

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 09-JG-10-685

CHARLESTON HARBOR
RESORT & MARINA,

Plaintiff,

vs.

PAUL DAVIS,

Defendant.

ORDER

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 APR 18 AM 11:31

FILED

This matter came before the Court on August 19, 2013 on the Motion for Relief from Judgment by the Defendant, Paul Davis (hereinafter "Davis"). The Defendant was represented by John Hughes Cooper and the Plaintiff, Charleston Harbor Resort and Marina (hereinafter "Marina"), was represented by William A. Scott.

This matter involves a complaint for breach of a License Agreement for Dockage (the "Agreement") entered into between the Marina and Davis for a 45' sailboat (hereinafter, the "Vessel"). The Marina filed a Complaint in the Small Claims Court and received a judgment against Davis for \$5,286.56 on April 3, 2009. The Plaintiff filed a motion ~~and~~ for supplemental proceedings. The Defendant filed this Motion for Relief from Judgment on June 14, 2013 and contends the judgment must be set aside as void for failure to properly serve Davis. The Marina contends Davis' Motion should be denied for six reasons: (1) the Motion is untimely, as Davis knew about the Judgment by at least June 11, 2012; thus, over a year passed before the Motion for Relief from Judgment was filed on June 14, 2013; (2) the Plaintiff served the only entity it could



based on false and misleading information provided by the Defendant, Paul Davis; (3) there is no evidence that Mr. Davis did not know about the Complaint or the Judgment; (4) there is no meritorious defense as Davis does not contest that the debt is owed or that the amount is incorrect; (5) this is really an untimely appeal of a Judgment from the Small Claims Court and should be denied; and (6) if granted the case must be remanded to the Small Claims Court and Mr. Davis will incur a greater judgment against him. Based on the Agreement, Mr. Davis would be subject to additional attorney's fees, costs, and prejudgment interest at a higher rate than post judgment interest now accruing.

Based on the undisputed facts, the law and the arguments of counsel, Defendant's Motion for Relief from Judgment is denied.

FACTS

On May 26, 2005, the Vessel was purchased by Chesapeake Venture Corp., a Delaware corporation. The Vessel was documented with the USCG, documentation No. 1056595. On June 30, 2006, the documentation expired. At that time, the owner was listed at Chesapeake Venture Corp., 101 North Fairfield Drive, Dover, DE 19901.

On April 19, 2007, Paul Davis entered into the Agreement for dockage with Charleston Harbor Resort and Marina. Paul Davis listed himself as "Owner," with the address of 101 North Fairfield Drive, Dover, DE 19901-5720.

On March 1, 2008, the charter for Chesapeake Venture Corp. was revoked for non-payment of taxes and/or failure to file a complete annual report.

In May 2008, Davis took the Vessel from the Marina, and on May 27, 2008, Davis entered into a Dockage Agreement with Sunset Cay Marina, Folly Beach. Davis listed his address as

14639 O.R. Koon Hwy, Newberry, SC 29108.

On January 16, 2009, the Marina filed a Complaint against Davis in Small Claims Court for unpaid dockage. On January 28, 2009, the Complaint was sent via U.S. Mail to Paul Davis at 101 North Fairfield Drive, Dover, DE 19901. The letter was not returned by the U.S. Mail. On February 4, 2009, a process server served the Complaint on Joyce Lockhart as registered agent for Paul Davis at 505 Brookfield Drive, Dover, Delaware. Ms. Lockhart was and is employed by Corporate Systems, Inc. The Court understands the address for Corporate Systems, Inc. changed from 101 North Fairfield Drive, Delaware, to 505 Brookfield Drive, Dover Delaware. Davis did not file an Answer or otherwise appear in the underlying action.

On April 3, 2009, judgment was entered against Paul Davis by Small Claims Court in the amount of \$5,286.56. On April 28, 2009, the Transcript of Judgment was filed in Circuit Court.

In connection with litigation between Sunset Cay Marina and Davis for failure to pay dockage, the attorneys for Sunset Cay Marina, who also represents the Plaintiff in this action, sent a settlement proposal to the attorney for Paul Davis, Wendy Keefer, and stated, "There is an existing Judgment against Mr. Davis in favor of Charleston Harbor Resort and Marina for \$5,286.56" Ms. Keefer forwarded the letter to Davis on June 11, 2012.

In the pending litigation in Circuit Court between Sunset Cay Marina and Davis, Davis claimed to be the owner of the Vessel and a resident of Newberry County. Davis alleged in his Answer that "an entity owned solely by Davis is the registered owner of the vessel but that entity no longer exists or operates and that its property is now the property of Davis." Most recently, on June 18, 2013, Davis filed a complaint in federal court against Gary Schwab, d/b/a Sunset Cay Marina, claiming the Vessel was owned by Chesapeake Venture Corp. and that he was not the

owner of the Vessel, but that he had chartered it.

DISCUSSION

The Defendant moves for an Order pursuant to Rule 60(b)(4) for relief from the Judgment because the Judgment is void. The Defendant contends the Court had no personal jurisdiction over the Defendant because he was never properly served; therefore, the Judgment is void and must be set aside.

The Supreme Court recently explained that “[a] void judgment is one that, from its inception, is a complete nullity and is without legal effect[.]” *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). ‘The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.’ *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct.App.2002) (quoting *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct.App.1996)); *see also BB & T*, 369 S.C. at 551, 633 S.E.2d at 503 (‘A judgment is void if a court acts without personal jurisdiction.’). ‘A judgment is not rendered void by irregularities which do not involve jurisdiction.’ *Universal Benefits, Inc.*, 349 S.C. at 183, 561 S.E.2d at 661.” *Ware v. Ware*, 404 S.C. 1, 734 S.E. 2d 817, 822 (2013).

The resolution of this matter requires the resolution of two issues: (1) was the Defendant properly served; and (2) is the Defendant entitled to relief under Rule 60 (b)(4)?

1. Was The Defendant Properly Served?

The principal object of service of process is to give notice to the defendant of the proceedings against it. Rule 4 of the South Carolina Rules of Civil Procedure (SCRPC) serves at

least two purposes. First, it confers personal jurisdiction on the Court; and, second, it assures the defendant of reasonable notice of the action. Exact compliance with the Rules is not required to effect service of process. The Court must inquire whether the plaintiff had sufficiently complied with the Rules such that the Court has personal jurisdiction of the defendant and the defendant has notice of the proceedings. *Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 SE 2d 27, 30, (Ct. App. 2010).

"It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant. *Jensen v. Doe*, 292 S.C. 592, 594, 358 S.E.2d 148, 148 (Ct.App.1987). There is a presumption of proper service when the civil rules on service are followed." *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005). "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)." *Id.*

An individual may be served "by delivering a copy of the summons and complaint to him personally or by leaving copies at his dwelling, house, or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process." Rule 4 (d)(1), SCRCp.

In this case, Davis entered into the Agreement on April 19, 2007 with the Marina for dockage for the Vessel. Davis represented on the Agreement that he was the owner of the Vessel and he gave the address of 101 N. Fairfield Drive, Dover, Delaware 19901-5720. The address provided by Davis was actually the address for Corporate Systems, Inc. Corporate Systems, Inc. was also the agent for service of process for Chesapeake Venture Corp., a Delaware company

owned and operated by Davis. Chesapeake Venture Corp. was the purchaser and owner of the Vessel as shown on the USCG abstract of title and USCG Documentation. However, the Coast Guard Documentation expired as of June 30, 2006. The charter for Chesapeake Venture Corp. was revoked on March 1, 2008 for non-payment of taxes and for failure to file a complete annual report. Neither the USCG documentation nor the information for Chesapeake Venture Corp. references Davis or provides an address for Davis. Davis apparently did not advise Corporate Systems, Inc. of any changes.

Failure to renew the documentation and the corresponding revocation of the charter for Chesapeake Venture Corp. raised several issues and concerns. First, South Carolina law requires that any watercraft held for principal use in this state must be titled by the Department of Natural Resources unless it is a documented vessel by the United States Coast Guard. S.C. Code Ann. § 50-23-20 and § 50-23-30. Every person who acquires a vessel to be titled under South Carolina law must apply to the SC Department of Natural Resources and provide the applicant's name, address, date of birth, and the county where the watercraft is principally located. S.C. Code Ann. § 50-23-60. There is no indication that the Vessel was ever titled in South Carolina as required by South Carolina law. To the contrary, the Court understands that the USCG documentation was renewed earlier this year.

Davis took the Vessel from the Marina in May of 2008 without paying for dockage. At that time, the Vessel was not documented with the USCG, the charter for Chesapeake Venture, Corp. had expired, and Davis had not registered the Vessel as required by South Carolina law. Registration in South Carolina would have required Davis to provide information to the South Carolina Department of Natural Resources (DNR) including his address.

With the above issues concerning ownership and the address of the owner of the Vessel, the Marina filed the Complaint in the Small Claims Court and served Paul Davis via personal service at 101 N. Fairfield Drive, Dover, Delaware. The 101 N. Fairfield Drive address was for Corporate Systems, Inc.; however, the Court understands Corporate Systems, Inc. moved to 505 Brookfield Drive, Dover, Delaware, where the Complaint was actually served. Therefore, the Marina served Paul Davis, who claimed to be the owner of the Vessel, at the address provided by Davis. The Court concludes that Davis by identifying himself as the owner and giving the address of Corporate Systems, Inc. to the Marina appointed Corporate Systems, Inc. as his agent for service of process. The Marina perfected service on Davis by serving his agent. The technical issues of which the Defendant complains are the result of Davis' own failure to renew the documentation and the charter of the Corporation.

The Defendant's reliance on the Affidavit of Joyce Lockhart is not persuasive. The Defendant contends that Corporate Systems, Inc., for whom Joyce Lockhart works, was the agent for service of process for Chesapeake Venture Corp., but not Paul Davis, individually. Ms. Lockhart, however, acknowledges that she knows Paul Davis as the owner of Chesapeake Venture Corp. The Court finds that Paul Davis appointed Corporate Systems, Inc., as his agent by using its address on the Agreement. Significantly, while counsel for Davis stated Ms. Lockhart did not notify Davis of the lawsuit, Ms. Lockhart does not state in her affidavit that she did not provide a copy of the Summons and Complaint to Paul Davis, whom she knew, even as the owner of Chesapeake Venture Corp. Further, what is noticeably absent from the record is any statement by the Defendant that he did not actually receive notice of the Summons and Complaint.

¹ The Agreement provided for venue in Charleston County.

Based on the above, the Court finds that Davis appointed Corporate Systems, Inc., as his agent for service of process by listing its address on the Agreement, and personal service on Corporate Systems, Inc. meets the requirements of Rule 4 (d)(1).

2. Is the Defendant Entitled to Relief from the Judgment Pursuant to Rule 60 (B)(4)?

Even if the Court were to find that service was not proper, it would still have to consider whether the Defendant failed to file his Motion for Relief from Judgment within a reasonable time. In *McDaniel v. United States Fidelity and Guarantee Company*, 324 SC 639, 478 SE 2d 868 (Ct. App. 1997), the Court of Appeals held that the reasonable time requirements apply to Rule 60 (b)(4) motions that attack a judgment as void.

In this case, there is no dispute that the Defendant received notice of the Judgment no later than June 11, 2012, in connection with another complaint against Davis for failure to pay dockage. At that time, the Defendant was represented by counsel and was clearly aware of the Judgment; however, the Defendant took no action to contest the Judgment. The Defendant waited for over a year until after Supplemental Proceedings were initiated in this case before he contested the Judgment. Once Davis learned of the Judgment, he had an affirmative obligation to contest it within a reasonable time if he intended to do so. He did not. Further, there is nothing in the record that suggests that the amount due is not legitimate or that Davis has a meritorious defense. He has simply failed to provide any information that would suggest that he does not owe the amount of the Judgment. Finally, even if the Court were to vacate the Judgment, the matter would be remanded back to the Small Claims Court for a determination on the merits. While counsel for Davis argued that there may be an issue with the Statute of Limitations, Plaintiff's counsel raised issues

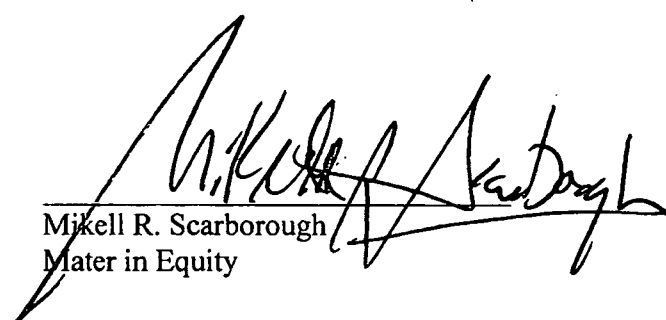
x In Supplemental Proceedings, the Court accepts a Judgment as void.
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** in the Court which issued the Judgment! Thus he has also failed to do his duty.*

concerning Davis' representations about ownership of the vessel and the address of the owner which could avoid any statute of limitation defenses. While the Court makes no ruling on these issues, it appears certain the litigation would continue.

Under the circumstances of this case, which were complicated by the Defendant's representations on his address and ownership of the Vessel, the Court concludes that the Plaintiff complied with Rule 4 regarding service of process; and that, even if service was not proper, the Defendant had adequate notice of the Judgment but failed to challenge it within a reasonable time. *

The Defendant's Motion for Relief from Judgment is denied.

AND IT IS SO ORDERED.


Mikell R. Scarborough
Master in Equity

Dated this 10 day of April, 2013 4

* Upon further review of the record, this Motion was Addressed and Denied by Judge Dennis in a Form Order dated Aug 6, 2013. Therefore, this Court finds this Motion is moot!