input type="checkbox"/> YES/ <input type="checkbox"/> NO	
Estimated Time Needed: _____			
SECTION II: Motion/Order Type			
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.			
Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant 		4-14-14 Date submitted	
SECTION III: Motion Fee			
<input type="checkbox"/> PAID - AMOUNT: \$ _____ <input checked="" type="checkbox"/> EXEMPT:			
(check reason) <input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC) <input checked="" type="checkbox"/> Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ <input type="checkbox"/> Other: _____			
JUDGE'S SECTION			
<input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____		JUDGE CODE _____ Date: _____	
CLERK'S VERIFICATION			
Collected by: _____		Date Filed: _____	
<input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> CONTESTED - AMOUNT DUE: \$ _____			

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JUN 12 2014

STATE OF SOUTH CAROLINA }  
COUNTY OF HORRY }

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTEENTH JUDICIAL CIRCUIT

Anita Bacchi and Kristine Lomas, }  
Plaintiffs, }

Case No.: 2008-CP-26-7586

vs.

ORDER GRANTING MOTION TO VACATE  
JUDGMENT AS TO SERGEY SOKOLOVSKY

America's Source Consulting  
Agency LLC, and Sergey  
Sokolovsky,  
Defendant.

FILED  
MAR 28 2014  
1:26 PM  
CLERK OF COURT  
JAMES H. HARRARD

This matter comes before the Court upon the motion of Sergey Sokolovsky filed on November 22, 2013, for an order vacating the default judgment entered against him. A hearing was scheduled on March 4, 2014. Appearing at the call of the case was James R. Snell, Jr., on behalf of the Defendant Sergey Sokolovsky, and J. Marshall Biddle on behalf of the Plaintiffs. This order grants Mr. Snell's motion on behalf of the Defendant Sokolovsky, finding that the default judgment entered against him individually is void.

The default judgment in question was filed on May 24, 2010. It was entered against America's Source Consulting Agency, LLC. It was a default judgment, and the court did not hold any hearing prior to its issuance. Prior to entering the judgment the Plaintiff made two separate attempts to serve the Defendant Sokolovsky. One was by certified mail to the registered agent for the LLC, and the other was by United Parcel Service (UPS) shipment. There was no signed acceptance of service (whereby Sokolovsky would have specifically accepted receipt of the Summons and Complaint), no personal service, and no service by publication.

*1*  
*MHC*

In the Defendant's motion to vacate he raises three main objections: 1) the judgment is void for lack of service; 2) the judgment is void based on lack of personal jurisdiction; and 3) the judgment is void based on lack of a verified pleading, affidavit, or hearing on default damages. The Court's decision granting the Defendant's motion to vacate the default judgment is based solely on the issue of lack of personal service. The remaining issues, which were raised by the Defendant, are additional grounds that would also support the Defendant's requested relief.

Rule 55(c) and Rule 60, SCRPC, read together, allow the court to entertain an independent action to set aside a default judgment within a reasonable time. *Momani v. Van Surdam*, 296 S.C. 409, 373 S.E.2d 691 (Ct. App. 1988). The trial court has broad discretionary authority to set aside a default judgment. *Harbor Is. Owner's Ass'n v. Preferred Is. Props., Inc.*, 369 S.C. 540, 633 S.E.2d 497 (2006). Rule 55(c) specifically states: "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Rule 55(c), SCRPC. Rule 60(b)(4) states that a court may relieve a party from a final judgment within a reasonable time where the judgment is void. Rule 60(b)(4), SCRPC. The rule permitting an independent action applies where the judgment is void for lack of process and/or where the court otherwise has no personal or subject-matter jurisdiction to hear the underlying complaint. *Momani*, 296 S.C. at 410, 373 S.E.2d at 691-92. Where the court has no jurisdiction over the defendant, all proceedings based on the faulty service are void. *Id.*; *Delta Apparel, Inc. v. Farina*, No. 5180, 2013 WL 5819541 (S.C. Ct. App. Sept.12, 2013).

2  
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The standard for determining whether to vacate the judgment is whether good cause is shown to vacate, as provided by Rule 55(c). *N.H. Ins. v. Big Gap*, 312 S.C. 417,435 S.E.2d 377 (Ct. App. 1994). The single fact that Sokolovsky was never served with the 2008 complaint, and was otherwise never notified of the complaint, constitutes good cause for the court to proceed with an action to set aside the default judgment. See *Delta Apparel vs. Farina*, 2013 WL 5819541, at \*3 (S.C. Ct. App. 2013).

Under South Carolina law, to effectuate service of process on a nonresident individual such as Sokolovsky, Rule 4(d)(1) provides that an individual may be served by personal delivery of the complaint and summons, or by leaving copies of the complaint and summons at the individual defendant's "dwelling house or usual place of abode with some person of suitable age and discretion then residing therein. 11 Rule 4(d)(1), SCRPC. In addition, Rule 4(d)(8) allows service "by registered or certified mail, return receipt requested and delivery restricted to the addressee." Rule 4(d)(8), SCRPC. Importantly, service by registered or certified mail may not form the basis of a default judgment under South Carolina law "unless the record contains a return receipt showing the acceptance by the defendant." When service is made out of state, as alleged in the present case, proof of the service may be made by affidavit before several designated individuals, including a notary public. Rule 4(h), SCRPC.

Effective May 1, 2013, the South Carolina legislature amended Rule 4(d) and added Rule 4(d)(9) which now permits a plaintiff to service process by a commercial delivery system which meets the requirements to be considered a designated delivery service in accordance with 26 U.S.C. § 7502(t)(2)." Rule 4(d)(9), SCRPC. Significantly,

the use of commercial delivery services for process serving was not permitted prior to May 2013.

Plaintiffs concede in the Amended Affidavit of Default attached to Plaintiffs' Certification and Petition for Judgment that Sokolovsky was not properly served under Rule 4(d). It is uncontested that Plaintiff was never personally served at his place of abode. Further, Plaintiff was never served in Massachusetts by either certified or registered mail, return receipt requested.

Plaintiffs erroneously contend that service by the commercial carrier United Parcel Service "UPS" constitutes proper service. As explained above, service by commercial carrier was not considered proper service until the South Carolina rules of civil procedure were amended in 2013. On March 22, 2010, when the UPS service allegedly took place, such service of process was not available in South Carolina. Additionally, the address where UPS delivered the summons and complaint was neither Sokolovsky's dwelling house nor his usual place of abode as of March 22, 2010, and Sokolovsky's signature is not on the UPS return receipt.

The rules establishing proper service "assures the defendant of reasonable notice of the action." *Delta Apparel*, at \*3 (quoting *Roche v. Young Bros. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995)). Where, as in the instant case, service is ineffective under the law, the court does not acquire personal jurisdiction over the defendant, and the defendant lacks reasonable notice of the action. *Ex parte S.C. Dep't of Review*, 350 S.C. 404, 566 S.E.2d 196 (Ct. App. 2002); *BB&Tv. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006). Where a court has no jurisdiction over the defendant, all

4  
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proceedings based on the ineffective service of process are void, including the default judgment. *Momani*, 296 S.C. at 410, 373 S.E.2d at 692.

**CONCLUSION**

Plaintiffs never obtained legal service of process on the defendant Sergey Sokolovsky. Therefore the court never obtained personal jurisdiction and judgment against him individually is void. This order does not affect the Plaintiffs' judgment against America's Source Consulting Agency, LLC.

IT IS ORDERED!

April 24, 2014  
Geerway, South Carolina  
*Georgetown,*

*Benjamin H. Culbertson*  
The Honorable Benjamin H. Culbertson