

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER,)
)
 DIANE S. GOODSTEIN,)
)
 Plaintiff,)
)
 v.)
)
 SEAL-O-FLEX, INC. and LATITUDE)
 CONSTRUCTION SERVICES LLC.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 Civil Action No. 2012-CP-18-1647

ORDER DENYING DEFENDANT SEAL-O-FLEX'S MOTION TO SET ASIDE DEFAULT JUDGMENT

JUDGE: J. BRUCE WILSON
 CLERK: JESSICA ANNE HARRIS
 COUNTY OF DORCHESTER
 SOUTH CAROLINA

This matter came before the Court upon Defendant Seal-O-Flex's Motion to Set Aside Default Judgment under South Carolina Rules of Civil Procedure 4(d)(8), 55(c), and 60(b)(4). A hearing on this motion was held on July 9, 2014 in Colleton County. Present at that hearing was Arnold Goodstein on behalf of the Plaintiff and Suzanne Ulmer on behalf of the Defendant Seal-O-Flex. After considering the arguments of counsel, the applicable law, and legal memoranda submitted by the parties, the Court hereby DENIES Defendant Seal-O-Flex's Motion to Set Aside Default Judgment.

#1
 Pm B

FACTUAL FINDINGS

Plaintiff's Complaint was filed on July 3, 2012. Service of process was performed by certified mail, restricted delivery signed for by Wanda Gumbs on behalf of Robert K. Kauffmann, the registered agent for Seal-O-Flex. No answer or other responsive pleading was filed by Seal-O-Flex, and this Court entered an order of default against Defendant Seal-O-Flex on August 26, 2013. A damages hearing was scheduled for December 6, 2013. The order of default and notice of damages hearing were served personally on Defendant Seal-O-Flex through its registered agent, Kauffmann

on November 22, 2013. No one appeared on behalf of Defendant Seal-O-Flex at the damages hearing, and, after hearing testimony, this Court entered judgment for the Plaintiff.

Defendant Seal-O-Flex filed the instant motion on January 15, 2014. The issue presented by this motion is whether the Summons and Complaint were properly served on Defendant Seal-O-Flex. It is undisputed that Plaintiff sent the Summons and Complaint via certified mail, with return receipt requested and delivery restricted to Kauffmann, the registered agent of Seal-O-Flex. It is also undisputed that Wanda Gumbs, the receptionist for Seal-O-Flex, signed the return receipt.

LEGAL STANDARD

#2
PMB
Service of process is governed by Rule of Civil Procedure 4. Pursuant to that Rule, a plaintiff may serve a corporation in one of two ways. First, under Rule 4(d)(3), a plaintiff may serve a corporation “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....” S.C.R.C.P. Rule 4(d)(3). Second, under Rule 4(d)(8), a plaintiff may serve a corporation by “registered or certified mail, return receipt requested and delivery restricted to the addressee.” S.C.R.C.P. Rule 4(d)(8).

“Service pursuant to [Rule 4(d)(8)] shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing acceptance by the defendant. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.” S.C.R.C.P. Rule 4(d)(8).

Rule 4 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. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995). 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.* "A plaintiff need only show compliance with the rules. When the rules are followed, it is presumed that service was proper." *Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 10, 615 S.E.2d 112, 115 (2005) (internal citations omitted).

Because Plaintiff has demonstrated compliance with the Rules, the burden shifts to Defendant Seal-O-Flex to show that the return receipt was signed by an unauthorized person. For the reasons stated herein, Seal-O-Flex has not carried its burden.

DISCUSSION *MB*

Defendant makes several arguments based ~~on~~ *MB* the authority conferred upon Gumbs by Defendant Seal-O-Flex. Because Gumbs lacked actual, apparent, or implied authority, Defendant Seal-O-Flex argues, the return receipt was signed by an unauthorized person, service of process was improper, and the Court did not obtain personal jurisdiction over Defendant Seal-O-Flex.

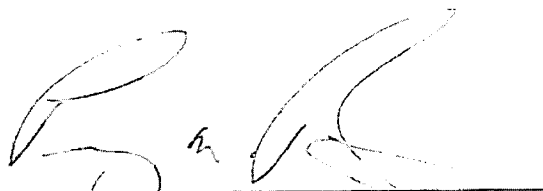
However, the Court is most persuaded by Defendant's admission at the hearing of this motion that Defendant was aware of the pending proceedings and intentionally chose not to respond. Based upon Plaintiff's compliance with Rule 4, SCRCF, and Defendant's admission that it had notice of the action, the Court can find no reason why it should hold that service of process was not proper.

IT IS THEREFORE ORDERED that Defendant Seal-O-Flex's Motion to Set Aside Default Judgment is hereby DENIED.

AND IT IS SO ORDERED.

Walterboro, South Carolina

July 23, 2014



Perry M. Bückner
Presiding Judge, Fourteenth Judicial Circuit

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EXHIBIT A

FORM 4

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP1801647

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER
THE COURT OF COMMON PLEAS
Diane S Goodstein

Seal-O-Flex Inc

Latitude Construction
Services LLC

Received
9/12/12

PLAINTIFF(S)

DEFENDANT(S)

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

Submitted by:

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit);
 Rule 43(k), SCRPC (Settled); Other: _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j) SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other: _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order; (formal order to follow) Statement of Judgment by the Court

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of (List name(s) below) | Judgment Against (List name(s) below) | Judgment Amount To be Enrolled (List amount(s) below) |
|--|--|--|
| | | |
| | | |
| | | |

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

RECEIVED

SEP 10 2012

Perry N. Buckner
Circuit Court Judge

2122
Judge Code

7-23-14
Date

For Clerk of Court Office Use Only

This judgment was entered on 7-31-2014, and a copy mailed first class or placed in the appropriate attorney's box on 7-31-2014, to attorneys of record or to parties (when appearing pro se) as follows:

Arnold S. Goodstein PO Box 2350 Summerville, SC 29484-2350

Karen Marie DeJong 940 Johnnie Dodds Blvd. Ste. 203 Mt. Pleasant, SC 29464
Trent M. Kernodle PO Box 13897 James Island, SC 29422-3897

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Cheryl Graham
Cheryl Graham - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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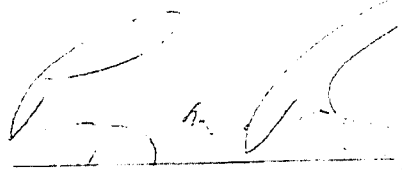
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IT IS THEREFORE ORDERED that Defendant Seal-O-Flex's Motion to Set Aside Default Judgment is hereby DENIED.

AND IT IS SO ORDERED.

Walter B. ..., South Carolina

July 27, 2014



Perry M. Bückner
Presiding Judge, Fourteenth Judicial Circuit