

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Case No.: 2013-CP-23-05159

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

v.

Cheyenne Burrell and Richard Burrell,

Appellants,

Respondents.

RESPONDENTS' MOTION TO DISMISS INTERLOCUTORY APPEAL

Respondents Cheyenne and Richard Burrell hereby move to dismiss this Appeal because it is interlocutory. This Appeal does not fall within the purview of S.C Code Ann. § 14-3-330 because it does not stem from a final judgment.

Appellants appeal from an order by the Honorable Alison Lee signed on July 11, 2014 and entered on July 22, 2014. This order refused to set aside an entry of default for failure to meet the "good cause" standard under Rule 55 (c), SCRCP. The Defendants failed respond to a summons and complaint within the

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OCT 10 2014

SC Court of Appeals

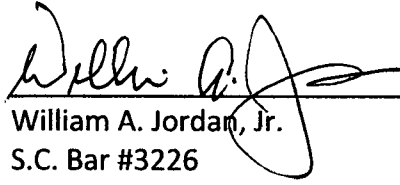
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30 day timeframe set forth by Rule 12(a), SCRCF. These documents had been served on an agent authorized by law to accept process. On August 1, 2014, Appellants' attorney attempted to notice the depositions of the Respondents in violation of the Supreme Court's ruling in *Limehouse v. Hulse*, 404 S. E. 2d 93, 744 S.E.2d 566 (2013).

That same day, Appellants filed a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCF, which was denied in an order signed on September 4, 2014 and entered on September 19, 2014. This Appeal followed on September 26, 2014, precluding the Circuit Court from conducting a long-set damages hearing, scheduled before the Honorable Steven John on September 29, 2014. Upon receiving the Notice of Appeal, Respondents requested that Appellants dismiss it because it was premature and frivolous. Respondents asked for the immediate dismissal so that a damages hearing could proceed and Appellants could then perfect their appeal. Appellants refused.

The cases of *Thynes v. Lloyd*, 294 S.C. 152, 363 S.E. 2d 122 (S.C. Ct. App. 1987) and *Jefferson's v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988) are directly on point, are dispositive of this motion and mandate immediate dismissal. For these reasons, and others to be discussed more fully in the attached Memorandum, Respondents move to have this Appeal dismissed, move for an award of attorneys' fees and costs and move to have the case remanded to the lower court so that a damages hearing may proceed.

Tuesday, October 7, 2014

A handwritten signature in black ink, appearing to read "William A. Jordan, Jr.", is written over a horizontal line.

William A. Jordan, Jr.

S.C. Bar #3226

William A. Jordan, III

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Attorneys for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

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SC Court of Appeals

Case No.: 2013-CP-23-05159

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

Appellants,

v.

Cheyenne Burrell and Richard Burrell,

Respondents.

**RESPONDENTS' MEMORANDUM IN SUPPORT OF MOTION TO DISMISS INTERLOCUTORY
APPEAL**

PROCEDURAL BACKGROUND

This action was initiated by Respondents on September 24, 2013, seeking damages for a fall suffered by the Respondent Cheyenne Burrell on November 30, 2010. On that date, Burrell was walking on a staircase at the Fairmeadow Townhomes apartment complex off White Horse Road when she was severely injured. The stairs collapsed because they were in a state of major disrepair and contained rotting wood.

After filing the Summons and Complaint on September 24, 2013, Respondents attempted on numerous occasions to serve the registered agent at the South Carolina Secretary of State for Appellants, Barbara Evans, via certified mail return receipt requested. (Exhibit A, Judge Lee's Order of July 22, 2014, p.1) These mail packages were returned unclaimed. The Respondents then served the Appellants by personal service. Process Server Tony Finley visited the registered agent's address, 15 Best Drive, on two occasions: October 30, 2013 and November 1, 2013. (Exhibit A, Judge Lee's Order of July 22, 2014, p.1) On the first occasion, he was unable to complete service, but spoke with Kathy Keziah on the second occasion. Ms. Keziah told Mr. Finley that she was a leasing agent at Fairmeadow Townhomes and was also an assistant to Carol Dixon, the apartment complex manager. She further informed him that she had the authority to accept legal documents on behalf of the Defendants. (Exhibit A, Judge Lee's Order of July 22, 2014, p.2) Upon receipt of the documents, Keziah told Finley she would make sure that Dixon received the papers. (Exhibit A, Judge Lee's Order of July 22, 2014, p.2).

Respondents filed a Petition for Entry of Default, along with a supporting affidavit, on December 24, 2013 (Exhibit B), and an Order of Default was signed by Judge Letitia Verdin on January 7, 2014. (Exhibit C).

Appellants filed a Motion to Set Aside the Default. Judge Alison Lee held a hearing on May 20, 2014. At that hearing, Appellants were allowed the opportunity to present affidavits necessary for the Court's consideration of the matter. Respondents were also allowed the same opportunity. Thereafter, Judge Lee entered an order refusing to set

aside the default under Rule 55 (c) SCRPC, because the Appellants failed to meet the “good cause” standard. Specifically, Judge Lee found that Kathy Keziah had apparent authority to accept process. Appellants filed a Motion to Reconsider pursuant to Rule 59(e), which was denied in the September 4, 2014 Order (Exhibit D). After filing the Motion to Alter or Amend, Appellants’ attorney attempted to conduct discovery (a technique expressly forbidden by the Supreme Court in *Limehouse v. Hulsey*, 404 S. E. 2d 93, 744 S.E.2d 566 (2013)) by serving notices of deposition on the Respondents. (Exhibit E).

A damages hearing was scheduled in this matter on September 29, 2014 before Judge Stephen John in Greenville County Court of Common Pleas. Appellants filed this Notice of Appeal, precluding such a hearing. (Exhibit F). Respondents requested that the appeal be dismissed because it is premature so that the damages hearing proceed. Appellants refused to dismiss the Appeal. (Exhibit G). This Motion to Dismiss the Appeal followed.

THE APPEAL SHOULD BE DISMISSED BECAUSE IT IS NOT AN APPEAL FROM A FINAL JUDGMENT IN THE CASE, AND IS THEREFORE AN UNPERMITTED INTERLOCUTORY APPEAL. JUDGE LEE’S ORDER OF JULY 22, 2014, REFUSING TO SET ASIDE AN ORDER OF DEFAULT UNDER RULE 55 (C), SCRPC, IS NOT AN ORDER THAT INVOLVES THE MERITS OF SOME CLAIM OR DEFENSE.

An appeal from an order refusing to set aside an entry of default under Rule 55(c) has been prohibited since at least 1988. In that year, the Supreme Court of South Carolina issued its decision in *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 317, 368 S.E.2d 456, 456 (1988). In that case, Judge Ness, writing for the court, stated: “We agree that the grant or denial of a Rule 55(c) motion is not directly appealable under S.C. Code Ann. § 14-

3-330 (1976).” In *Jefferson*, as in this case, the trial court denied the appellant's motion to set aside the default. *Id.* at 318, 368 S.E.2d at 456. The Respondents moved to dismiss the appeal arguing that the order was appealable and interlocutory. *Id.* The court agreed. *Id.* Analyzing the motion under Section 14-3-330 of the South Carolina Code, the Court stated:

“We hold this order is not appealable . . . because it does not involve the merits. In ruling on appellants’ Rule 6(b) motion the judge expressed no opinion on the substantive contents of the answer, but determined only that appellants had not shown good cause to be allowed to file late. We also hold that the order is not appealable under subsection (2)(c) since it does not strike the answer, but refused to allow its filing. Again, this decision does not relate to the merits of the answer. Accordingly, the appeal is dismissed without prejudice. ”

Id.

Additional guidance on these issues is present in *Thynes v. Lloyd*, 294 S.C. 152, 363 S.E.2d 122 (Ct. App. 1987). There, the Court favorably cited the general rule that “[u]nder the South Carolina Rules of Civil Procedure . . . an order setting aside an entry of default is not appealable until after final judgment.” *Id.* at 153, 363 S.E.2d at 122 (quoting *Ateyeh v. United Omaha Life Insurance Co.*, 361 S.E.2d 340 (Ct. App. 1987)). In *Thynes*, the Defendant was put into default by the Clerk after failing to serve an answer within 30 days of being served with the Summons and Complaint. *Id.* at 153, 363 S.E.2d at 122. After this, the Defendant filed an Answer, then filed a motion “requesting a ruling that the [defendant] was not in default or in the alternative that any entry of default be set aside . . . or in the alternative that time for answering be extended” *Id.* This motion was denied, and before a damages hearing occurred and a judgment was entered, the defendant appealed the case to the Court of Appeals. *Id.* at 153, 363 S.E.2d at 123. The Court of Appeals

concluded that “it is clear that the motion of [the appellant] was a motion under Rule 55(c).” *Id.* at 154, 363 S.E.2d at 122. Absent the Appellant’s motion to dismiss on 12(b)(2), 12(b)(4), and 12(b)(5) grounds, the procedural posture of this case is identical to the posture in *Thynes*. The Court held that while “the denial of a motion under Federal Rule 60(b) to set aside a default judgment is immediately appealable . . . the denial of a motion under Federal Rule 55(c) to set aside an entry of default is not appealable until after final judgment.” *Id.*

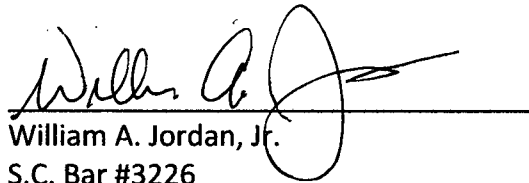
In this case, Judge Lee's order refuses to set aside the default finding that the Appellants’ agent was authorized to accept service by law; the agent had the apparent authority to accept service. The initial Order found that Ms. Keziah had the actual authority to accept service, but this was modified following the Appellants’ motion for reconsideration. The Court found that Ms. Keziah only had apparent authority to accept service, on the basis that she held herself out to the public, and specifically the process server, as the person authorized to accept service of process. Her position at the front desk, her title as leasing agent, her *de facto* status as manager of the office (while her supervisor was out), and her statements to the process server were more than enough to support the finding that she had apparent authority to accept service of process. She followed through on her statement to the process server to make sure that Mrs. Dixon received the service of process. It is undisputed that the papers made their way to Ms. Dixon, who the Appellants admit was someone authorized to accept service. Furthermore, it is undisputed that the papers made their way to the Appellants’ insurance agent, Mike Poulton, in Utah. Why the Appellants failed to file a responsive pleading within the thirty

day period is not clear, but the attempts to personally serve an agent of the Appellants, after getting a return of mail served on the registered agent by mail, was not a sneak attack, but in fact a genuine attempt to place them on notice that suit had been filed.

In attempting to escape liability in this matter, Appellants filed tripartite motion, which was styled as a motion to dismiss (on the basis of Rules 12(b)(2), 12(b)(4), and 12(b)(5), SCRCPP), motion to enlarge the time to answer, and a motion to set aside the default. The Circuit Court's Orders, boiled down to their essence, found that: (1) no deficiency in personal jurisdiction, process, or service of process existed, because the agent who had accepted the papers had the authority to do so; (2) the Appellants errors (or errors of the Appellants' agents) ensuring that an Answer was timely serve were not excusable, and therefore good cause did not exist to remove the Appellants from default status. Both of these issues involve questions of law and must be decided by a trial judge. They are not defenses that can be presented at trial. They are not issues that ever appear before juries in South Carolina. Each and every day, these issues are decided by Circuit Court Judges across our state, and appeals do not follow from these decisions, *until a final judgment has been entered*. The higher Courts of this state have made it clear that such appeals are not permitted.

For these reasons, the Motion to Dismiss should be granted. Respondents should be awarded costs and attorneys' fees because this Appeal is frivolous and was intended merely to delay the damages hearing, just like the Appellants attempts to conduct discovery after they had been placed in default.

Tuesday, October 7, 2014

A handwritten signature in black ink, appearing to read "William A. Jordan, Jr.", is written over a horizontal line. The signature is stylized with a large, looped 'J'.

William A. Jordan, Jr.

S.C. Bar #3226

William A. Jordan, III

S.C. Bar #101271

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Attorneys for Respondents

EXHIBIT A

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. WICKERSHIMER
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), SCRPC. 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, SCRPC. "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.

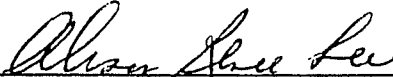
The Defendants have failed to meet the "good cause" standard. "[C]ourts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant." Regions Bank v. Owens, *supra*, 402 S.C. at 649, 741 S.E.2d at 55 (quoting Pilgrim v. Miller, 350 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 RENÉE LEE
Presiding Judge

Columbia, South Carolina
July 11, 2014



EXHIBIT B

STATE OF SOUTH CAROLINA FILED - CLERK OF COURT THE COURT OF COMMON PLEAS
GREENVILLE CO. CASE NO.: 2013-CP-23-5159
COUNTY OF GREENVILLE PAUL B. WICKENS SIMER

Cheyenne Burrell and Richard Burrell, et al
2014 JUN 14 PM 1 37

Plaintiff(s),

-vs-

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

Defendant(s).

**MOTION FOR JUDGMENT
AND ORDER OF DEFAULT**

This matter is before the Court upon the plaintiff's Motion for an Order of Default, the Affidavit of William A. Jordan, III and counsel for plaintiff. It appears to the Court that this action was filed against Capital Growth Corporation, d/b/a CGC Management Company and Fairhill, Ltd., d/b/a Fairhill LTD, L.P., on September 24, 2013. Capital Growth Corporation, d/b/a CGC Management Company and Fairhill, Ltd., d/b/a Fairhill LTD, L.P., was served by certified mail, return receipt requested and restricted delivery, to its agent, Barbara Evans. This was returned to Plaintiffs as unclaimed. Service was then completed by personal service to the Leasing Agent, Kathy Keziah, who attested that she was authorized to accept service on behalf of the Defendants. More than thirty (30) days has passed since the Defendants were served with the Summons and Complaint and no one has made an appearance or requested an extension of time to answer on behalf of Capital Growth Corporation, d/b/a CGC Management Company and Fairhill, Ltd., d/b/a Fairhill LTD, L.P.

It is therefore ordered that plaintiff's Motion for Default against Capital Growth Corporation, d/b/a CGC Management Company and Fairhill, Ltd., d/b/a Fairhill LTD, L.P., is, and the same is hereby granted.

IT IS SO ORDERED.

s/ Letitia H. Weeden
South Carolina Circuit Court Judge
13th Judicial Circuit

January
December 7, 2013

Greenville, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
IN THE COURT OF COMMON PLEAS
CASE NO.: 2013-CP-23-5159

2014 JAN 14 PM 1 37

Cheyenne Burrell and Richard Burrell,

Plaintiff(s),

-vs-

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

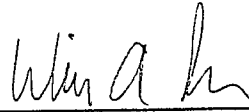
**AFFIDAVIT OF DEFAULT
And MOTION FOR JUDGMENT**

PERSONALLY APPEARED BEFORE ME, the undersigned attorney, who, being first
duly sworn, deposes and says that:

1. I, William A. Jordan, III of the Jordan Law Center, am the attorney representing the Plaintiff(s) in the above entitled action.
2. More than thirty (30) days have elapsed since the legal service upon the Defendants, Capital Growth Corporation, d/b/a CGC Management Company and Fairhill, Ltd., d/b/a Fairhill LTD, L.P., of the Summons and Complaint herein. A copy of the Affidavit of Service is on file in the office of the Clerk of Court for Greenville County and attached hereto. No Notice of Appearance, Answer, Motion to Dismiss or any other appearance of any kind has been subsequently served or filed, and the Defendant(s) are in default.
3. Pursuant to the provisions of the Soldiers and Sailors Civil Relief Act, a reasonable investigation has been made to determine the military status of the Defendant(s), and, upon information and belief Defendant(s), is not a member of the military service of the United States.

The Plaintiff, therefore, moves the court for an Order judging the Defendant(s) to be in default for want of appearance in this action, and, after a due hearing pursuant to the provisions of Rule 55 of the South Carolina Rules of Civil Procedure for a judgment for Plaintiff against the Defendants in such an amount as may be properly found due.

Respectfully submitted:



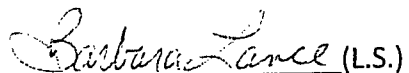
William A. Jordan, III Esquire
Jordan Law Center
622 Wade Hampton Blvd.
Post Office Box 1687
Greenville, South Carolina 29609
Attorney for Plaintiff

Date: December 24, 2013

Greenville, South Carolina

SWORN to and subscribed before me

this 24 day of December, 2013.



Notary Public for South Carolina

My Commission Expires: 1/9/19

EXHIBIT C

FORM 4

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

FILED-CLERK OF COURT
 GREENVILLE CO. S.C.

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2013CP2305159

Cheyenne Burrell

Richard Burrell B. WICKENBARGER

Capital Growth
 Corporation
 Fairhill Ltd

CGC Management
 Company
 Fairhill Ltd LP

2014 JAN 14 PM 1:07

PLAINTIFF(S)

DEFENDANT(S)

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.**

Circuit Court Judge

Judge Code

1/14/2014
 Date

For Clerk of Court Office Use Only

This judgment was entered on **14th day of January, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **14th day of January, 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.

FILED-CLERK OF COURT
GREENVILLE CO. S.C.

PAUL B. WICKENSINER

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE

2014 JAN 14 PM 1 37

CASE NO.: 2013-CP-23-5159

Cheyenne Burrell and Richard Burrell,

Plaintiff(s),

-vs-

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

Defendant(s).

**ORDER OF DEFAULT AND FOR A
HEARING TO ASCERTAIN DAMAGES**

IT APPEARING from the Affidavit of William A. Jordan, III attorney for Plaintiffs, that the Defendant, Capital Growth Corporation, d/b/a CGC Management Company and Fairhill, Ltd., d/b/a Fairhill LTD, L.P., in this matter have been duly served with a Summons and Complaint and that more than thirty (30) days have elapsed during which no responsive pleading was filed by the Defendant; and

IT FURTHER APPEARING that a hearing to ascertain damages pursuant to Rule 55 of the South Carolina Rules of Civil procedure should be held to determine the amount owed the Plaintiff;

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Defendants, are hereby in default and a judgment in an amount to be determined at a hearing to be held shall be filed in favor of the Plaintiff.

PAW

of Letitia H. Verdine

South Carolina Circuit Court Judge

Thirteenth Judicial Circuit

Greenville, South Carolina

~~December~~ 7, 2018
January

EXHIBIT D

FILED-CLERK OF COURT
STATE OF SOUTH CAROLINA GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
COUNTY OF GREENVILLE
2014 SEP 19 PM 4 28
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP2305159

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):**
SCRC (Vol. Nonsuit); Rule 43(k), SCRC (Settled); Rule 12(b), SCRC; Rule 41(a),
 Other: _____
- ACTION STRICKEN (CHECK REASON):**
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other: _____
 Rule 40(j) SCRC; Bankruptcy:
- 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

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 RENÉE LEE
Presiding Judge

September 4, 2014
Columbia, South Carolina

EXHIBIT E

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Cheyenne Burrell & Richard Burrell,
Plaintiffs,

Civil Action No. 2013-CP-23-5159

v.

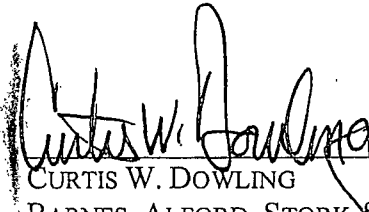
**NOTICE OF TAKING DEPOSITION
OF CHEYENNE BURRELL**

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

Defendants.

**TO: PLAINTIFFS AND THEIR ATTORNEY, WILLIAM A. JORDAN,
ESQUIRE:**

YOU WILL PLEASE TAKE NOTICE that the Defendants' attorney will, on Tuesday, August 12, 2014 at 2:00 p.m., proceed to take the deposition of *Cheyenne Burrell* at the law office of William A. Jordan located at 622 Wade Hampton Boulevard, Greenville, South Carolina. The oral examination will continue from day to day until completed. You are invited to attend and take such part as shall be fit and proper.



CURTIS W. DOWLING
BARNES, ALFORD, STORK & JOHNSON, LLP
1613 Main Street (29201)
P.O. Box 8448
Columbia, South Carolina 29202
803.799.1111 (Office)
803.254.1335 (Fax)
curtis@basjlaw.com
Attorneys for Defendants

August 1, 2014

CERTIFICATE OF SERVICE

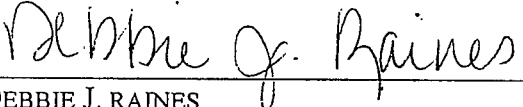
The undersigned employee of Barnes, Alford, Stork & Johnson, LLP certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:

- Notice of Taking Deposition of Cheyenne Burrell

PERSON(S) SERVED:

William A. Jordan, Esquire
Law Office of William A. Jordan
622 Wade Hampton Boulevard
Post Office Box 1687
Greenville, SC 29609


DEBBIE J. RAINES

August 1, 2014

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

Cheyenne Burrell & Richard Burrell,

Plaintiffs,

v.

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

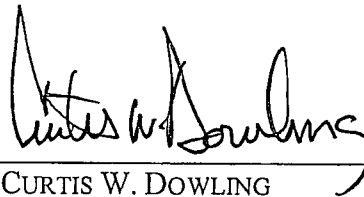
Defendants.

Civil Action No. 2013-CP-23-5159

**NOTICE OF TAKING DEPOSITION
OF RICHARD BURRELL**

**TO: PLAINTIFFS AND THEIR ATTORNEY, WILLIAM A. JORDAN,
ESQUIRE:**

YOU WILL PLEASE TAKE NOTICE that the Defendants' attorney will, on Tuesday, August 12, 2014 at 3:30 p.m., proceed to take the deposition of *Richard Burrell* at the law office of William A. Jordan located at 622 Wade Hampton Boulevard, Greenville, South Carolina. The oral examination will continue from day to day until completed. You are invited to attend and take such part as shall be fit and proper.



CURTIS W. DOWLING
BARNES, ALFORD, STORK & JOHNSON, LLP
1613 Main Street (29201)
P.O. Box 8448
Columbia, South Carolina 29202
803.799.1111 (Office)
803.254.1335 (Fax)
curtis@basjlaw.com
Attorneys for Defendants

August 1, 2014

CERTIFICATE OF SERVICE

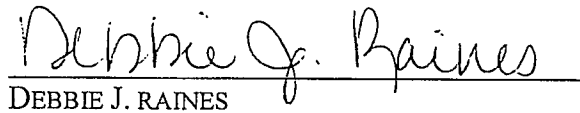
The undersigned employee of Barnes, Alford, Stork & Johnson, LLP certifies that he or she has, on the date below, served the below document(s) upon the below person(s) via first class mail.

DOCUMENT(S) SERVED:

- Notice of Taking Deposition of Richard Burrell

PERSON(S) SERVED:

William A. Jordan, Esquire
Law Office of William A. Jordan
622 Wade Hampton Boulevard
Post Office Box 1687
Greenville, SC 29609


DEBBIE J. RAINES

August 1, 2014

EXHIBIT F

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Case No. 2013-CP-23-05159

Cheyenne Burrell and Richard Burrell, Respondents,

v.

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

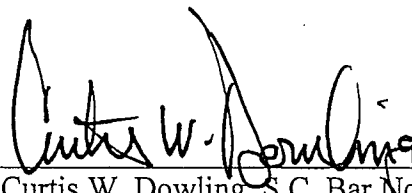
NOTICE OF APPEAL

Appellants, Capital Growth Corporation d/b/a CGC Management Company and Fairhill, Ltd. d/b/a Fairhill Ltd., L.P., appeal the following orders of The Honorable Alison Renee Lee:

1. Order dated July 11, 2014, and filed July 22, 2014; and
2. Order dated September 4, 2014, and filed September 19, 2014.

Copies of the orders are attached. Appellants received written notice of the entry of the Orders on July 24, 2014, and September 24, 2014, respectively.

[SIGNATURE BLOCK ON FOLLOWING PAGE]



Curtis W. Dowling, S.C. Bar No. 6493
Matthew G. Gerrald, S.C. Bar No. 76236
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111
Attorneys for Appellants

September 26, 2014

Other Counsel of Record:

William A. Jordan, Esquire
Law Office of William A. Jordan
622 Wade Hampton Boulevard
Post Office Box 1687
Greenville, SC 29609
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Case No. 2013-CP-23-05159

Cheyenne Burrell and Richard Burrell, Respondents,

v.

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

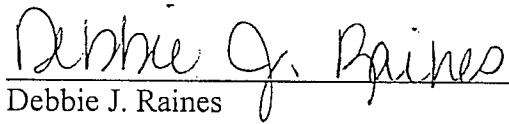
PROOF OF SERVICE

I, the undersigned employee of Barnes, Alford, Stork & Johnson, LLP, do hereby state that I have on September 26, 2014, served and filed the enclosed **NOTICE OF APPEAL** by depositing copies of the document in the United States Mail, sufficient postage prepaid, with the return addresses clearly noted, addressed as follows:

William A. Jordan, Esquire
Law Office of William A. Jordan
622 Wade Hampton Boulevard
Post Office Box 1687
Greenville, SC 29609

The Honorable Alison Renee Lee
1701 Main Street, Room 324 (29201)
Post Office Box 192
Columbia, SC 29202

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E. North Street
Greenville, SC 29601-2120



Debbie J. Raines
Barnes, Alford, Stork & Johnson, LLP
1613 Main Street (29201)
Post Office Box 8448
Columbia, SC 29202
(803) 799-1111

7/24/14

FORM 4

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, S.C.
PAUL J. COOPER, CLERK
2014 JUL 22 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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- 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.

Circuit Court Judge	Judge Code	Date
		7/22/2014

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), SCRCP. 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, SCRCP. "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)).

af
#2

(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), SCRCP, 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.

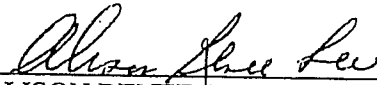
The Defendants have failed to meet the "good cause" standard. "[C]ourts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant." Regions Bank v. Owens, supra, 402 S.C. at 649, 741 S.E.2d at 55 (quoting Pilgrim v. Miller, 350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

ref
A-3

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



9/24/14

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

COUNTY OF GREENVILLE GREENVILLE CO. S.C. CASE NO: 2013CP2305159
PAUL B. WICKENSIMER

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. WICKENSIMMER THIRTEENTH JUDICIAL CIRCUIT

2014 SEP 19 PM 4:28 Action No.: 2013-CP-23-05159

Cheyenne Burrell and Richard Burrell
 Plaintiffs,
 v.
 Capital Growth Corporation d/b/a CGC
 Management Company and Fairhill, Ltd.
 d/b/a Fairhill Ltd., L.P.,
 Defendants.

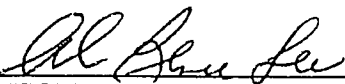
ORDER

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), SCRCP, 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

EXHIBIT G

From: John, Steven H. Law Clerk (John Simkovich) [mailto:SJohnLC@sccourts.org]
Sent: Tuesday, September 30, 2014 9:22 AM
To: William Jordan; Lopez, Stephen
Cc: Curtis Dowling; William Jordan (william@williamjordan.org); John, Steven H.
Subject: RE: {Burrell, Cheyenne & Richard v. Capital Growth Corporation}{Matter No.[76.19907]}

[Quoted text hidden]

William Jordan <williamjordanlaw@gmail.com>
To: Curtis Dowling <curtis@basjlaw.com>

Tue, Sep 30, 2014 at 9:44 AM

Curtis: In light of this email, we are contemplating appearing and making a record as we contend the appeal you have taken is frivolous and intended solely for delay. This is the second time, in our view, the first being your attempt to conduct discovery while in default, that you have used methods that are clearly prohibited by long-standing well settled South Carolina case law. You are an experienced, capable and smart lawyer who knows better. In the spirit of civility, we are asking that you immediately dismiss this frivolous appeal so we can proceed with the damages hearing our client deserves. Will you do that? Bill

[Quoted text hidden]

William Jordan <williamjordanlaw@gmail.com>
To: Curtis Dowling <curtis@basjlaw.com>

Tue, Sep 30, 2014 at 10:01 AM

Curtis: Unless we can understand why this case is different from the ones we have provided to , we will let Steve know that we wish to appear and put our position on the record. If you can let me know your appeal theory, this would help. Reasonable, good lawyers can disagree. We do not wish to make you have to drive unnecessarily to Greenville. Thanks. Bill

[Quoted text hidden]

William Jordan <williamjordanlaw@gmail.com>
To: "John, Steven H. Law Clerk (John Simkovich)" <SJohnLC@sccourts.org>, Curtis Dowling <curtis@basjlaw.com>

Tue, Sep 30, 2014 at 10:16 AM

Thanks John Paul: We understand. We wish to appear and put our position on the record. Bill

[Quoted text hidden]

Curtis Dowling <curtis@basjlaw.com>
To: William Jordan <williamjordanlaw@gmail.com>

Tue, Sep 30, 2014 at 11:51 AM

Let me know how it goes. How about sending me the damages documentation I have requested for months.

Curtis.

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

Thanks so much Steve.

[Quoted text hidden]

[Quoted text hidden]

[Quoted text hidden]

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<image002.gif>

622 Wade Hampton Boulevard / Greenville SC 29609

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--
William A. Jordan, Esquire

Jordan Law Center

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(Cell) 864-304-6235

(Fax) 864-467-9349

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<image003.png>

622 Wade Hampton Boulevard / Greenville SC 29609

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Alison Renee Lee, Circuit Court Judge

Case No.: 2013-CP-23-05159

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

Appellants,

v.

Cheyenne Burrell and Richard Burrell,

Respondents.

CERTIFICATE OF SERVICE

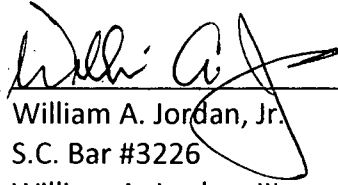
I, the undersigned Attorney of the Jordan Law Center, attorneys for the Appellant, do hereby certify that I have served the Appellants' Counsel with a copy of the enclosed Respondents' Motion to Dismiss Interlocutory Appeal and Respondents Memorandum in Support of same, mailing a copy of the same by United States Mail, postage prepaid, to the following address: Curtis W. Dowling, Esquire, Barnes, Alford, Stork & Johnson, LLP, Post Office Box 8448, Columbia, South Carolina, 29202.

RECEIVED

OCT 10 2014

SC Court of Appeals

Wednesday, October 8, 2014



William A. Jordan, Jr.

S.C. Bar #3226

William A. Jordan, III

S.C. Bar #101271

Jordan Law Center

622 Wade Hampton Boulevard

Greenville, S.C. 29609

(864) 235-0147

(864) 467-9349 (fax)

William@williamjordan.org

Attorneys for Respondents



Jordan Law Center

Attorney William Jordan

Attorney William A. Jordan, III Attorney Brian T. Smith*

October 8, 2014

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Capital Growth Corporation d/b/a CGC Management Company and Fairhill, LTd. d/b/a Fairhill Ltd., L.P. v. Cheyenne Burrell and Richard Burrell, Case No: 2013-CP-23-05159

Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of the Respondents' Motion to Dismiss Interlocutory Appeal and Respondents Memorandum in Support of same. I have also enclosed our \$25.00 check representing payment of the filing fee for same. Also enclosed please find the original Certificate of Service in the above case.

Sincerely,

William A. Jordan, Jr.

/tdh

Enclosures

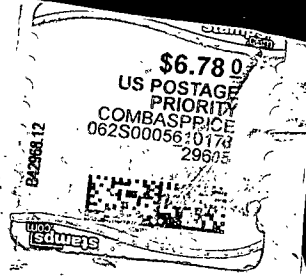
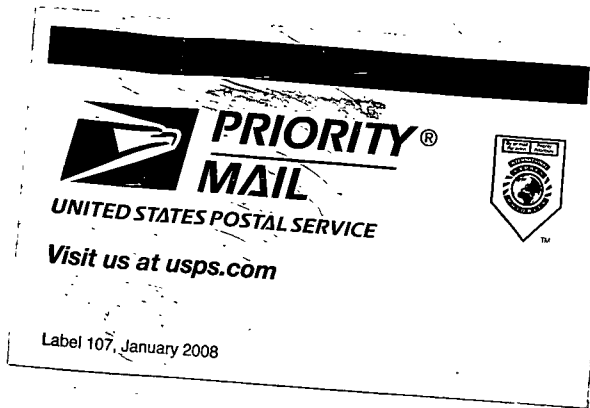
cc: Curtis W. Dowling, Esquire

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Clerk, South Carolina Court of Appeals
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