

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2013CP2305891

NAI Earle Furman LLC

Pleasant Grove
Properties Inc

RECEIVED

OCT 24 2014

SC COURT OF APPEALS
PLAINTIFF

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. GREENSIMMER
2014 JUL 12 11:21 AM

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

7/23/2014

Date

For Clerk of Court Office Use Only

This judgment was entered on **July 23, 2014**, and a copy mailed first class or placed in the appropriate attorney's box on **July 23, 2014**, to attorneys of record or to parties (when appearing pro se) as follows:

Paul S. Landis Fayssoux Law Firm, PA P.O. Box 10207
Greenville, SC 29603

Jonathan P Whitehead 410 E. Butler Rd., Ste. E. Mauldin,
SC 29662

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

NAI Earle Furman, LLC,

Plaintiff,

vs.

Pleasant Grove Properties, Inc.,

Defendant.

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-23-05891

2014 JUL 23 PM 12 17

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER

RECEIVED ORDER

OCT 24 2014

SC Court of Appeals

This matter comes before the court on a Motion to Set Aside Default Judgment filed by Defendant Pleasant Grove Properties, Inc. A hearing on the motion was conducted on May 23, 2014. Present at the hearing were Paul Landis, Esquire, for Plaintiff NAI Earle Furman, LLC and Jonathan Whitehead, Esquire, on behalf of Defendant Pleasant Grove Properties, Inc. Defendant seeks relief from a default judgment pursuant to Rules 55 and 60 of the S.C. Rules of Civil Procedure.

Defendant argues in its motion that the default judgment entered against it is void because the Defendant was not properly served with the Summons and Complaint. As an alternative, Defendant argues that the judgment should be set aside on the basis of mistake, inadvertence, or excusable neglect.

The Summons and Complaint were filed on November 1, 2013 seeking commission fees arising out of a Commission Agreement between the parties in which Plaintiff procured a tenant to lease commercial property owned by Defendant. The amount claimed in commissions is \$12,600, plus attorney fees and costs. The Affidavit of Service states that service was made upon "David Peacock, as Registered Agent via Teresa Fant - Secretary and states authorized to Accept Service" at 4394 Wade Hampton Boulevard in Taylors, SC on January 21, 2014. According to the Secretary of State, the registered agent for Pleasant Grove Properties, Inc. is David Peacock at 1425B Buncombe Road, Greer, SC.

Subsequently, an affidavit of default and motion for default judgment were filed in March 2014 in which the Plaintiff was seeking a judgment for the failure of the Defendant to answer or otherwise plead in response to the lawsuit. By Order dated March 20, 2014, Judge Letitia Verdin awarded a judgment by default, which was entered on March 31, 2014. Subsequently on April 4,

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2014, Defendant filed the motion currently before the court to set aside the default and to seek relief from the default judgment. The motion is supported by the affidavits of Teresa Fant and David Peacock.

In her affidavit, Teresa Fant states that she is the office manager of Rental One, LLC at its place of business located at 4394 Wade Hampton Boulevard, Taylors, SC. She avers that the process server appeared at the business address for Rental One and asked her to sign for a sealed envelope addressed to David Peacock on February 3 or 4, 2014. She denied stating that she was authorized to accept service and does not know what that means. She did not know what was in the envelope and she told the person that she was not authorized to accept anything on behalf of Peacock. As the office manager for Rental One, she is not permitted to open the mail or any packages for anyone other than Rental One, especially items addressed to Peacock. He generally reviews those items when he stops by the business from time to time. When Peacock was informed of the package, he inquired who left it, and directed that it be sent to the attorney for review and handling. On the same day Fant told Peacock about the package, he instructed her to contact the attorney for instructions on forwarding it to him. Once she received the instructions to forward the documents to the attorney, she opened the package and faxed it to the attorney as requested.

Peacock presented an affidavit in which he states he is the owner and president of Pleasant Grove Properties, Inc. He also has an interest in several other companies including Rental One, LLC located in Taylors, SC. He received word from Fant on March 20, 2014 that someone came to the Taylors location and asked her to sign for an envelope that was sealed with packing tape addressed to David Peacock. Upon inquiry, Fant told Peacock that a private investigator delivered the envelope. Peacock understood that the investigator was also a process server. Peacock contacted an attorney and made arrangements to have the contents of the package faxed for his review. The attorney contacted Peacock after receiving the fax and informed him of the Summons and Complaint, which had been filed on November 1, 2013. The attorney also informed Peacock of the default judgment against Defendant in the amount of \$12,930. Peacock asserts that he was never served with the Summons and Complaint and does not understand the affidavit of service on Teresa Fant, the office manager for Rental One, LLC, when he is the registered agent for Pleasant Grove Properties in Greer, SC. Peacock also asserts

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that his attorney tells him the corporation has a meritorious defense to the lawsuit and perhaps a valid counterclaim against Plaintiff.

In opposition to Defendant's motion and affidavits, Plaintiff submitted various exhibits. The exhibits contain letters dated September 17, 2013 addressed to Peacock notifying him of the claims of Plaintiff. These letters were sent certified mail, return receipt requested, and addressed to Peacock at the following addresses: a post office box in Greer; 1425B S. Buncombe Road in Greer; and 4394 Wade Hampton Blvd. in Taylors. All letters addressed to the Greer addresses were returned as either unclaimed or unable to forward. The letter sent to 4394 Wade Hampton Boulevard addressed to "Pleasant Grove Properties, Inc. c/o David Peacock, President" was delivered. The receipt was signed by Teresa Fant.

Plaintiff also enlisted the assistance of a process server to serve Peacock personally at residences in Miramar Beach, Florida and in Duncan, South Carolina. Documents supporting these addresses indicate that Peacock resided in Duncan until November 4, 2011 and then he moved to Florida. Additionally, in January 2014, Plaintiff again attempted service upon Peacock by certified mail, return receipt requested, restricted delivery to the business addresses at 1425B S. Buncombe Road and the post office box in Greer, as well as 4394 Wade Hampton Boulevard in Taylors. The mail addressed to Wade Hampton Boulevard was returned unclaimed; the mail addressed to the post office box in Greer was returned as unclaimed, unable to forward; and the mail addressed to S. Buncombe Road in Greer was returned as unable to forward. The post office box to which mail was sent was the same address listed in the lease agreement amendment (executed June 2013) for Pleasant Grove Properties, Inc. for purpose of the lease. It appears that although there were businesses operating at Wade Hampton Boulevard and through the post office box, no one claimed the mail. The mail at S. Buncombe Road was returned as unable to forward which implies that there was no business at that address.

In its memorandum, Defendant requests that the default be set aside pursuant to Rule 55, SCRCF, and seeks relief from judgment under Rule 60, SCRCF. However, "once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCF." Sundown Operating Co., Inc. v. Intedge Industries, Inc., 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). "The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." Id. The "good cause" standard requires that the party seeking relief under Rule 55 provide an explanation for the

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default and give reasons why vacation of the default would serve the interests of justice. Once good cause is established then the court must consider the *Wham* factors: timing of the motion for relief; whether defendant has a meritorious defense; and the degree of prejudice to the plaintiff. *Id.* On the other hand, "Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.'" *Id.* Therefore, Rule 60 is a more stringent standard and is more difficult for a party to avoid a default after entry of judgment.

Defendant first argues under Rule 60(b)(4) that the judgment is void because it was not properly served thereby depriving the court of jurisdiction. 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.*

Plaintiff attempted to serve Defendant through its registered agent at the address listed with the Secretary of State. The mail was returned as unable to forward. The registered agent was not personally served at the location listed with the Secretary of State, but this does not defeat service. Defendant has the responsibility to keep the records updated. It is apparent by the return of the mail as unable to forward that Defendant did not maintain an office at that address and had not provided any forwarding address where mail could be delivered or business transacted. The Defendant's registered agent was not located at the address and no change of address or change in registered agent had been provided to the Secretary of State. The registered agent did not appear to physically reside in South Carolina. Service could not be accomplished at a post office box; both previous letters and the summons and complaint were returned as unclaimed.

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) (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)).

Based upon the affidavits presented, service was properly affected upon the corporation. Plaintiff sent the process server to the address at which the last mail addressed to the corporation was received - 4394 Wade Hampton Blvd, Taylors, SC. The person located at that address was Teresa Fant who had previously signed for mail addressed to Pleasant Grove Properties, Inc., c/o David Peacock, President. According to Fant's affidavit, she was asked to sign for a sealed envelope addressed to David Peacock. She states she did not know what was in the envelope or what it means to accept service. She did acknowledge that she regularly receives mail on behalf of Peacock but cannot open it and Peacock reviews the mail when he comes to the office. Several days after she received the package on February 3 or 4, she informed Peacock about the package and he directed what to do with it.

Peacock never states in his affidavit that Fant is not authorized to receive documents or mail on his behalf. His only challenge is that Fant is the office manager for Rental One, LLC a separate and distinct company from Pleasant Grove Properties. His affidavit also has some inconsistencies related to timing of events as compared to the affidavit of Fant. In light of all of the information presented by Plaintiff and Defendant regarding the attempts of service, the actual service and the subsequent events, I find the Affidavit of Service by the process server to be credible and Plaintiff's attempts to notify and serve Defendant to be more credible than the affidavits and arguments submitted by Defendant. Defendant was properly served and the judgment is not void.

Defendant asserts that the judgment should be set aside for mistake, inadvertence, surprise, or excusable neglect pursuant to Rule 60(b)(1). Defendant argues that the delay in the package and its contents being sent to the attorney for review was clearly the result of mistake, inadvertence, surprise or excusable neglect because the envelope received by Fant was addressed to Peacock and did not reflect that it pertained to Defendant. Additionally, Defendant asserts there was a delay between Fant and the attorney being able to communicate about the package. The attorney asserts that within 6 days of receiving the documents he learned of the default judgment and began preparing the motion.

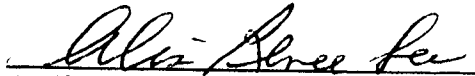
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However, Defendant fails to establish a factual basis for mistake or surprise. There is no claim of any mistake by Defendant and there is no evidence of any surprise as Defendant was aware Plaintiff had hired an attorney to collect the commission based upon the letter sent in September 2013. There is also no argument about inadvertence.

Defendant then must assert excusable neglect. According to Defendant's own documents and arguments, the documents were received by Fant on February 3 or 4 and placed on Peacock's desk. According to Fant's affidavit, she informed Peacock of the documents within a few days. At that point, there was still time to answer to complaint. However, according to Peacock, it was March 20 when he received the information from Fant. The attorney argues that within 6 days of receiving the documents he learned of the March 31, 2014 judgment and prepared the motion which was filed on April 4, 2014. The purported reason for excusable neglect seems to be that it took time for to get the documents to the attorney for his review. Such a delay is not a basis to set aside a judgment. See Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894 (2011) (Party has a duty to monitor the progress of his case and the lack of familiarity with legal proceedings is unacceptable.).

For the foregoing reasons, Defendant Pleasant Grove Properties, Inc.'s Motion to Set Aside the Default Judgment is **DENIED**.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
July 22, 2014

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STATE OF SOUTH CAROLINA

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

JUDGMENT IN A CIVIL CASE

COUNTY OF GREENVILLE

PAUL D. WICKENS
SIMER

CASE NO: 2013CP2305891

IN THE COURT OF COMMON PLEAS

2014 SEP 19 PM 4 27

NAI Earle Furman LLC vs. Pleasant Grove Properties Inc

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:

Paul S. Landis Fayssoux Law Firm, PA P.O. Box
10207 Greenville, SC 29603

Jonathan P Whitehead 410 E. Butler Rd., Ste. E.
Mauldin, SC 29662

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

STATE OF SOUTH CAROLINA)
 COUNTY OF GREENVILLE)
 IN THE COURT OF COMMON PLEAS)
 THIRTEENTH JUDICIAL CIRCUIT)

FILED - CLERK OF COURT
 GREENVILLE CO. S.C.
 PAUL B. WICKENSIMER

NAI Earle Furman, LLC,)
 2014 SEP 19 PM 4 27) Civil Action No.: 2013-CP-23-05891

Plaintiff,)
)
 v.)
)
 Pleasant Grove Properties, Inc.,)
)
 Defendant.)

ORDER

This matter comes before the Court on a Motion to Reconsider, Alter or Amend. A hearing on Defendant's Motion for Relief from Judgment was held on May 23, 2014. Thereafter, an Order was signed on July 22, 2014 and filed July 23, 2014 denying Defendant's motion. Defendant filed a Motion to Reconsider, Alter or Amend on August 4, 2014, and a copy was received in this office on the same day.

Defendant contends two reasons why the Court should reconsider its July 22 Order. First, Defendant argues that the default judgment is void because Defendant was not properly served, and therefore the Court lacked jurisdiction. Defendant reiterates its argument that service was never properly affected by mail or personal service on the registered agent. This Court found in its Order that service was proper on Teresa Fant, an employee who had the apparent authority to receive service of process because of her position as an officer manager in one of David Peacock's, the registered agent's, companies and the process server's statement that Fant stated she was authorized to accept service. Defendant claims that Fant never made such a statement, that Fant was not employed by the Defendant company, and that the case law the Court relied upon is distinguishable from the present facts. The Court considered all of these arguments in making a ruling in its July 22 Order. The Court weighed the credibility of the affidavits submitted by both Plaintiff and Defendant 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). Therefore, Defendant has not provided

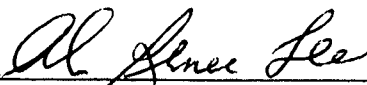
any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

Defendant constantly points out in its motion that Plaintiff did not follow exactly the rules to effect proper service of process. However, “[e]xacting compliance with the rules is not required to affect service of process.” *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Plaintiff made numerous efforts to serve Defendant in every way possible before serving Fant. Plaintiff cannot be expected to never serve Defendant because Defendant has made being served overly burdensome or difficult. When Plaintiff encountered a person who had the apparent authority to accept service of process, it is reasonable that it affected service in this manner.

Second, Defendant argues that the default judgment should be set aside for mistake, inadvertence, surprise, or excusable neglect. Defendant states that even if service was proper, mistake or surprise exists because Fant did not know what was inside the package containing the Summons and Complaint and did not open it. The failure to open the contents and read the documents does not amount to surprise or mistake. The Court does not find that Defendant’s reason is sufficient good cause to set aside the default judgment. Again, Defendant has not provided 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.

Accordingly, this Court hereby **DENIES** Plaintiff’s Motion to Reconsider, 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