

FORM 4

7/24/14

STATE OF SOUTH CAROLINA
 COUNTY OF GREENVILLE
 IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2305159

Cheyenne Burrell	Richard Burrell	Capital Growth Corporation Fairhill Ltd	CGC Management Company Fairhill Ltd LP
PLAINTIFF(S)		DEFENDANT(S)	

FILED - CLERK OF COURT
 GREENVILLE COUNTY, SC
 PAUL J. COOPER, CLERK
 2014 JUL 29 AM 9:55

Submitted by: _____ Attorney for: Plaintiff Defendant
 Self-Represented Litigant

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.**

7/22/2014
 Date **RECEIVED**

Circuit Court Judge

Judge Code

SEP 29 2014

For Clerk of Court Office Use Only

This judgment was entered on **July 22, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **July 22, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

William Ashley Jordan Jr. Jordan Law Center, LLC P.O.
Box 1687 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

Curtis W. Dowling Barnes, Alford, Stork & Johnson, LLP
P.O. Box 8448 Columbia, SC 29202

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

**Paul B. Wickensimer Greenville County Clerk Of
Court - 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.

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
)
 Cheyenne Burrell and Richard Burrell,)
)
 Plaintiffs,)
)
 vs.)
)
 Capital Growth Corporation d/b/a CGC)
 Management Company and Fairhill, Ltd.)
 d/b/a Fairhill Ltd., L.P.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 THIRTEENTH JUDICIAL CIRCUIT

DOCKET NO. 2013-CP-23-05159

ORDER

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMMER
 2014 JUL 22 AM 9 55

This matter came before the Court on the motion of Defendants to set aside the entry of default and to dismiss the action due to insufficient service of process. A hearing on the motions was conducted on May 20, 2014. Plaintiffs were represented by William A. Jordan and Will Jordan, Esquires, and the Defendants were represented by Curtis Dowling, Esquire. The motions were supported by the Affidavit of Garry R. Gee. Plaintiffs submitted exhibits in opposition to the motion including the Affidavit of Tony Finley, who was the process server, and documentation relating to service on the Defendants.

This personal injury action arises out of an incident in which the Plaintiff Cheyenne Burrell was injured after she fell on a staircase at the Fairmeadow Townhomes apartment complex located on White Horse Road in Greenville. The Summons and Complaint were filed on September 24, 2013. Service of the Summons and Complaint was attempted by mailing them to the registered agent for both Defendants, Barbara Evans, at 15 Best Drive in Greenville by certified mail, return receipt requested, restricted delivery. After numerous attempts, the mail was returned to Plaintiffs' counsel unclaimed. Thereafter, alternate service was accomplished through a process server who served Defendants by leaving a copy with Kathy Keziah, who indicated she was authorized to accept service, at 15 Best Drive in Greenville, which is the business office of CGC Management Company and Fairhill, Ltd. According to the Affidavit of Service, Defendants were served on November 1, 2013.

Plaintiffs filed a Motion for Judgment and Affidavit of Default on December 24, 2013, and an Order of Default was signed by Judge Letitia Verdin on January 7, 2014. In the interim,

Defendants filed the Motion to Set Aside the Default on January 3, 2014. The question before the court is whether the Defendants were properly served.

Pursuant to Rule 4, S.C. Rules of Civil Procedure, a corporation may be served "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..." Rule 4(d)(3), SCRCF. Rule 4 serves at least two purposes: "It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Exacting compliance with the rules is not required to affect service of process. Id.

The Affidavit of Tony Finley states that he went to the address of the registered agent on two occasions to attempt to serve the Defendants. On the first occasion, October 31, 2013, he went to the location and asked for the registered agent, who was not available. He returned the next day to the business office, which is also the leasing office for the apartment complex, to find only one person present, Kathy Keziah. She informed Finley that she was the leasing agent, an assistant to the leasing manager, Carol Dixon, who was not in the office. Upon inquiry, Keziah represented that she had authority to accept legal documents. Upon receipt of the documents, Keziah indicated that she would make sure the documents were given to Dixon.

Not every person associated with a corporation is an agent of the corporation for the purposes of service of process. See Roberson v. Southern Finance of S.C., Inc., 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005) (holding that a clerical employee was not an agent authorized to accept service of process of the corporation). Whether a person may accept service on behalf of the corporation depends on the authority conferred on the person. That authority may be actual or apparent. There is no question that the registered agent for service (the agent authorized by law to accept service) was not served because she did not sign for the documents. Therefore, Plaintiffs had to affect service by some other means. The Affidavit of Garry Gee states that Keziah is not the registered agent for the corporation and has not been asked to act as a registered agent for service of process. No one has asserted that she is the registered agent. Service on the registered agent is only one of the ways in which a corporation may be served pursuant to Rule 4, SCRCF. "Service on an employee is effective when the employee has apparent authority to receive it on behalf of the employer." Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 721 S.E.2d 430, 433 (2012) (citing Richardson v. P.V., Inc., 383 S.C. 610, 682 S.E.2d 263 (2009)

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(holding that hotel receptionist had authority to receive service of process where she was only employee present in office, which represented to third parties that she was in charge)). Keziah was the only person present at the office open to conduct business on behalf of the Defendants. She held herself out as a person with whom business could be conducted. She therefore had apparent authority to accept legal documents on behalf of the Defendants. Gee's affidavit only states that she was not the registered agent, but it did not aver that she had no authority to receive legal papers on behalf of the corporations. Service of process was proper in this case.

Rule 55(c), SCRPC, provides that an entry of default may be set aside by the court for good cause shown. The good cause standard for a party seeking relief from the entry of default "requires a party...to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Regions Bank v. Owens, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013) (quoting Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009)). Once a satisfactory explanation has been given, then the trial court must also consider the "Wham" factors: (1) timing of the motion for relief; (2) defendant has a meritorious defense; (3) prejudice to the plaintiff is relief is granted. Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 719 S.E.2d 703, 706 (Ct. App. 2011).

Gee's affidavit states that although Defendants hold the belief that service was not proper, the summons and complaint were handled appropriately. The documents were given to Defendants' insurance agent with the request that it be forwarded to the carrier, Philadelphia Indemnity Insurance Company. The agent assured Gee that the documents would be forwarded. Over one month later (about December 12, 2013), when Gee had not heard from anyone about the matter, he contacted the agent who then contacted the insurance company. The agent learned that the insurance company had no record of receiving the documents. The documents were then sent electronically to the insurance company and upon receipt an investigation was commenced and an attorney hired. The attorney promptly attempted to contact Plaintiff's attorney on December 24, 2013 but received no answer. The motion was filed by Defendants' counsel on January 3, 2014.

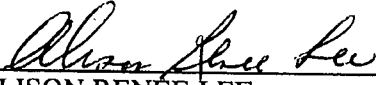
The Defendants have failed to meet the "good cause" standard. "[C]ourts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant." Regions Bank v. Owens, *supra*, 402 S.C. at 649, 741 S.E.2d at 55 (quoting Pilgrim v. Miller, 350 S.E.2d 637, 567 S.E.2d 527 (Ct. App. 2002), *vacated*, April 25, 2003).

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Here, Defendants did not forward the documents to the insurance company themselves but to the insurance agent, who indicated he would forward to the insurance company. There is no evidence that anyone took steps to confirm receipt of the documents by the insurance company until over 30 days later. A party has a duty to monitor the progress of his case. Hill v. Dotts, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "Although the presence of other factors, in the totality of the circumstances, may amount to a showing of 'good cause,' a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent." Sundown Operating Co. v. Intedge Indus., Inc., *supra*, 383 S.C. at 609, 681 S.E.2d at 889. Here, the failure of the Defendants to forward the documents in a timely fashion and their failure to monitor the progress of the case fails to establish good cause under Rule 55(c). Therefore, this court need not reach the Wham factors regarding timing of the motion, meritorious defense, and prejudice to the plaintiff.

For the reasons stated, Defendants were properly served under Rule 4 and Defendants' motion to dismiss and/or set aside the default is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
July 11, 2014

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9/24/14

STATE OF SOUTH CAROLINA FILED--CLERK OF COURT JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

CASE NO: 2013CP2305159

IN THE COURT OF COMMON PLEAS

2014 SEP 19 PM 4 28

Cheyenne Burrell vs. Capital Growth Corporation

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.
- ACTION DISMISSED (CHECK REASON):**
 - Rule 12(b), SCRCP;
 - Rule 41(a),
 - SCRCP (Vol. Nonsuit);
 - Rule 43(k), SCRCP (Settled);
 - Other: _____
- ACTION STRICKEN (CHECK REASON):**
 - Rule 40(j) SCRCP;
 - 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE -

This judgment was entered on the 19th day of September, 2014, and a copy mailed first class this 19th day of September, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

William Ashley Jordan Jr. Jordan Law Center, LLC
P.O. Box 1687 Greenville, SC 29602

Curtis W. Dowling Barnes, Alford, Stork & Johnson, LLP P.O. Box 8448 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court
- Clerk of Court

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. **IN THE COURT OF COMMON PLEAS**
COUNTY OF GREENVILLE PAUL D. WIGGINS III **THIRTEENTH JUDICIAL CIRCUIT**

Cheyenne Burrell and Richard Burrell, 19) PM 4 28) Action No.: 2013-CP-23-05159

Plaintiffs,

v.

Capital Growth Corporation d/b/a CGC
 Management Company and Fairhill, Ltd.
 d/b/a Fairhill Ltd., L.P.,

Defendants.

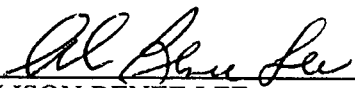
ORDER

This matter comes before the Court on a Motion to Alter or Amend. A hearing on Defendants’ motion to dismiss and/or set aside the entry of default was held on May 20, 2014. Thereafter, an Order was signed on July 11, 2014 and filed July 22, 2014 denying Defendants’ motion to dismiss and/or set aside the entry of default. Defendants filed a Motion to Alter or Amend pursuant to Rule 59(e), SCRCPP, on August 1, 2014, and a copy was received in this office on August 4, 2014. After careful consideration of the record in this case, this Court is unable to discover any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Defendants contend that the July 11 Order contains a factual error when it states “Gee’s affidavit only states that she [Kathy Keziah] was not the registered agent, but it did not aver that she had no authority to receive legal papers on behalf of the corporations.” Defendants cite excerpts from affidavits to contradict this statement. This Court acknowledges that the statement quoted is incorrect given that the Affidavit of Garry R. Gee does state that Keziah was not an agent authorized to receive service. However, this Court finds that while Keziah did not have actual authority to accept service, Keziah had apparent authority to accept service regardless because of her position in the office and statements made that she was authorized to accept legal documents. The Court weighed the credibility of the multiple affidavits submitted by both Plaintiff and Defendants and found that the impartial affidavit of the process server created contemporaneously to service should be given more weight. *See Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 145, 719 S.E.2d 703, 706 (Ct. App. 2011) (holding that it was appropriate for the trial court judge to weigh the affidavit of a process server more heavily than the party

who alleged it was not served). In its Motion to Alter or Amend, Defendants do not contest this apparent authority. Accordingly, this Court hereby **DENIES** Plaintiff's Motion to Alter or Amend. Pursuant to Rule 59(f), the Court is of the opinion that oral argument is not necessary.

AND IT IS SO ORDERED.



ALISON RENEE LEE
Presiding Judge

September 4, 2014
Columbia, South Carolina