

6
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2013-CP-23-05891

NAI Earle Furman, LLC,

Respondent,

v.

Pleasant Grove Properties,
Inc.,

Appellant.

RECORD ON APPEAL

Jonathan P. Whitehead
410 E. Butler Rd., Suite E.
Mauldin, South Carolina 29662
(864) 561-8011
Attorney for Appellant

Paul S. Landis
209 E. Washington Street
Greenville, South Carolina 29601
(864) 233-0445
Attorney for Respondent

RECEIVED

APR 20 2015

SC Court of Appeals

INDEX

I. ORDERS

1. Order of July 23, 2014.....1
2. Order of September 19, 2014.....9

II. PLEADINGS

1. Summons and Complaint filed November 1, 2013.....16
 - Exhibit A to Complaint.....24
 - Exhibit B to Complaint.....27
 - Exhibit C to Complaint.....29
 - Exhibit D to Complaint.....31
2. Affidavit of Service filed January 31, 2014.....36
3. Affidavit of Default filed March 18, 2014.....37
4. Notice of Motion and Motion for Default filed March 31, 2014.....39
5. Order of Default Judgment entered March 31, 2014.....42
6. Motion to Set Aside Default and for Relief from
Default Judgment filed April 4, 2014.....44
7. Affidavit of Teresa Fant filed April 8, 2014.....47
8. Affidavit of David Peacock filed April 8, 2014.....49
9. Answer and Counterclaims filed April 8, 2014.....52
 - Exhibit A to Answer and Counterclaims.....61
10. Certificate of Service by Mail filed May 20, 2014.....78
11. Memorandum in Support of Defendant's Motion for
Relief from Judgment filed May 20, 2014.....79
 - Exhibit 1 to Motion for Relief.....92

Exhibit 2 to Motion for Relief.....	94
Exhibit 3 to Motion for Relief.....	97
Exhibit 4 to Motion for Relief.....	101
12. Notice of Motion and Motion to Reconsider, Alter or Amend and Memorandum in Support filed August 4, 2014.....	103
Exhibit A to Motion to Reconsider, Alter or Amend.....	119
13. Certificate of Service by Mail filed August 6, 2014.....	128
14. Affidavit of Service filed August 6, 2014.....	129
15. Notice of Appeal dated October 22, 2014.....	13
16. Proof of Service of Notice of Appeal dated October 22, 2014.....	15

III. MOTION HEARING TRANSCRIPT

1. Caption, and cover sheet of Motion Hearing Transcript.....	130
2. Motion hearing transcript: Argument/discussion of Mr. Jonathan P. Whitehead, Counsel for Defendant/Appellant.....	134-138
3. Motion hearing transcript: Argument/discussion of Mr. Paul S. Landis, Counsel for Plaintiff/Respondent.....	138-154
4. Motion hearing transcript: Rebuttal argument/discussion of Mr. Jonathan P. Whitehead, Counsel for Defendant/Appellant.....	154-157
5. Motion hearing transcript: Certificate of Reporter.....	159

IV. EXHIBITS

1. Exhibits submitted by Plaintiff.....	160-161
Copy of letter from NAI Earle Furman, LLC to Dave Peacock Pleasant Grove Properties dated August 6, 2013.....	162
Copies of letters from Fayssoux Law Firm to Pleasant Grove Properties, Inc. c/o David Peacock dated September 17, 2013 Mailed Certified Mail to three (3) separate addresses.....	167-179

Copy of Memorandum for Service of Process on Defendant at 4394 Wade Hampton Blvd. dated November 4, 2013.....	180
Copy of Email to Emerald Coast Protective Services for Service on Mr. Peacock’s “Primary Residence” in Miramar Beach, FL.....	181
Copy of Email updating local process sever to attempt service at Defendant’s home in Duncan, SC.....	184
Copy of letters for service of process of the Summons and Complaint dated January 15, 2014 mail Certified mail, return receipt requested, restricted delivery to three (3) separate addresses.....	186-194
Affidavit of Service dated January 21, 2014.....	195
Supporting documentation.....	196-199
V. CERTIFICATE OF COUNSEL.....	200

FORM 4

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

FILED-CLERK OF COURT
GREENVILLE CO. SC
PAUL B. GREEN
2014 JUL 12 PM 1:21

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.**

7/23/2014

Circuit Court Judge

Judge Code

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

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 nearing 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

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMER
2014 JUL 23 PM 12 17

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,

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

encl
#2

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, SCRPC, and seeks relief from judgment under Rule 60, SCRPC. However, "once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC." 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

and
#3

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

ad
#4

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.

and
#5

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

af
86

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2013CP2305891

FILED-CLERK OF COURT
GREENVILLE CO S.C.
AUL B WICKENSIMR
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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

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

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

NAI Earle Furman, LLC,

2014 SEP 19 PM 4 27

Civil Action No.: 2013-CP-23-05891

Plaintiff,

ORDER

v.

Pleasant Grove Properties, Inc.,

Defendant.

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

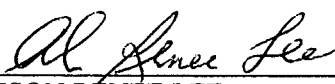
any material fact or principle of law that either has been overlooked or disregarded and further finds no error of law or facts not appropriately considered.

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 RENEE LEE
Presiding Judge

September 4, 2014
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No 2013-CP-23-05891

NAI Earle Fuiman, LLC,

Respondent,

v

Pleasant Grove Properties,
Inc ,

Appellant

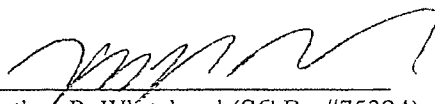
NOTICE OF APPEAL

Pleasant Grove Properties, Inc , Appellant, hereby appeals from the Order of the Honorable Alison Renee Lee signed July 22, 2014, and entered with the Greenville County Court of Common Pleas on July 23, 2014 Appellant received written notice of entry of the July 23, 2014, Order via U S Mail on July 24, 2014 Appellant timely filed a Motion to Reconsider, Alter or Amend on August 4, 2014 That Motion was subsequently denied by the Honorable Alison Renee Lee by Order signed September 4, 2014, and entered with the Greenville County Court of Common Pleas on September 19, 2014 Appellant received written notice of entry of the September 19, 2014, Order via U S Mail on September 23, 2014

A copy of the July 23, 2014, Order and September 19, 2014 Order from which appeal is

taken are provided herewith and incorporated as if attached hereto. Accordingly, Appellant herein files its Notice of Appeal of the hereinabove set forth Orders and certifies that this Notice of Appeal is filed within thirty (30) days of receiving notice of entry of the September 19, 2014, Order denying Appellant's timely Motion to Reconsider, Alter or Amend the July 23, 2014, Order.

October 22, 2014



Jonathan P. Whitehead (SC Bar #75324)
410 E. Butler Rd., Suite E
Mauldin, South Carolina 29662
(864) 561-8011
(864) 675-0205 (fax)
Attorney for Appellant

Other Counsel of Record
Paul S. Landis
P.O. Box 10207
Greenville, South Carolina 29603
(864) 233-0445
Attorney for Respondent

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No 2013-CP-23-05891

NAI Earle Furman, LLC,

Respondent,

v

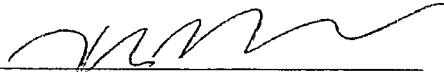
Pleasant Grove Properties,
Inc ,

Appellant

PROOF OF SERVICE

I certify that I have served Appellant's Notice of Appeal on NAI Earle Furman, LLC, by depositing a copy of it in the United States Mail, postage prepaid, on October 21, 2014, addressed to its attorney of record, Paul S Landis, P O Box 10207, Greenville, South Carolina, with copy also sent via facsimile, and that I have filed and served a copy of Appellant's Notice of Appeal on the lower court by depositing a copy of the same in the United States Mail, postage prepaid, on October 21, 2014, addressed to the Clerk of Court for Greenville County, Paul B Wickensimer, at 305 E North Street, Greenville, South Carolina 29601

October 22, 2014


Jonathan P Whitehead (SC Bar#75324)
410 E Butler Rd , Suite E
Mauldin, South Carolina 29662
(864) 561-8011
(864) 675-0205 (fax)
Attorney for Appellant

03-25-14, 10:12 AM, Rental One
STATE OF SOUTH CAROLINA

6/50205

6643891956

3/13

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
FILED-CLERK OF COURT
GREENVILLE, SC

NAI Earle Furman, LLC

PAUL S. LANDIS CIVIL ACTION COVERSHEET

Plaintiff(s)

2013 NOV 1 AM 3 53 2013-CP-23-05891

vs.

Pleasant Grove Properties, Inc.

Defendant(s)

Submitted By: Paul S. Landis
Address: PO Box 10207
Greenville, SC 29603

SC Bar #: 76120
Telephone #: 864-233-0445
Fax #: 864-233-4781
Other:
E-mail: paul@inaysouthcarolina.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint ☒ NON-JURY TRIAL demanded in complaint
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules
☐ This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 -CP-
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Injunctive Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstatement License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (610) | | |

Submitting Party Signature:

Date: October 29, 2013

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

MANDATED ADR COURTIERS

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition.
 - b. Requests for temporary relief,
 - c. Appeals
 - d. Post Conviction relief matters,
 - e. Contempt of Court proceedings,
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures, and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

NAI Earle Furman, LLC,)

C A No 2013-CP-23- 05891

Plaintiff.)

v)

SUMMONS

Pleasant Grove Properties, Inc.,)

Defendant)

TO THE DEFENDANT ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the COMPLAINT in this action a copy of which is attached hereto and herewith served upon you, and to serve a copy of your Answer to the Complaint upon the subscriber at 209 E Washington Street, Greenville, South Carolina 29601, within thirty (30) days after the service thereof, exclusive of the day of such service. If you fail to answer to the Complaint within this thirty (30) day period, the Plaintiff will apply to the Court for the relief demanded in the Complaint and judgment will be taken against you by default.

IN THE EVENT YOU ARE AN INFANT OVER FOURTEEN YEARS OF AGE OR AN IMPRISONED PERSON, you are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent you in this action within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

IN THE EVENT YOU ARE AN INFANT UNDER FOURTEEN YEARS OF AGE OR ARE INCOMPETENT OR INSANE, then you and the Guardian or Committee are further summoned and notified to apply for the appointment of a Guardian ad Litem to represent said infant under fourteen years of age or said incompetent or insane person within thirty (30) day after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff herein.

FAYSSOUX LAW FIRM, P A.



Paul S. Landis S.C. Bar # 76120
209 E. Washington Street, (29601)
PO Box 10207
Greenville, SC 29603
(864) 233-0445
(864) 233-4781 (Fax)
paul@fayssouxlaw.com

Attorney for Plaintiff

October 29, 2013
Greenville, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

NAI Earle Furman, LLC,)

C A No 2013 CP-23-0588

Plaintiff,)

vs)

COMPLAINT
(Non-Jury)

Pleasant Grove Properties, Inc ,)

Defendant.)

FILED-CLERK OF COURT
GREENVILLE, SC
PAID 2.00
MAY 1 2014

COMES NOW Plaintiff who, complaining of Defendant herein, would allege and show as follows

1 Plaintiff NAI Earle Furman, LLC is a limited liability company organized and existing under the laws of the State of South Carolina and has its principal place of business in Greenville County, South Carolina.

2 Upon information and belief, Defendant Pleasant Grove Properties, Inc is a corporation organized and existing under the laws of the State of South Carolina and is doing business in Greenville County, South Carolina

3 The facts and circumstances giving rise to this action occurred in Greenville County, South Carolina, and the demised premises that are the subject of this action are located in Greenville County

4 All parties, matters, and things herem are within the jurisdiction of this Court, and venue is proper in Greenville County, South Carolina Any conditions precedent to the filing of this action have been satisfied or excused

**FOR A FIRST CAUSE OF ACTION
(Breach of Contract / Collection of Lease Commission)**

5. On November 12, 2007, Defendant Pleasant Grove Properties, Inc (as Lessor) entered into a binding Commission Agreement ("Commission Agreement") with Plaintiff NAI Earle Furman, LLC (as Agent) concerning real property located at 1425-C South Buncombe Road in Greer, South Carolina ("Subject Premises") A copy of said Commission Agreement is attached as Exhibit A

6. Paragraph 1 of the Commission Agreement provides as follows

LESSOR SHALL PAY TO AGENT A COMMISSION TO BE CALCULATED AS FOLLOWS: A CASHED-OUT AMOUNT EQUAL TO SIX PERCENT (6%) OF THE AGGREGATE RENTS TO ACCRUE DURING THE INITIAL TERM OF THE NEW LEASE AS WELL AS FOR ANY EXPANSION SPACE LEASED BY LESSEE COMMISSION OWED TO AGENT WILL BE FOR ANY ADDITIONAL BUILD OUT SQUARE FOOTAGE AND ANY NEW LEASE TERM WHICH HAS NOT ALREADY BEEN PAID FOR ON THE EXISTING +/- 10,500 SF LESSEE CURRENTLY OCCUPIES AND AGENT HAS ALREADY BEEN PAID FOR THE TOTAL OF SUCH COMMISSION TO BE PAID BY LESSOR TO AGENT UPON EXECUTION OF THE NEW LEASE AGREEMENT.

7 Paragraph 2 of the Commission Agreement provides as follows:

IN THE EVENT THIS LEASE IS RENEWED OR EXTENDED OR A NEW LEASE IS ENTERED INTO BETWEEN THE LESSOR OR LESSEE, THEN IN EITHER OR [SIC] SAID EVENTS LESSOR SHALL PAY TO AGENT, AS FURTHER COMPENSATION A CASHED-OUT [SIC] EQUAL TO THREE PERCENT (3%) OF ANY EXTENSIONS OR RENEWALS PAYABLE UPON EXECUTION OF SUCH

8 On February 9, 2008, Pleasant Grove Properties, Inc and Schmolz and Bickenbach USA, Inc entered into a Lease Agreement for the Subject Premises In Paragraph 36 of said Lease Agreement, Defendant agreed to pay a commission to NAI Earle Furman, LLC upon execution of the Lease Agreement and upon the execution of any extensions of the same

9 On May 31, 2013, Pleasant Grove Properties entered into a Lease Amendment with its tenant, Schmolz & Bickenbach Said Lease Amendment constituted an extension of the

February 9, 2008 Lease Agreement and, pursuant to the Lease Agreement, Lease Amendment, and Commission Agreement, Defendant was obligated to pay a commission of Twelve Thousand and no/100 Dollars (\$12,600 00) to Plaintiff upon execution of the Lease Amendment.

10 Plaintiff submitted Invoice No. 5750 to Defendant on June 18, 2013 in the amount of \$12,600 00 for the commission due. Said Invoice was payable upon receipt. A copy of said Invoice is attached as Exhibit B

11 In breach of the parties' agreement, Defendant failed to pay the commission owed to Plaintiff. In violation of the parties' agreement, Defendant attempted to pay installments of \$210 00, but Plaintiff rightfully rejected the same

12 By way of letter dated August 6, 2013, Plaintiff demanded payment of the full commission on or before August 21, 2013, but Defendant failed or refused to pay the same. A copy of Plaintiff's demand letter is attached as Exhibit C

13 By way of letter dated September 17, 2013, Plaintiff, through undersigned counsel, again demanded payment in full on or before September 27, 2013. Defendant again failed or refused to pay the same. A copy of said demand letter is attached as Exhibit D

14 In spite of Plaintiff's demands for payment, Defendant has, without justification, failed or refused to pay the full commission due in the amount of \$12,600 00.

15 As a direct and proximate result of Defendant's breach of contract, Plaintiff has sustained damages in the amount of \$12,600.00 plus attorney's fees and the costs of this action

WHEREFORE, Plaintiff prays for a judgment against Defendant in the amount of Twelve Thousand Six Hundred and no/100 Dollars (\$12,600.00), plus attorney's fees, the costs of this action, and such other and further relief as this Honorable Court deems just and proper

FAYSSOUX LAW FIRM, PA



Paul S. Landis S.C. Bar No 76120
209 E Washington Street (29601)
P O Box 10207
Greenville, SC 29603
(864) 233-0445
(864) 233-4781 (Fax)
paul@fayssoulaw.com
Attorney for Plaintiff

October 27, 2013
Greenville, South Carolina

NAI Earle Furman, LLC v Pleasant Grove Properties, Inc

EXHIBIT A

Commission Agreement

COMMISSION AGREEMENT

THIS AGREEMENT, made this 12th day of November, 2007, by and between Pleasant Grove Properties (hereinafter called "Lessor") and NAI Earle Furman, LLC (hereinafter called "Agent")

WITNESSETH:

WHEREAS, Pleasant Grove Properties (Lessor) and Schmolz & Bickenbach (Lessee) are negotiating to enter into a new Lease agreement which would include a built out expansion of the current +/- 10,500 sf building which Lessee occupies located at 1425 B South Buncombe Rd in the city of Greer, in the state of South Carolina.

WHEREAS, Lessor recognizes that valuable services are being rendered by the Agent in securing the said Lease Agreement

NOW, THEREFORE, in consideration of and in compensation for services being rendered by the agent in securing the aforesaid Lease Agreement, the parties hereto do agree

- 1 Lessor shall pay to Agent a commission to be calculated as follows: A cashed-out amount equal to six percent (6%) of the aggregate rents to accrue during the initial term of the new Lease as well as for any expansion space leased by Lessee. Commission owed to Agent will be for any additional built out square footage and any new lease term which has not already been paid for on the existing +/- 10,500 sf Lessee currently occupies and Agent has already been paid for. The total of such commission to be paid by Lessor to Agent upon execution of the new Lease Agreement.
- 2 In the event this Lease is renewed or extended or a new Lease is entered into between the Lessor or Lessee, then in either or said events, Lessor shall pay to agent, as further compensation a cashed-out equal to three percent (3%) of any extensions or renewals payable upon execution of such.
- 3 In the event of a sale or an assignment of the demised premises, Lessor agrees to secure a written agreement whereby such Purchaser or Assignee assumes the obligation of payment to NAI Earle Furman, LLC of all fees due, failing in which such obligation shall become immediately due and payable, in full, by the Lessor named herein.
- 4 This agreement shall inure to the benefit and be binding upon the parties hereto their respective transferees, representatives, successors, heirs or assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first written above

WITNESS:

C. S. [Signature]

LESSOR: Pleasant Grove Properties, Inc

By: [Signature]Print Name: DAVID PEACOCKTitle: PRESIDENTDate: 11-13-2007

WITNESS:

[Signature]

AGENT: NAI Eagle Forum, LLC

By: [Signature]Print Name: Gracie HuntTitle: AgentDate: 11-13-07

NAI Earle Furman, LLC v Pleasant Grove Properties, Inc

EXHIBIT B

Invoice

NAI Earle Furman, LLC

Commercial Real Estate Services, Worldwide

101 E. Washington Street, Ste 400
Greenville, SC 29601

Invoice

DATE	INVOICE #
6/18/2013	5730

BILL TO
Rental One Equipment Solutions Attn: Dave Peacock 4394 Wade Hampton Blvd Taylors, SC 29687

SUBJECT PROPERTY
1425 C S. Buncombe Rd

		TERMS	BROKER
		Due upon receipt	JGH
DESCRIPTION		AMOUNT	
Total Commission Due		12 600 00	
Lessor: Pleasant Grove Properties, Inc. Lessee: Schmolz & Bickenbach Square feet: 16,800 Term: 60 months Rate: 3% Total Lease Volume \$420,000			
Total		\$12,600 00	

(864) 232-9040 Office / (864) 235-4300 Fax
 PJ BASE VISIT US AT www.NAIEarleFurman.com

NAI Earle Furman, LLC v. Pleasant Grove Properties, Inc

EXHIBIT C

Demand Letter dated August 6, 2013



Commercial Real Estate Services, Worldwide

tel 864 232 9040
fax 864 235 4300
www.naiearlefurman.com

101 E. Washington St
Suite 400
Greenville SC 29601

August 6, 2013

Dave Peacock
Pleasant Grove Properties
PO Box 2103
Greer, SC 29652

Dave,

We are in receipt of the \$210.00 check, however, this amount is insufficient and unacceptable. Pursuant to the commission agreement date November 12, 2007 between NAI Earle Furman, LLC and Pleasant Grove Properties, Inc. Paragraph 2 states that the commission for any renewal will be a 3% cashed out value based on the volume of the lease at the time of execution.

It is again stated in the lease between Pleasant Grove Properties, Inc. and Schmolz & Bickenbach USA, Inc. dated February 9, 2008, Paragraph 36 that 3% of the total value of the lease is to be paid at execution of the lease renewal.

We have enclosed the following items:

- A revised invoice for 3% of the total lease renewal volume of \$420,000, the amount due is \$12,600.00
- Commission Agreement dated November 12, 2007
- Lease Agreement dated February 9, 2008
- Lease Amendment dated May 31, 2013
- The check we received from Pleasant Grove Properties, Inc. in the amount of \$210.00

The enclosed invoice is past due and payable immediately, please remit payment before August 21, 2013.

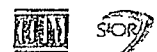
Sincerely,

NAI Earle Furman, LLC

Grice Hunt

JGH/wec

Individual Member of



Build on the power of our network Over 375 offices worldwide www.naiglobal.com

NAI Eric Furman, LLC v. Pleasant Grove Properties, Inc.

EXHIBIT D

Demand Letter dated September 27, 2013

JAMES W. FAYSSOUX, SR.
JAMES W. FAYSSOUX, JR.



PAUL S. LANDIS
T. HUNT RUD

September 17, 2013

VIA CERTIFIED MAIL

Pleasant Grove Properties, Inc.
c/o David Peacock, President
4394 Wade Hampton Blvd
Taylors, SC 29687

Pleasant Grove Properties, Inc.
c/o David Peacock, President
P.O. Box 2103
Greer, SC 29652

Pleasant Grove Properties, Inc.
c/o David Peacock, Registered Agent
1425B S Buncombe Road
Greer, SC 29651

RE. Commission due to NAI Earle Furman, LLC
Subject Premises - 1425C S Buncombe Road

Dear Mr. Peacock:

This letter is to advise you that I have been engaged by NAI Earle Furman, LLC for the purpose of collecting a commission that is due by virtue of a Lease Amendment dated May 31, 2013. As you are aware, Pleasant Grove Properties, Inc. was obligated through its Commission Agreement with my client to pay the total commission upon execution of the new lease extension agreement. In spite of its obligation, Pleasant Grove Properties has submitted two payments in the amount of \$210.00, which were not in compliance with the Commission Agreement and have therefore been rejected. The full commission is overdue and remains unpaid.

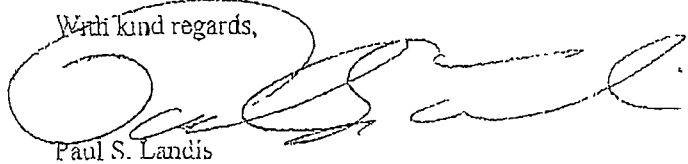
I have attached a copy of Invoice #5750 in the amount of \$12,600.00 which was submitted to you for payment on or about June 18, 2013. My client has made subsequent demands for payment which have been unsuccessful in resolving this matter without my assistance.

Accordingly, please allow this to serve as a final notice to you, prior to litigation, that the total commission of \$12,600 must be paid on or before September 27, 2013. If the

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864.233.0445 • 864.233.4781 FAX • WWW.FAYSSOUXLAW.COM

commission is not paid in full by that date, we will institute litigation without further notice and will pursue all remedies available to collect the commission due

With kind regards,

A handwritten signature in dark ink, appearing to read 'Paul S. Landis', written over a large, light-colored oval shape.

Paul S. Landis

Enclosure (as stated)

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

THIRTEENTH JUDICIAL CIRCUIT

NAI Earle Furman, LLC,)

C A No - 2013-CP-23-0589

Plaintiff,)

vs)

Pleasant Grove Properties, Inc ,)

Defendant)

VERIFICATION

FILED-CLERK OF COURT
GREENVILLE SC
PAUL B. VIOGEE
2014 NOV 1 AM 8 53

PERSONALLY APPEARED BEFORE ME, Ford H. Borders, who, after being first duly sworn, deposes and states as follows:

1. My name is Ford H. Borders, and at all times relevant to this action I was, and am currently, Principal and Broker with Plaintiff NAI Earle Furman, LLC

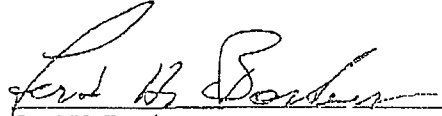
2 I have personal knowledge of the debt owed by Defendant Pleasant Grove Properties, Inc which is the subject of the above-captioned action and the allegations contained within the Complaint. I am fully competent to make this affidavit

3. I hereby verify that, to the best of my personal knowledge, the allegations contained in the Complaint in this action are true and accurate

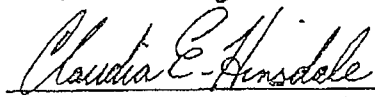
4 Defendant currently owes the principal sum of Twelve Thousand Six Hundred and no/100 Dollars (\$12,600 00) to Plaintiff

5. In spite of demands for payment of the same, the aforementioned sum is still due to Plaintiff by Defendant

FURTHER AFFIANT SAYETH NOT.


Ford H. Borders

SWORN TO AND SUBSCRIBED before me
This 29th day of October, 2013



Notary Public for South Carolina

My commission expires _____ Claudia E. Hinsdale
My Commission Expires
October 24, 2017

STATE OF SOUTH CAROLINA,)
COUNTY OF GREENVILLE)
NAI Earle Furman, LLC)
Plaintiff(s))
vs.)
Pleasant Grove Properties, Inc.)
Defendant(s).)

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL WICKHAMER
2014 JAN 31 PM 1:36
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
AFFIDAVIT OF SERVICE
FILE NO: 2013-CP-23-05891

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn
says that (s)he served the Summons and Complaint in this action
(Describe document(s) served)
on David Peacock, as Registered Agent via Teresa Fant - Secretary and states
authorized to Accept Service, by delivery to
(Name of party served)
☒ David Peacock, as Registered Agent via Teresa Fant - Secretary and states
authorized to Accept Service personally;
(Name of party served)
☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)
and a person of discretion residing at the residence of the party served;

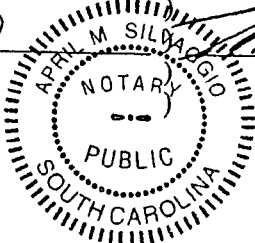
David Peacock, as
Registered Agent via
Teresa Fant - Secretary
and states authorized to
☒ Accept Service, the Secretary of Pleasant Grove Properties, Inc.
(Name of person served) (Title) (Name of corporate party served)
and leaving with ☐ (him) ☒ (her) a copy at 4394 Wade Hampton Blvd
(Street address)
in Taylors Greenville County, South Carolina
(City or Town) County
on January 21, 2014 at 12:51 PM o'clock

that deponent knows the person so served, and that deponent is not a party of this action, is not less
than eighteen (18) years of age and has no interest therein or connection therewith.

☐ Unable to locate and serve the above process on the defendant after diligent efforts to do so.
The process is returned unexecuted

Sworn to and Subscribed before me
this 21st day of January, 2014.

[Signature]
Notary Public for South Carolina



[Signature]
Signature of Deponent

Post Office Box 641
Mauldin, SC 29662
(864) 907-3590

SCCA 402 (Revised 12/07)
My Commission Expires
February 26, 2020

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
FILED-CLERK OF COURT)
COUNTY OF GREENVILLE GREENVILLE CO. S.C. THIRTEENTH JUDICIAL CIRCUIT
PAUL B WICKENSIMER)
NAI Earle Furman, LLC,) Case No.: 2013-CP-23-05891
2014 MAR 18 AM 8 59)

Plaintiff,

AFFIDAVIT OF DEFAULT

vs.

Pleasant Grove Properties, Inc.,

Defendant.

SCANNED

PERSONALLY APPEARED BEFORE ME, Paul S. Landis, who, after being first duly sworn, states as follows that:

ENTERED COMPUTER
He is the attorney for the Plaintiff in the above-captioned action. The original Summons and Complaint was filed in the Office of the Clerk of this Court on November 1, 2013 and Defendant was duly served by and through, Teresa Fant, Secretary to the registered agent, David Peacock, with a copy of the Summons and Complaint on January 21, 2014 as will appear by the Affidavit of Service which was previously filed in this action. Plaintiff's counsel has not received an Answer or responsive pleadings of any kind, and upon information and belief, no Answer, motion, other pleading, or Notice of Appearance has been made by or on behalf of the Defendant. Accordingly, the Defendant is in default.

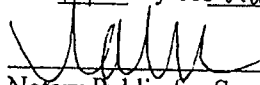
Plaintiffs hereby request that the Clerk of Court make an entry of Defendant's default in the above-captioned action

FURTHER AFFIANT SAYETH NOT.



Paul S. Landis / S.C. Bar No. 76120
209 E. Washington Street (29601)
P.O. Box 10207
Greenville, SC 29603
(864) 233-0445
(864) 233-4781 (Fax)
paul@fayssouxlaw.com
Attorney for Plaintiff

SWORN TO AND SUBSCRIBED before me
this 14 day of March, 2014.



Notary Public for South Carolina

My commission expires: 11/21/2023

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

NAI Earle Furman, LLC

☒ Plaintiff

v

Pleasant Grove Properties, Inc.

☐ Defendant

IN THE COURT OF COMMON PLEAS

CASE NO.

2013-CP-23-5891

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 MAR 31 PM 3:00

WLe

Plaintiff's Attorney:

Paul S. Landis, Bar No. 76120

Address:

PO Box 10207, Greenville, SC 29603

phone: 864-233-0445 fax: 864-233-4781

e-mail: paul@fayssouxlaw.com other:

Defendant's Attorney

, Bar No.

Address:

phone:

fax:

e-mail:

other:

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed:

Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

March 17, 2014

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT:

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Collected by: William L. Klykas

Date Filed:

3/31/14

☒ MOTION FEE COLLECTED: \$25.00

☐ CONTESTED - AMOUNT DUE:

check #4983

Fayssoux Law Firm PA

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

C.A. No.: 2013-CP-23-05891

NOTICE OF MOTION AND
MOTION FOR DEFAULT JUDGMENT
(Sum Certain)

ENTERED COMPUTER

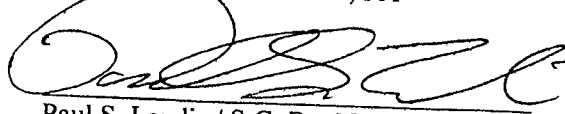
FILED - CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS
2013 MAR 31 PM 3:08

YOU WILL PLEASE TAKE NOTICE that Plaintiff hereby moves this Honorable Court for an Order entering Judgment for Plaintiff on all causes of action in this matter. Plaintiff is seeking an award of sum-certain damages and attorney's fees, and notice of the relief sought is hereby provided pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. This Motion is supported by the Clerk's Entry of Default, the Affidavit of Default, and Plaintiffs' Complaint accompanied by the Affidavit and Verification of Ford H. Borders. The aforementioned documents have been filed with the Clerk of Court, and copies of the same are attached.

Based upon the Complaint and accompanying Affidavit and Verification of Ford H. Borders, which have been filed in this matter, Plaintiff moves this Court for an entry of judgment against Defendant for the sum of Twelve Thousand Six Hundred and NO/100 (\$12,600.00) Dollars plus costs in the amount of Three Hundred Thirty and NO/100 (\$330.00). Accordingly, Plaintiff moves this Court to enter judgment in its favor in the total amount of Twelve Thousand Nine Hundred Thirty and NO/100 (\$12,930.00) Dollars

I SO MOVE.

FAYSSOUX LAW FIRM, PA



Paul S. Landis / S.C. Bar No. 76120

209 E. Washington Street (29601)

P.O. Box 10207

Greenville, SC 29603

(864) 233-0445

(864) 233-4781 (Fax)

paul@fayssouxlaw.com

March 17, 2014
Greenville, South Carolina

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

C.A. No.: 2013-CP-23-05891

ORDER

ENTERED COMPUTER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2014 MAR 31 PM 3 08

WLB

The above-captioned matter was before this Court for consideration of Plaintiff's Motion for Default Judgment.

Based upon the Clerk's Entry of Default, the Affidavit of Default, Plaintiff's Complaint, and the Affidavit and Verification of Ford H. Borders, I make the following findings of fact and conclusions of law:

1. Defendant was served with a Summons and Complaint in this matter on January 21, 2014.

SCANNED

2. Based upon the Affidavit of Default submitted by Plaintiff's counsel and review of the case file, I find that Defendant has failed to answer or otherwise plead in a timely manner.

3. I find that Defendant is in default and that the allegations contained in Plaintiff's Complaint are deemed admitted as true.

4. Based upon the Complaint, along with the Affidavit and Verification of Ford H. Borders, I find that a sum certain has been provided by Plaintiff and that NAI Earle Furman, LLC is, entitled to a judgment in its favor in the amount of Twelve Thousand Nine Hundred Thirty and 00/100 (\$12,930.00).

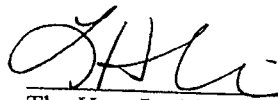
Verified

IT IS HEREBY ORDERED that judgment be entered in Plaintiff's favor in the total



amount of Twelve Thousand Nine Hundred Thirty and NO/100 (\$12,930 00).

IT IS SO ORDERED.



The Hon. Letitia H. Verdin
Circuit Court Judge
Thirteenth Judicial Circuit

This 30 day of March 2014
_____, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

FILED-CLERK OF COURT

GREENVILLE CO. S.C.

PAUL B. WICKENSIMMER

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-23-05891

NAI Earle Furman, LLC

vs

Pleasant Grove Properties, Inc.,

Defendant

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney Paul S. Landis, Bar No 76120 Address P O. Box 10207, Greenville, SC 29603 Phone 864-233-0445 Fax 864-233-4781 E-mail paul@fayssoulaw.com Other _____	Defendant's Attorney Jonathan P. Whitehead, Bar No 75324 Address: 410 E Butler Rd., Ste. E., Mauldin, SC 29662 Phone 864-561-8011 Fax 864-675-0205 E-mail jon@jwhiteheadlaw.com Other _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion Motion to Set Aside Entry of Default and for Relief from Default Judgment Estimated Time Needed <u>15 minutes</u> Court Reporter Needed ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee ☒ PAID - AMOUNT \$ _____ ☐ EXEMPT (check reason)	
☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter _____ ☐ Other _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other _____	
CLERK'S VERIFICATION Collected by _____ Date Filed _____ ☐ MOTION FEE COLLECTED \$ _____ ☐ CONTESTED - AMOUNT DUE \$ _____	

SCCA 233 (11/2003)

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

C.A. No.: 2013-CP-23-05891

NOTICE OF MOTION AND MOTION
TO SET ASIDE DEFAULT AND FOR
RELIEF FROM DEFAULT JUDGMENT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
APR 4 PM 4 38

TO: PLAINTIFF AND ITS ATTORNEY, PAUL S. LANDIS:

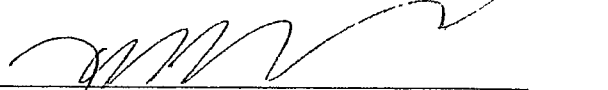
PLEASE TAKE NOTICE that the Defendant, Pleasant Grove Properties, Inc., will move, by counsel, within ten (10) days of service hereof, or as soon thereafter as counsel may be heard, in the Court of Common Pleas of Greenville County, South Carolina, for an Order setting aside entry of default, for good cause shown, in accordance with Rule 55(c) of the South Carolina Rules of Civil Procedure and for an Order for relief from the judgment by default entered against the Defendant on March 31, 2014, in accordance with Rules 60(b)(1) and (4) of the South Carolina Rules of Civil Procedure

In this case, the Defendant submits that good cause exists in that the Motion was filed within days of Defendant learning of the pendency of this action and entry of judgment by default, that Defendant has a meritorious defense and potential counterclaims to assert, and that there is no substantial delay that would frustrate the Plaintiff or justice in this matter if the requested relief were granted. Further, the Defendant submits that the relief requested herein is proper in that the judgment by default is void in that the Defendant was not afforded due process and/or, in the alternative, should the court find that the judgment by default is valid, relief is still

appropriate in that there exists mistake, inadvertence, surprise or excusable neglect such that the Court may relieve the Defendant from the judgment by default.

This motion will be based upon the pleadings, arguments of counsel, the statutory and common law of this state, and any other such Affidavit(s) or memorandum of law submitted at a later date

RESPECTFULLY SUBMITTED,



Jonathan P. Whitehead (S.C. Bar #75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E. Butler Rd , Ste. E
Mauldin, South Carolina 29662
(P) 864-561-8011
(F) 864-675-0205
Attorney for the Defendant

Mauldin, South Carolina
Dated. April 4, 2014

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
NAI Earle Furman, LLC,)
)
Plaintiff,)
)
vs)
)
Pleasant Grove Properties, Inc ,)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2013-CP-23-05891

AFFIDAVIT OF TERESA FANT

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENSIMER
2014 APR 8 PM 3 32

I, TERESA FANT, being duly sworn, do hereby depose, swear, and affirm as follows.

1 I am a citizen and resident of Anderson County, South Carolina, and I am employed by Rental One, LLC (hereinafter "Rental One"), as the Office Manager of its business office located at 4394 Wade Hampton Blvd , Taylors, South Carolina 29687.

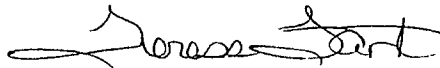
2 The owner of Rental One and my employer requested that I give this Affidavit concerning the receipt of a package from an individual who presented himself at the business office of Rental One, identified himself as Paul Silvaggio, and asked me if I would sign for an envelope that was sealed with packing tape and had David Peacock's name written on the outside To the best of my knowledge and memory, this occurred on or about February 3rd or 4th, 2014

3 I have been informed by Attorney Jonathan P Whithead that an Affidavit of Service was filed with the Greenville County Court of Common Pleas that provides that I stated that I was authorized to "Accept Service " This statement is absolutely untrue. Furthermore, I did not know what service means and still don't understand what was in the envelope I reiterated to the individual delivering the package that I was not authorized to accept anything on behalf of David Peacock

4. As the office manager of Rental One, I am specifically not permitted to open any mail and/or packages that are delivered and addressed to anyone other than Rental One, LLC, especially items addressed or sent to David Peacock. Mr. Peacock generally reviews any such items when he stops by the business office from time to time.

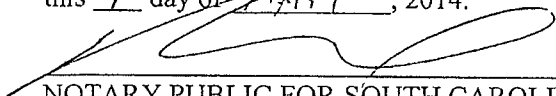
5. Several days after the above package was delivered, I mentioned the package to Mr. Peacock during one of our telephone conversations. He inquired as to who left the package, I informed him that the business card the individual left said "Private Investigator", he then informed me to send to Attorney Jonathan Whitehead for his review and handling.

6. On the same date I spoke with David Peacock I contacted Mr. Whitehead and asked how he wanted me to get the package to him. He informed that he wanted me to open package and fax to his office. I called David Peacock as asked if it was permissible for me to open and fax to Mr. Whitehead as he had requested. He responded by instructing me to do as Mr. Whitehead requested.

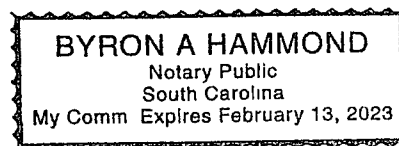


Teresa Fant

SWORN to and subscribed before me
this 4th day of April, 2014.



NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 2/15/23



STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
NAI Eaile Furman, LLC,)
)
Plaintiff,)
)
vs)
)
Pleasant Grove Properties, Inc ,)
)
Defendant)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2013-CP-23-05891

AFFIDAVIT OF DAVID PEACOCK

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL J. WICKENS
2014 APR 8 PM 3:28

I, DAVID PEACOCK, being duly sworn, do hereby depose, swear and affirm as follows

1 I am a citizen and resident of Walton County, Florida, and I am the President and Owner of Defendant Pleasant Grove Properties, Inc (hereinafter "Pleasant Grove") As such, I am duly authorized to give the herein Affidavit

2 In addition to Pleasant Grove, I own and/or have an interest in several other companies with principal offices located in Greenville and Spartanburg County, South Carolina One such company is Rental One, LLC ("Rental One"), which is located at 4394 Wade Hampton Blvd , Taylors, South Carolina 29687

3 On or about March 20, 2014, I received word from Teresa Fant, who I employee as the Office Manager for Rental One, that an individual stopped by the business and asked her to sign for an envelope that was sealed with packing tape and included my name handwritten on the outside

4 I asked her who delivered the package and she said the individual that delivered it left a business card that said he was a Private Investigator

5 I contacted attorney Jonathan P Whitehead to see if he was available to

see what the package contained being it was left by a Private Investigator, which as I understand also works as a process server

6 I called Ms Fant back and requested that she contact Mr Whitehead and see how he wanted it delivered

7 She called me back the day she contacted Mr Whitehead and said he wanted her to open and fax to him and wanted my approval to do so I informed her that I wanted her to do as Mr Whitehead wanted and to cooperate with him as requested

8 After Mr Whitehead received the fax he contacted me and informed me that it was a Summons and Complaint Mr Whitehead informed me that the Plaintiff had filed this action against Pleasant Grove on November 1, 2013 Although I was never served with a Summons or other Notice of this action, my attorney informed me that a Final Order from the Court had been filed on March 31, 2014, awarding the Plaintiff a Default Judgment against Pleasant Grove in the amount of \$12,930 00

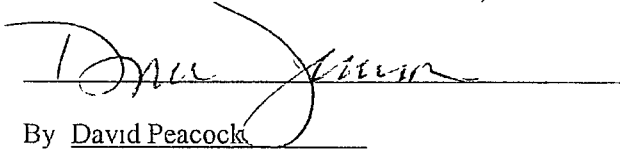
9 I always thought that the registered agent or their authorized representative had to be served with a copy of the Summons and Complaint when they were being sued My attorney tells me that an Affidavit of Service was filed in this case alleging that I was served as the registered agent of Pleasant Grove when the Summons and Complaint was delivered to Teresa Fant, my Office Manager for Rental One, LLC, which is a separate and distinct company from Pleasant Grove I do not understand how a judgment could have been obtained against my company, Pleasant Grove Properties, Inc , in a lawsuit in which I, as the registered agent, was not served with the Summons and Complaint or given any other notice

10 I understand from my attorney that I have a good faith and meritorious

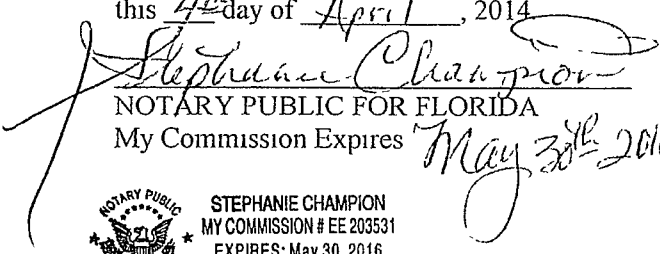
defense to the cause of action filed against me by the Plaintiff herein and that I may also have a valid counterclaim against the Plaintiff regarding the subject matter of the action. However, my attorney informs me that he cannot assert my meritorious defense and bring my counterclaim as long as the Final Order in this action remains valid.

11 I certainly do not think it is just or fair that I cannot now assert my defense and counterclaim against the Plaintiff because of an Order that was obtained in a lawsuit in which I was never afforded notice or proper service of process.

PLEASANT GROVE PROPERTIES, INC.


By David Peacock
Its President and Owner

SWORN to and subscribed before me
this 4th day of April, 2014


NOTARY PUBLIC FOR FLORIDA

My Commission Expires May 30th 2016



STEPHANIE CHAMPION
MY COMMISSION # EE 203531
EXPIRES May 30, 2016
Bonded Thru Budget Notary Services

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

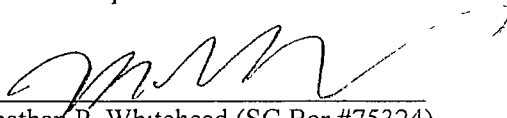
C.A. No.: 2013-CP-23-05891

SUMMONS

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B. WICKENSIMER
FILED-CLERK OF COURT
2014 APR 8 PM 3 33
PAUL B. WICKENSIMER

TO: PLAINTIFF, NAI EARLE FURMAN, LLC, BY AND THROUGH ITS
ATTORNEY OF RECORD, PAUL S. LANDIS:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the
COUNTERCLAIM herein, a copy of which is herewith served upon you, and to serve a copy of
your Answer to the said Complaint upon the subscriber at his office at 410 E Butler Rd , Ste E ,
Mauldin, South Carolina 29662, within thirty (30) days of the date hereof, exclusive of the day
of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff
will apply to the Court for the relief requested in the Complaint


Jonathan P. Whitehead (SC Bar #75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E Butler Rd , Ste. E
Mauldin, South Carolina 29662
P: 864-561-8011
F 864-675-0205
Attorney for Defendant

Date. 4/8/14
Mauldin, South Carolina

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

C.A. No.: 2013-CP-23-05891

ANSWER AND COUNTERCLAIM

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL B WICKENSINER
2014 APR 8 PM 3 33

The Defendant, answering the Complaint of Plaintiff, would respectfully allege and show unto this Honorable Court as follows:

For a First Defense
(General Denial)

1 Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, denied or otherwise explained.

2. Defendant is without knowledge or information sufficient to form an opinion as to the truth of the allegations set forth in paragraph 1 of the Complaint herein and therefore denies the same

3 Defendant admits paragraphs 2 and 3 of the Complaint herein

4 Defendant denies the allegations set forth in paragraph 4 of the Complaint herein and demands strict proof thereof.

5 Defendant admits paragraph 5 of the Complaint herein

6. Answering paragraphs 6 and 7 of the Complaint herein, Defendant admits the allegations contained in said paragraphs only to the extent that they are consistent with the content of the Commission Agreement dated November 12, 2007

7. Answering paragraph 8 of the Complaint herein, Defendant admits that it entered into a Lease Agreement dated February 9, 2008. Regarding paragraph 36 of that Lease Agreement, Defendant admits those allegations only to the extent they are consistent with the content of said Lease Agreement.

8. Answering paragraph 9 of the Complaint herein, Defendant admits only that it entered into a Lease Amendment with Schmolz & Bickenbach on May 31, 2013. Defendant denies the rest and remainder of the allegations set forth under paragraph 9 of the Complaint and demands strict proof thereof.

9. Answering paragraph 10 of the Complaint, Defendant admits the allegations contained in said paragraph only to the extent they are consistent with the invoice attached to the Complaint as Exhibit B. Defendant denies that commissions were due and that the same was payable upon receipt of the invoice.

10. Answering paragraph 11 of the Complaint, Defendant denies that it breached the parties' agreement and that a commission was due and demands strict proof of the same. Responding further, Defendant admits it attempted to pay installments in the amount of \$210.00 in order to compromise with the Plaintiff. Defendant denies that it violated the parties' agreement and demands strict proof thereof.

11. Answering paragraph 12 of the Complaint, Defendant admits only that a letter dated August 6, 2013, is attached to the Complaint as Exhibit C. Responding further, Defendant denies that any commissions were due and demands strict proof thereof.

12. Answering paragraph 13 of the Complaint, Defendant admits only that a letter dated September 17, 2013, is attached to the Complaint as Exhibit D. Responding further, Defendant denies that any commissions were due and demands strict proof thereof.

13 Defendant denies the allegations set forth under paragraphs 14 and 15 of the Complaint and demands strict proof thereof

14 Defendant denies that Plaintiff is entitled to any relief whatsoever and would request that the Complaint be dismissed with prejudice.

For a Second Defense
(Plaintiff's Breach of Duty of Loyalty and Lack of Good Faith)

15 Defendant reaffirms its earlier allegations as if repeated verbatim herein

16 Defendant would show that even if a commission were due, the same being denied but set forth herein for purposes of this defense, Defendant was justified in refusing to pay Plaintiff any commissions as a result of Plaintiff's breach of the duty of loyalty and lack of good faith

17 Defendant, upon information and belief, alleges that the Plaintiff and/or its agents solicited Defendant's tenant, Schmolz & Bickenbach (hereinafter "Tenant"), without Defendant's knowledge or consent, and attempted to show said Tenant other properties similar in nature to Defendant's property that were available for lease in the surrounding areas. Defendant alleges that it was engaged in negotiations with Tenant to enter into a lease extension and/or lease amendment at the time it discovered Plaintiff was acting in bad faith as hereinbefore described

18 Defendant alleges that such conduct as hereinabove described violated the duty of loyalty and good faith that existed in the agreement existing between Plaintiff and Defendant in that Plaintiff acted in bad faith and with a conflict of interest regarding its duties to Defendant as its agent in the leasing process.

For a Third Defense
(Rule 12(b)(6))

19 Defendant reaffirms its earlier allegations as if fully repeated verbatim herein

20. The Complaint should be dismissed for failure to properly state a viable cause of action against the Defendant.

For a Fourth Defense
(Estoppel)

21. Defendant reaffirms its earlier allegations as if fully repeated verbatim herein.

22 Defendant alleges and would show that the Plaintiff's claims are barred by the doctrine of estoppel in that Plaintiff claims commissions are owed for services it performed for the Defendant regarding procuring Schmolz & Bickenbach ("Tenant") for the Lease Amendment between Defendant and Tenant dated May 31, 2013.

23 Plaintiff alleges that commissions were due under the May 31, 2013 Lease Agreement by alleging that it was a continuation of the February 9, 2008, lease agreement existing between Defendant and Tenant. Specifically, Plaintiff alleges that such commission was provided for under paragraph 36 of the 2008 lease, as set forth under paragraph 8 of the Complaint. Defendant would show that the last paragraph of paragraph 36, on page 13 of the 2008 lease agreement, provides that "[a]gent [here, Plaintiff] is named as a party to this contract solely for the purpose of enforcing its rights under the paragraph [paragraph 36] and it is understood by all parties that Agent is acting solely in the capacity as Agent for Lessor (here, Defendant) "

24. Despite the fact that Plaintiff was supposed to act solely for Defendant, Plaintiff took steps to show Tenant other properties to the detriment of Defendant as opposed to continuing to represent Defendant's best interests in procuring Tenant for a lease amendment or

extension of the 2008 lease agreement between Defendant and Tenant. This conduct is contrary to Plaintiff's underlying claim that it is entitled to commissions due for the May 31, 2013 Lease Amendment existing between Defendant and Tenant

25 The Defendant alleges that any reasonable person would have interpreted Plaintiff's actions in showing other properties to Tenant to be indicative that Plaintiff had no intention of continuing to operate under the Commission Agreement and that Plaintiff considered the Commission Agreement to be void with respect to it being due a commission for any "lease amendment, lease extension or otherwise that may subsequently come to pass between Defendant and Tenant. Accordingly, Plaintiff should be estopped from coming back now claiming that it is responsible for procuring Tenant for purposes of being due a commission as a result of the May 31, 2013 Lease Amendment between Defendant and Tenant.

For a Fifth Defense
(Waiver)

26. Defendant reaffirms its earlier allegations as if fully repeated verbatim herein

27. Defendant alleges and would show that Plaintiff's claim is barred by the doctrine of waiver in that it failed to act as Defendant's "agent" when it showed other available properties to Tenant (as hereinabove described) and instead sat back in silence as Defendant actively negotiated the May 31, 2013, lease amendment between Defendant and Tenant. Plaintiff only came forward and claimed that a commission was due several weeks after Defendant handled all negotiations with Tenant concerning the new lease amendment.

For a Sixth Defense
(Equitable Defenses)

28. Defendant reaffirms its earlier allegations as if fully repeated verbatim herein

29 Plaintiff's cause of action against Defendant is barred by any and all remaining equitable doctrines available to Defendant, including, but not limited to, unclean hands, consent, condonation, and unjust enrichment

30 For these and other reasons, Plaintiff is not entitled to any recovery under the causes of action as set forth against Defendant in the Complaint.

For a Seventh Defense and By Way of a First Counterclaim
(Breach of Contract / Breach of the Duty of Good Faith and Fair Dealing)

31 Defendant reaffirms its earlier allegations as if fully repeated verbatim herein and only to the extent the same are not inconsistent herewith.

32 On November 12, 2007, Plaintiff and Defendant entered into a Commission Agreement wherein the Plaintiff was to serve as Defendant's Agent in procuring potential Tenants to occupy Defendant's building and property located at 1425-C South Buncombe Road, Greer, South Carolina. A copy of the Commission Agreement is attached as Exhibit A to the Complaint and shall be incorporated herein by reference

33 Defendant craves reference to the fee provisions of the Commission Agreement, as set forth under paragraphs 6 and 7 of the Complaint and incorporates the same herein by reference

34 Defendant would show that Plaintiff acted as Defendant's Agent under the Commission Agreement and subsequently received commissions or fees pursuant to the Commission Agreement as a result of a Lease dated February 9, 2008, between Defendant and Schmolz & Bickenbach USA, Inc ("Tenant"). A copy of said Lease is attached hereto as Exhibit A

35 Defendant would show that the last paragraph of paragraph 36, on page 12-13, of the 2008 Lease Agreement attached as Exhibit A provides that "[a]gent [here, Plaintiff] is named

as a party to this contract solely for the purpose of enforcing its rights under the paragraph [paragraph 36] and it is understood by all parties that Agent is acting solely in the capacity as Agent for Lessor (here, Defendant) ”

36. Defendant alleges and would show that the provisions set forth in the paragraphs under paragraph 36 of the 2008 Lease Agreement are directly related to the Commission Agreement that existed between Plaintiff and Defendant. Clearly, Plaintiff was to serve as Defendant's agent in the negotiating and procuring of Tenant for purposes of the 2008 Lease Agreement and any lease extensions or amendments thereof.

37. Defendant alleges that, under both the Commission Agreement and the Lease Agreement attached as Exhibit A, Plaintiff owed Defendant a duty to act in good faith and to deal fairly.

38. Defendant would show that towards the end of the lease term between Defendant and Tenant, Defendant discovered that Plaintiff and/or its agents were showing other available rental properties to Tenant as opposed to acting as agent of Defendant and attempting to procure a lease amendment or extension between Defendant and Tenant. Defendant would show that these other rental properties were in the same area as its property and were being offered at substantially lowered rates than its property.

39. Defendant alleges that these actions constituted a breach of contract on the part of Plaintiff as a result of their breaching the duty of good faith and fair dealing that are inherent in all contracts.

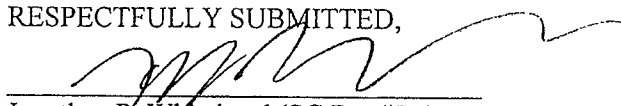
40. As a direct and proximate result of Plaintiff's breach of the duty of good faith and fair dealing with respect to the Commission Agreement, Defendant entered into a Lease Amendment with Tenant that provides for monthly rental payments substantially lower than

what Defendant would have received had Plaintiff acted in good faith. Accordingly, as a direct and proximate result of Plaintiff's actions, Defendant has sustained damages in an amount to be determined at trial.

WHEREFORE, having fully set forth its Answer to Plaintiff's Complaint and set forth a Counterclaim thereto, Defendant makes the following prayer for relief.

- A. For an Order dismissing the Plaintiff's Complaint with prejudice,
- B. For the costs of this action;
- C. For judgment against the Plaintiff for damages in an amount to be determined at the trial of this case and as a result of Plaintiff's breach of contract with the Defendant, and
- D. For such other and further relief as this Court deems just and proper

RESPECTFULLY SUBMITTED,



Jonathan P. Whitehead (SC Bar #75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E. Butler Rd., Ste. E
Mauldin, South Carolina 29662
P 864-561-8011
F 864-675-0205
Attorney for Defendant

Date: 4/8/14
Mauldin, SC

EXHIBIT A

**Lease Agreement dated February 9, 2008
between Pleasant Grover Properties, Inc. (“Lessor”)
and Schmolz & Bickenbach USA, Inc. (“Lessee”)**

**NAI EARLE FURMAN, LLC
101 E. WASHINGTON STREET, SUITE 400
GREENVILLE, SOUTH CAROLINA 29601**

**STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)**

LEASE

This Agreement is made the 9th day of February, 2008 between Pleasant Grove Properties, Inc. (hereinafter called "Lessor"), and Schmolz & Bickenbach USA, Inc. (hereinafter called "Lessee")

1. PREMISES

Lessor agrees to lease to Lessee and Lessee agrees to lease the premises situated in the City of Greer, County of Greenville, and State of South Carolina, (hereinafter called the "Premises"), and more specifically described as follows:

±16,800 SF building, ±6,300 SF of which will be an expansion of the existing ±10,500 SF facility to be built by Lessor and/or its designee located at 1425 C S. Buncombe Road and more specifically described on Greenville County Tax Map # 0528020110902

2. TERM

For a term of Five (5) year(s) beginning on the 1st day of August, 2008, and ending on the 31st day of July, 2013 (No easement for light or air is a part of the Premises)

3. RENTAL

Rent for the Premises, which Lessee agrees to pay, shall be at the yearly rate of \$104,475.00. Rent is payable in advance on the first day of each month, in equal monthly installments of \$8,706.25. First month's rent and security deposit which shall be equal to one month's rent are due at lease execution. Payment of monies due and owing as a result of this lease agreement that are not received by the 10th day of the month will be considered late payment upon which the Lessee shall be assessed a late payment penalty of 1% \$87 plus \$20 per day until paid current. These payments shall be considered additional rent.

4. USE

Premises shall be used for the purpose of Steel Tooling

Fabrication and no other. Lessee agrees not to use Premises for any illegal purposes or to violate any regulation of any governmental body or to create any nuisance or trespass to others.

5. TAXES

Throughout the term of this Lease, Lessor shall pay any and all real estate taxes, stormwater management fees and or sanitation charges payable on or with respect to the property, including land and building, as and when the same shall come due. Lessor shall use Lessor's best efforts to keep any tax increases on the real estate to a minimum (including the utilization of tax assessment appeal procedures where Lessor's attorney or tax advisor feel an appeal is well advised) Lessee shall pay an estimated portion of the tax bill each month, in addition to rent, and further agrees that the estimated portion may need to be adjusted each year based on the previous year's taxes.

6. INSURANCE

Lessor to maintain property and casualty insurance and Lessee will pay estimated pro-rata share each month, in addition to rent and the estimated portion of the tax bill each month Lessee to carry own liability insurance.

a Liability insurance in the Commercial General Liability form (or reasonable equivalent thereto) covering the Premises and Lessee's use thereof against claims for personal injury or death, property damage and product liability occurring upon, in or about the Premises, such insurance to be written on an occurrence basis (not a claims made basis), to be in combined single limits amounts not less than \$1,000,000.00 and to have general aggregate limits of not less than \$1,000,00 00 for each policy year. The insurance coverage required under this Paragraph 5.01(a) shall, in addition, extend to any liability of Lessee arising out of the indemnities provided for in Article 5 and, if necessary, the policy shall contain a contractual endorsement to that effect. The general aggregate limits under the Commercial General Liability insurance policy or policies must apply separately to the Premises and to Lessee's use thereof (and not to any other location or use of Lessee) and such policy shall contain an endorsement to that effect. Notwithstanding the foregoing, Lessee shall have the right to carry the liability insurance provided above in the form of a blanket

VB DA

insurance policy, covering additional items or locations or insureds, provided, however, that. (i) Lessor, and any other parties in interest designated by Lessor to Lessee, from time to time, shall be named as additional insureds thereunder as its interest may appear; (ii) the coverage afforded Lessor and such other parties designated by Lessor will not be reduced or diminished by reason of use of such blanket policy of insurance, and (iii) any such policy shall provide, at a minimum, for the minimum liability limitations hereinabove provided in this Article 6 with respect to Lessee's interests in and to the Premises

b Lessee's insurance policies required above shall (i) name Lessor, as well as any mortgagee of Lessor, as an additional insured, (ii) provide that a certificate evidencing such insurance shall be delivered to Lessor prior to possession of the Premises by Lessee or the commencement date of this lease agreement, whichever event shall occur later, and thereafter within thirty (30) days prior to the expiration and/or termination of each such policy, and, as often as any such policy shall expire or terminate; (iii) contain a provision that the insurer will give to Lessor and such other parties with interest in the premises at least thirty (30) days notice in writing in advance of any material change, cancellation, termination or lapse, or the effective date of any reduction in the amounts of insurance; and (iv) be written as a primary policy which does not contribute to and is not in excess of coverage which Lessor may carry. Notwithstanding the provisions of subparagraph (iii) of the preceding sentence, Lessee shall be responsible for providing Lessor with at least twenty-five (25) days notice in advance of any material change, cancellation, termination or lapse of any insurance policy relating to the premises, or the effective date of any reduction in the amount of insurance.

7. UTILITIES

The Lessee agrees to pay all charges for electricity, gas, heating, fuel, water, sewer rentals or charges, and any other utility charges used in the Premises

8. SUBLETTING AND ASSIGNMENT

It is understood and agreed that if Lessee does so assign or sublet (only after having received written permission from the Lessor, which permission may be withheld at the sole option of the Lessor) all or any portion of the leased Premises, Lessee, nevertheless, shall remain responsible

to Lessor under all terms and conditions of this lease including, among other responsibilities and without limiting such responsibilities, the obligation to pay to the Lessor any and all amounts due in accord with all of the terms and conditions of this lease agreement

Lessor reserves the right to adjust the rental rate in the event it consents to an assignment or sub-letting of the Premises.

9. EXAMINATION OF PREMISES

Lessee agrees that it has examined and is familiar with the condition of the Premises and will accept the Premises in its present state of condition and repair unless otherwise agreed upon in this lease. Lessor agrees that all HVAC, electrical & plumbing is in good working order

10. POSSESSION

If this lease is signed by all the parties before the Premises become ready for occupancy and Lessor cannot acquire or deliver possession of the Premises by the time the term of this lease is anticipated to begin, the Lessee agrees to waive any claim for damages, including but not limited to, any incidental, consequential direct, indirect and/or punitive damages due to such delay and LESSOR WAIVES ANY RENTALS DUE until possession is delivered to Lessee. If Lessee is to finish the leased Premises itself and the Premises are not ready for occupancy at the time designated for this lease to begin, the Lessee will, nevertheless, pay rent and all other amounts due and owing in accord with the terms and conditions of this lease agreement according to the lease dates set forth in this Agreement

11. ALTERATIONS

See Exhibit A

The Lessee, after receiving written permission from Lessor, may make certain alterations, additions and improvements to the Premises. All additions, including, but not limited to, carpet, tile, wall covering, ceiling tile, shelving, partitioning, doors, and fixtures will become part of the leased Premises and will remain intact as fixtures to the property at the end of this lease, unless removal of the same is otherwise demanded by the Lessor prior to the termination or expiration of this lease agreement.

Store and office furniture and trade fixtures which are

readily removable without injury to the Premises may be removed at the end of this lease provided all other conditions of the lease have been satisfied. Any injury to the floors, walls or ceilings caused by removal of such trade fixtures will be repaired at the Lessee's sole expense by the Lessee at the time that such trade fixtures are removed.

12. REPAIRS BY LESSOR

The Lessor agrees to maintain the structural components of the buildings to include the roof, exterior walls (exclusive of glass, plate glass doors, and door mountings) and foundations. Lessor is under no obligation to inspect the Premises to find defects.

Lessee will report to Lessor any defective condition of the premises within twenty four hours of acquiring knowledge of the same which Lessor is required to repair according to the terms and conditions stated herein. Failure to report such defects shall make Lessee responsible to Lessor for any liability incurred by Lessor by reason of such defect and Lessee's failure to report the same in accord with the terms and conditions stated herein.

13. REPAIRS BY LESSEE

The Lessee agrees to keep and maintain the Premises at its sole expense in a good state of condition and repair excepting only those items referred to in Paragraph 12. The Lessee also agrees to keep all fixtures pertaining to the heating, air conditioning, ventilating, electrical, plumbing and sprinkler system (if any) in good order and repair at its sole expense. Lessee's expense is not to exceed \$1,500/year. Lessee further agrees to have a yearly HVAC maintenance contract with a reputable licensed HVAC company. Lessor will be responsible for any cost exceeding \$1,500. However, Lessor does not agree to cover any cost of repair that is a result of Lessee's neglect, misuse, damage, or lack of maintenance.

The Lessee also agrees to redecorate, paint, and renovate the Premises as may be necessary to keep them in proper condition and good appearance. If any portion of the leased Premises is on the ground level, the Lessee agrees to keep the sidewalks on front of the ground level portion clean and free of obstruction.

The Lessee agrees to return the Premises at the end of the lease term in at least as good condition as Premises were when first leased by Lessee pursuant to the lease agreement executed on September 26, 2006 between Pleasant Grove Properties, Inc & Schmolz & Bickenbach USA, Inc. , normal wear and tear excepted

14. SIGNS

The Lessee may place or attach to the Premises signs or other such identification as needed after receiving written permission from the Lessor. Any signs or other form of identification allowed must conform to City or County ordinances governing at the time.

Any damage caused to the Premises by the Lessee's erecting or removing such signs will be repaired promptly by the Lessee at the Lessee's sole expense

The Lessee also agrees to have any window or glass identification completely removed and cleaned at its sole expense promptly upon vacating the Premises.

15. KEYS

The Lessee agrees to account for all keys provided or duplicated and to return all keys to Lessor at once at the end of the lease period. The Lessee agrees that the Lessor or his Agent may keep a master key or passkey to the Premises in accordance with the terms and conditions of this lease

16. PERSONAL PROPERTY

All personal property moved into the Premises by the Lessee shall be at the sole risk of the Lessee or the owners of the personal property. The Lessee agrees that the Lessor shall not be liable for any damage, loss, or theft of personal property from any cause.

17. TRASH REMOVAL

The Lessee agrees to keep the entire Premises clean at all times, both inside and out (to include parking areas) at its sole expense

18. ABANDONMENT

The Lessee agrees not to abandon or vacate the Premises during the period of this lease without the Lessor's prior written permission, which permission may be withheld at the sole option of the Lessor.

19. DEFAULT

The Lessee agrees to pay rent at the time, in the amount, and in the manner as agreed upon in Paragraph 3 of this

lease The Lessee also agrees that rent shall be due at the specified time without any notice, bill, reminder, or demand from the Lessor or the Lessor's Agent

It is mutually agreed that any one or more of the following enumerated events shall constitute and be referred to as a "Default".

- (A) If the Lessee fails to pay rent at the time, in the Amount, and in the manner agreed upon and remains in default for thirty (30) days after the stated time whether or not Lessee receives a demand from Lessor during that time period, or
- (B) If the Lessee fails to perform any of the terms or provisions of this lease other than paying rent when due, and fails to cure such default within thirty (30) days after receiving written notice of default from the Lessor or the Lessor's Agent, or
- (C) If the Lessee is declared bankrupt or insolvent by judicial decree; or
- (D) If the Lessee takes the benefit of any federal reorganization or composition proceedings; or
- (E) If the Lessee makes a general assignment for benefit or creditors; or
- (F) If the Lessee's leasehold interest in this lease is sold under any process of law; or
- (G) If a trustee in bankruptcy or a receiver is appointed or elected for the Lessee, or
- (H) If the Lessee abandons the Premises, or
- (I) If any materialman's, mechanic's or other lien is filed against the leased Premises in connection with any improvements, alterations, or additions made by Lessee pursuant to Paragraph 11 or any other term or condition of this lease and the Lessee is responsible for the cost of the improvements, alterations, or additions but allows the lien or liens to stand against the leased Premises and does not

secure the discharge of the property from such liens by filing an appropriate bond pursuant to applicable law. If Lessee does file a bond and elects to contest the liens, there shall be no default pending final determination of such disputed matter, then, and in any of the above events, the Lessor at its option may at once terminate this lease by giving written notice to the Lessee. (Notice to terminate in any of the above events may also be given by the Lessor's attorney or Agent.)

Upon such termination by the Lessor, the Lessor or its Agents shall have the right to enter the Premises, by force if necessary without being liable for trespass, forcible entry or other tort, to re-take possession of the Premises, remove all persons and personal property of the Lessee if the Lessor so desires, and to place a "For Rent" or "For Lease" sign in a place where the sign would be most likely seen by the public.

The Lessee also agrees to pay all attorney's fees and all other expenses incurred by the Lessor while enforcing any of the obligations of this lease

20. RIGHT OF RE-ENTRY OR TO DECLARE FULL RENTAL DUE

In the event of a default as described in Paragraph 19 above, then Lessor, besides any other rights or remedies it may have available at law or in equity, may at Lessor's sole option (a) declare the full rental for the entire term immediately due and payable without prejudice to any other remedies in law or equity available to Lessor, or (b) have the immediate right of re-entry and take possession of the demised Premises immediately and to hold the Premises with the full right to recover from the Lessee all past due rents and any and all damages, including attorney's fees, as a result of the default. Lessor on re-entry may require that all persons exit the Premises and that all property be transported to and stored at a public warehouse or elsewhere at the sole cost and for the account of the Lessee. Additionally, the Lessor shall be able to utilize all other rights and remedies available to Lessor under the laws of the State of South Carolina.

21. RIGHT TO RE-LET

Should Lessee default as set out in Paragraph 19, Lessor may elect to re-enter the leased Premises and attempt to re-let the Premises. Lessor's only responsibility shall be to

offer the Premises for rent and make the usual and normal efforts to re-let the Premises. Lessee shall be liable for any deficiency between the amount of rental received, if any, and the amount which the Lessee is obligated to pay under this lease and for any other damages, including attorney's fees, suffered by Lessor.

**22. RIGHT TO
TERMINATE**

In addition to Lessor's right to re-enter and re-let the Premises, Lessor may elect at its sole option, upon a default, to terminate this Lease Agreement immediately. In such event, this lease shall be regarded as cancelled as of the date the Lessor serves notice of Lessor's election to terminate to Lessee. Lessee shall remain liable to Lessor for all rentals, charges and payments accrued to the time of such termination.

The Lessor's right to terminate this lease is in addition to and not in lieu of any other rights or causes of action that Lessor may have against the Lessee because of a default by the Lessee. If Lessor does not elect to terminate the lease as provided herein, then Lessor shall utilize and pursue such other rights as it may have against the Lessee under the other terms of this lease, the laws of the United States or the City, County and/or State in which the leased Premises are located.

**23. DAMAGE TO OR
DESTRUCTION
OF PREMISES**

The Lessee shall notify the Lessor and its agent within twenty four (24) hours in the event of any fire or other casualty to the leased Premises. If the leased Premises are totally destroyed by fire or other casualty or damaged to such an extent that they become wholly unfit for occupancy under existing building codes and regulations or in the sole opinion of the Lessor, then this lease may be terminated by either party by giving written notice within thirty (30) days after the occurrence of such fire or other casualty.

If the leased Premises, however, are damaged by fire or other casualty but may be repaired within ninety (90) days from the date of the damage (it being agreed that if such rebuilding or repairs cannot be completed within the 90-day period but the Lessor commenced the rebuilding or repair work without unreasonable delay within the 90-day period and completes the rebuilding or repair with due diligence, such damage shall be deemed rebuilt or

repaired within the 90-day period), then the Lessor may notify the Lessee within thirty (30) days of the date of the fire or other casualty of its intention to rebuild or make such repairs and may enter and repair the Premises as quickly and as reasonably possible. In this event, rent shall not be due while such rebuilding or repair work is being performed, but shall resume again as soon as the Lessee resumes any occupancy of the premises.

It is agreed that if the Premises are damaged only slightly due to fire or other casualty and still fit for occupancy, the Lessor shall repair the damage as quickly as reasonably possible and the Lessee shall continue to pay rent and uphold all other lease provisions as if no fire or other casualty has occurred.

The Lessee agrees it shall receive no form of compensation from the Lessor or the Lessor's insurance company because of any inconvenience, annoyance or business interruption arising from the damage, repair, rebuilding, or alteration of any portion of the building.

24. CONDEMNATION

If the whole or any part of the property of which the leased Premises are a part shall be condemned, taken by court decree or taken by any other lawful authority (including but not limited to the power of eminent domain), the Lessee shall have no claim or interest in any award of damages or other compensation for such taking.

If the Lessor in its sole discretion determines that such taking shall render the Premises unfit for the purposes of this lease, the lease shall terminate on the date that possession is taken by public authorities and rent shall be paid through that date.

25. GOVERNMENTAL ORDERS

The Lessee, at its sole expense, agrees to observe and comply with all laws, ordinances, rules and regulations of the Federal, State, County and Municipal authorities as may apply to the business conducted by the Lessee on the Premises.

26. ENTRY FOR CARDING, REPAIRS, ETC.

The Lessee agrees that the Lessor may card the Premises "For Sale" at any time and "For Rent" or "For Lease" sixty (60) days prior to the termination of this lease. The Lessor

may enter the Premises at reasonable hours to show same to prospective purchasers or Lessees and to make repairs required of Lessor under the terms of this lease, or to make repairs to Lessor's adjoining property, if any.

27. RIGHT TO MORTGAGE OR LEASE

The Lessee agrees that its rights are subordinate and subject to any bonafide mortgage which now covers the Premises or to any bonafide mortgage which may be placed on the Premises any time in the future by the Lessor and will sign any Lease Subordination Agreement or Estoppel Agreement at the Lessor's request. This lease shall in no way impede upon the rights of the Lessor to place any mortgage or other encumbrance on the premises.

28. WAIVER OF RIGHTS

The Lessee agrees that no waiver of any conditions of this lease by the Lessor whether implied or in writing shall constitute any further waiver by the Lessor of any other condition of this lease. The rights and remedies created by this lease are cumulative and the use of one remedy does not exclude or waive the right to the use of another or any other rights and/or remedies available at law or in equity.

29. ZONING

It is agreed that the use of the leased Premises is subject to any applicable zoning ordinances or regulations and set back lines of any governmental authority.

30. TIME

Time is of the essence of this Agreement

31. NOTICES

It is agreed that all notices regarding this lease shall be sent by certified or registered mail or other nationally recognized overnight courier provided that a signature is required for delivery to

(A) Notice to Lessor Pleasant Grove Properties, Inc.
ATTN: Dave Peacock
PO Box 2103
Greer, SC 29652
(864) 801-8883

(B) Notice to Lessee Schmolz & Bickenbach USA, Inc
ATTN: David Grandt
365 Village Drive
Carol Stream, IL 60180

(630) 682-3900 Ext. 2375

32. LIENS

The Lessee agrees that Lessee will pay all liens of contractors, subcontractors, mechanics, laborers, matenalmen, and other like items and will indemnify Lessor against all legal costs and charges, court fees, register of deed fees, bond premiums for release of liens, including legal counsel fees reasonably incurred in and about the legal representation regarding any suit in discharging the said Premises or any part from any liens, judgments, or encumbrances caused by Lessee

**33. QUIET
ENJOYMENT**

Subject to the conditions of this lease, the Lessor agrees that the Lessee may peaceably have, hold and enjoy the Premises, without hindrance by Lessor or Lessor's Agent

**34. WRITTEN
AGREEMENT**

This lease contains the entire agreement between the parties. It may be modified only by an amendment to the lease, reduced to writing and signed by Lessor and Lessee.

35. CAPTIONS

The marginal captions contained here are for convenience and reference only and are not a part of this lease nor are they to be construed as in any manner limiting or amplifying the terms and provisions of this lease.

**36. LESSOR-AGENT
CONDITIONS**

Lessor agrees to pay to NAI Earle Furman, LLC, Greenville, South Carolina, Agent, immediately following full execution of this lease, as compensation for its service rendered in procuring this lease 3% of all rentals scheduled to be paid by Lessee under this lease less the pro-rated amount of commission on the remaining term of the original lease. The expiration of the original lease shall be August 1st or the date of delivery. Lessor agrees that if this lease is extended, or if any new lease is entered into between Lessor and Lessee covering leased Premises, or any part thereof, then in either or said events, Lessor in consideration of Agent's having procured Lessee, agrees to pay to Agent Three percent (3%) of all rentals paid to Lessor by Lessee under extension of new lease at the time of such extension, if any.

Agent agrees in the event Lessor sells leased Premises that upon Lessor furnishing Agent with an agreement signed by purchaser, assuming Lessor's obligation to Agent under this lease, Agent will release original Lessor

from any further obligations to Agent provided now Lessor has agreed to pay Agent as set forth herein

In the event that the Lessee or a purchaser in privity with the Lessee should during the term of this lease or tenancy, purchase from the Lessor, the Premises herein leased, the Lessor will at the time of consummating a sale pay to NAI Earle Furman, LLC a commission of Six percent (6%) of the selling price of the property

Agent is named as a party to this contract solely for the purpose of enforcing its rights under this paragraph and it is understood by all parties that Agent is acting solely in the capacity as Agent for Lessor to whom Lessee must look in regard to all covenants, agreements and warranties contained in this lease and that Agent shall not be liable to Lessee in regard to any matter which may arise by virtue of this lease.

**37. HEIRS AND
ASSIGNS**

This lease shall bind and have affect to the benefit of the parties named and their respective heirs, executors, administrators, successors and assigns.

38. OPTIONS

1-5 Year Option at a rate to be determined Lessee must notify Lessor of intent to exercise option 90 days prior to lease expiration.

**39. ADDITIONAL
PROVISIONS**

None

**40. HOLD OVER
TENANT**

If the Lessee holds over and continues in possession at the conclusion of the lease term, or any extension of the term, without any written agreement as to such possession, Lessor shall agree to such possession by acceptance of additional monthly payments and Lessee shall be considered a Lessee from month to month at a rental amount equal to last payment made under the terms of the written lease and shall be subject to all other terms and conditions of this lease. Such tenancy may be terminated by either party upon the giving of 30 days notice in writing to the other party.

41. SAVING CLAUSE

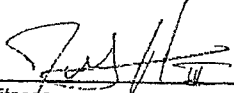
In the event any provision of this lease is declared or determined to be invalid under the laws governing this lease, the remaining terms and conditions shall remain in full force and effect and shall be binding on the parties

hereto.

42. DELIVERY DATE

- a) If construction of building expansion is not complete by August 1st as shown on Exhibit B delivery date and term of lease will be adjusted accordingly.
- b) Occupancy Permit – This agreement is subject to Lessee being able to obtain an occupancy permit from the City of Greer without any unreasonable expense

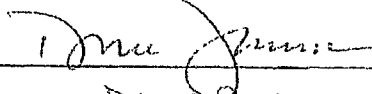
IN WITNESS WHEREOF, the parties named herein have set their hands and seals the year and day first above written.



Witness

Witness

LESSOR: Pleasant Grove Properties, Inc

By. 

Print Name DAVE PEACOCK
Title PRESIDENT
Date 2-20-2008



Witness

Witness

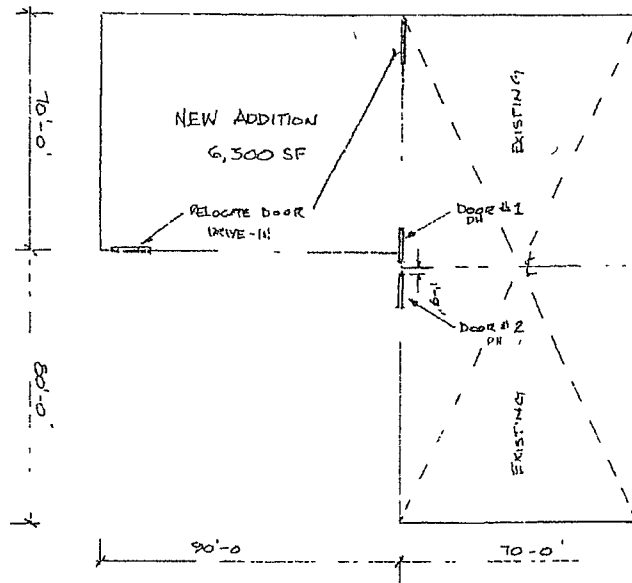
LESSEE: Schmolz & Bickenbach USA, Inc

By 

Print Name David Grandt
Title V. P. of Operations
Date 2/9/08

NOTE: THIS IS A LEGALLY BINDING CONTRACT. IF NOT COMPLETELY UNDERSTOOD, WE RECOMMEND YOU SEEK COMPETENT ADVICE FROM YOUR ATTORNEY.

EXHIBIT A



SCHMOLZ & BICKENBACH

6,300 SF ADDITION

SKETCH 1-11-08

Handwritten initials or signature.

EXHIBIT B

Line Item	Description	Amount	Balance
1	...	...	...
2	...	...	...
3	...	...	...
4	...	...	...
5	...	...	...
6	...	...	...
7	...	...	...
8	...	...	...
9	...	...	...
10	...	...	...
11	...	...	...
12	...	...	...
13	...	...	...
14	...	...	...
15	...	...	...
16	...	...	...
17	...	...	...
18	...	...	...
19	...	...	...
20	...	...	...
21	...	...	...
22	...	...	...
23	...	...	...
24	...	...	...
25	...	...	...
26	...	...	...
27	...	...	...
28	...	...	...
29	...	...	...
30	...	...	...
31	...	...	...
32	...	...	...
33	...	...	...
34	...	...	...
35	...	...	...
36	...	...	...
37	...	...	...
38	...	...	...
39	...	...	...
40	...	...	...
41	...	...	...
42	...	...	...
43	...	...	...
44	...	...	...
45	...	...	...
46	...	...	...
47	...	...	...
48	...	...	...
49	...	...	...
50	...	...	...
51	...	...	...
52	...	...	...
53	...	...	...
54	...	...	...
55	...	...	...
56	...	...	...
57	...	...	...
58	...	...	...
59	...	...	...
60	...	...	...
61	...	...	...
62	...	...	...
63	...	...	...
64	...	...	...
65	...	...	...
66	...	...	...
67	...	...	...
68	...	...	...
69	...	...	...
70	...	...	...
71	...	...	...
72	...	...	...
73	...	...	...
74	...	...	...
75	...	...	...
76	...	...	...
77	...	...	...
78	...	...	...
79	...	...	...
80	...	...	...
81	...	...	...
82	...	...	...
83	...	...	...
84	...	...	...
85	...	...	...
86	...	...	...
87	...	...	...
88	...	...	...
89	...	...	...
90	...	...	...
91	...	...	...
92	...	...	...
93	...	...	...
94	...	...	...
95	...	...	...
96	...	...	...
97	...	...	...
98	...	...	...
99	...	...	...
100	...	...	...

...

...

...

...

FILED - CLERK OF COURT
 STATE OF SOUTH CAROLINA THE COURT OF COMMON PLEAS
 GREENVILLE CO. S.C. THIRTEENTH JUDICIAL CIRCUIT
 COUNTY OF GREENVILLE PAUL B. WICKENSIMER

NAI Earle Furman, LLC, 2014 MAY 20 AM 10 07 CASE NO. 2014-CP-23-05891

Plaintiff,

v

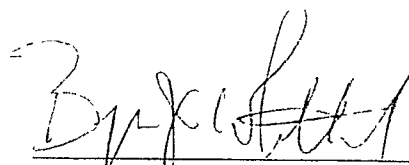
Pleasant Grove Properties, Inc ,

Defendant.

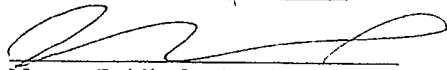
CERTIFICATE OF SERVICE
 BY MAIL

The undersigned hereby certifies that he is over the age of eighteen (18) years, that he is competent to serve papers, and that on this date he did cause **Notice of May 23, 2014 Hearing at 10:30 A.M., Notice of Motion and Motion to Set Aside Default and Relief from Default Judgment filed April 4, 2014, Affidavit of David Peacock filed April 8, 2014, Affidavit of Teresa Fant filed April 8, 2014, and a Summons, Answer and Counterclaim filed April 8, 2014** to be served upon the Defendant, NAI Earle Furman, LLC, by depositing a copies of the same in the United States Mail, postage prepaid, and addressed to Defendant's Attorney of Record, Paul S Landis, as follows.

Paul S. Landis, Esq.
 P O Box 10207
 Greenville, SC 29603


 Byron J Whitehead

SWORN TO BEFORE ME
 this 9th day of April, 2014.


 Notary Public for South Carolina
 My Commission Expires. 2/15/23

BYRON A HAMMOND
 Notary Public
 South Carolina
 My Comm Expires February 13, 2023

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
NAI Earle Fulman, LLC,)
Plaintiff,)
vs.)
Pleasant Grove Properties, Inc ,)
Defendant)

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2013-CP-23-05891

**MEMORANDUM IN SUPPORT OF
DEFENDANT'S MOTION FOR
RELIEF FROM JUDGMENT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENS, CLERK
2014 MAY 20 AM 10:00

Defendant Pleasant Grove Properties, Inc. ("Defendant") has filed a Motion to Set Aside Default pursuant to Rule 55(c), *SCRCP*, and for Relief from Default Judgment pursuant to Rule 60(b)(1) and (4), *SCRCP*, seeking an Order granting Relief from the Order granting the Plaintiff judgment by default entered in the within case on March 31, 2014. Defendant's Motion is based on the ground that the judgment is void because the Defendant was not provided proper due process through service of the Summons and Complaint. Alternatively, and only in the event this Court believes that service was proper, the Court should grant Defendant relief from the judgment for good cause shown and as a result of Defendant's mistake, inadvertence, or excusable neglect in not timely filing a Notice of Motion, Answer or other responsive pleading in this matter, as required by the Summons. This memorandum is submitted in support of Defendant's Notice of Motion and Motion filed with the Court on April 4, 2014.

Defendant's Motion is based on the record of the case, on assertions made in the Affidavit of David Peacock and the Affidavit of Teresa Fant, both of which were filed with this Court on April 8, 2014 and were timely served on Plaintiff's attorney of record on April 9, 2014.

I. INTRODUCTION

This case stems from the alleged breach of a 2007 Commission Agreement between Plaintiff and Defendant concerning Plaintiff procuring a tenant to lease out certain commercial property owned by Defendant in exchange for the payment of a commission. The 2007 Commission Agreement applied to subsequent lease renewals and/or extensions. The Plaintiff initially procured a tenant to lease Defendant's property and commissions were paid as a result of a five year lease agreement executed by Defendant and its tenant in 2006.

Subsequent to the 2006 lease agreement being entered, the Defendant added square footage to the premises at the request of its tenant, and Defendant and its tenant entered into another five-year lease agreement in 2008, which provided for a rental increase to cover the added square footage. Plaintiff was paid a commission following the rental increase and the execution of the 2008 lease agreement.

As the 2008 lease agreement neared the end of its term, Defendant and its Tenant were in negotiations to extend or renew the lease for another five year term. Plaintiff was not participating in the negotiations. At some point negotiations grew cold and appeared to be abandoned. During this period of time, David Peacock, the owner and registered agent of Defendant, witnessed several of Plaintiff's agents and other agents showing Defendant's current tenant other available rental properties in the area. As a result of this conduct, Defendant approached its current tenant and negotiated and entered into a lease amendment dated May 31, 2013. At no time during or at the termination of the 2008 lease did Plaintiff contact the Defendant to assist in negotiating a new or extension of the 2008 lease. Following execution of the 2013 lease, Plaintiff made demand to Defendant

for payment of commissions due under the 2007 Commission Agreement. Defendant disputed that commissions were due as a result of the conduct and actions of Plaintiff. Defendant attempted to compromise payment of the disputed commissions, however the Plaintiff rejected such attempts. The Defendant acknowledges receipt of an Invoice from Plaintiff dated June 18, 2013. The Defendant also acknowledges receipt of a letter from Plaintiff dated August 6, 2013 and a letter from an attorney for Plaintiff dated September 17, 2013. The Defendant did not hear anything else concerning the matter and assumed the Plaintiff had abandoned its demand for commissions.

On or about March 20, 2014, David Peacock, the owner and registered agent of Defendant, received a call from the office manager of another company that he owns named Rental One, LLC, which is located at 4394 Wade Hampton Blvd, Taylors, South Carolina (See Affidavit of David Peacock filed April 9, 2014). The office manager, Teresa Fant, is an employee of Rental One, LLC. Ms. Fant informed Mr. Peacock that an individual had stopped by the office of Rental One and asked her to sign for an envelope that was sealed with packing tape and had David Peacock's name handwritten on the outside.

Upon receipt of this information from Teresa Fant, David Peacock contacted the Defendant's attorney to inquire as to the attorney's availability to review the contents of the package. David Peacock then instructed the office manager of Rental One to deliver the package to Defendant's attorney. Ms. Fant faxed copies of the contents of the package to Defendant's attorney on March 25, 2014. On April 1, 2014, Defendant's attorney reviewed the contents of the package and discovered it to be a Summons and Complaint filed in the within matter on November 1, 2013. It was then discovered that

an Order granting Plaintiff judgment against the Defendant by default was entered in the within matter on March 31, 2014.

A further review of the court file in the within case reveals the following sequence of filings

1. **November 1, 2013: Summons and Complaint 10/29/2013.** The verified Summons and Complaint seeks collection of commission fees from Defendant in the amount of \$12,600.00, plus attorney's fees and costs of the action.

2. **January 31, 2014: Affidavit of Service dated 1/21/2014.** The Affidavit of Service filed in this case provided that the Summons and Complaint was served upon "David Peacock, as Registered Agent via Teresa Fant – Secretary and states authorized to Accept Service." The Affidavit further provides that it was served upon the "Secretary of Pleasant Grove Properties, Inc. at 4394 Wade Hampton Blvd in Taylors, South Carolina, " As more fully described hereinbelow, Ms Fant is not an officer or secretary of Defendant Pleasant Grove Properties, Inc. A copy of the Affidavit of Service is attached as "**Exhibit 1**" and shall be incorporated herein by reference.

3. **March 18, 2014: Affidavit of Default dated 3/14/2014.** The Affidavit of Default filed provided that service was accomplished "by and through, Teresa Fant, Secretary to the registered agent, David Peacock . . ." The Defendant would request the Court to take notice that Teresa Fant is an employee of Rental One, LLC, only and at no point was she an employee of David Peacock, individually, and/or Defendant Pleasant Grove Properties, Inc. See generally Affidavit of Teresa Fant filed April 8, 2014 and attached hereto as Exhibit 2

4. **March 31, 2014: Notice of Motion and Motion for Default Judgment**

dated 3/17/2014. The Defendant would request the Court to take notice that no affidavit of service was filed with the Court indicating that service of the Motion for Default Judgment was attempted or completed

5. **March 31, 2014: Order awarding Judgment to Plaintiff** signed by The Honorable Letitia H. Veidin on March 20, 2014.

6. **April 4, 2014. Notice of Motion and Motion to Set Aside Entry of Default and for Relief From Default Judgment dated 4/4/2014.** The Defendant, by and through its undersigned attorney, filed a motion with the court seeking relief from the default judgment entered four (4) days earlier. The Notice of Motion and Motion to Set Aside Entry of Default and for Relief from Default Judgment, together with the Affidavit of Teresa Fant (Exhibit 2) and Affidavit of David Peacock (Exhibit 3), and Notice of Motion hearing date were served on Plaintiff's attorney of record via U.S. Mail and Email on April 9, 2014.

7. **April 8, 2014. Affidavit of Teresa Fant dated 4/4/2014.** The Affidavit of Teresa Fant provides that she is the Office Manager for Rental One, LLC, with principal offices being located at 4394 Wade Hampton Blvd., Taylors, South Carolina 29687. The Affidavit provides that Ms. Fant informed the process server that she was not authorized to accept anything on behalf of David Peacock. A copy of the Affidavit of Teresa Fant is attached as "Exhibit 2" and shall be incorporated herein by reference.

8. **April 8, 2014. Affidavit of David Peacock dated 4/4/2014.** The Affidavit of David Peacock provides that he is the registered agent of Plaintiff, Pleasant Grove Properties. The Affidavit further provides that he is the registered agent for Rental One, LLC, which is a separate and distinct company that he owns with its offices being

located at 4394 Wade Hampton Blvd , Taylors, South Carolina 29687 A copy of the Affidavit of David Peacock is attached as “Exhibit 3” and incorporated by reference

II. ARGUMENT

Defendant’s Motion to Set Aside Default and for Relief from Default Judgment is made on the grounds that good cause exists to set aside entry of the default pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure (“SCRCP”) and that relief from judgment pursuant to Rule 60 SCRCP is proper in that (i) the judgment is void pursuant to Rule 60(b)(4), and/or (ii) that Defendant’s failure to timely respond pursuant to the Summons was the result of mistake, inadvertence, surprise or excusable neglect pursuant to Rule 60(b)(1)

A. GOOD CAUSE EXISTS TO SET ASIDE ENTRY OF DEFAULT

Pursuant to Rule 55(c), SCRCP, the Court may set aside an Entry of Default “for good cause shown.” According to case law, “[i]n determining this issue, the master shall consider the following three factors (1) the timing of [the defaulting party]’s motion for relief, (2) whether [the defaulting party] has a meritorious defense, and (3) the degree of prejudice to [the other party] if relief is granted.” Wham v Shearson Lehman Brothers, Inc., 298 S.C. 462, 465, 381 S.E 2d 499, 501 (Ct App. 1989).

Good cause exists to set aside entry of default in this case The Order was entered March 31, 2014. The Defendant filed its Motion for relief from the default judgment on April 4, 2014. Thus Defendant’s Motion was filed within four (4) days of learning of entry of the Order. Further, the Defendant has a meritorious defense to the payment of fees to Plaintiff pursuant to the Commissions Agreement. Defendant set forth its meritorious defenses in an Answer and Counterclaim filed with the Court on April 8,

2014 Defendant's meritorious defenses demonstrate that it was justified in not paying commissions to Plaintiff as a result of Plaintiff's breach of the duty of loyalty to Defendant and for the Plaintiff's lack of good faith in performance of its obligations under the Commission Agreement. Specifically, Defendant craves reference to the allegations set forth in its Answer regarding the Plaintiff's and/or Plaintiff's agents conduct and actions towards the Defendant when it/its agents initiated and/or participated in showing other available rental properties to Defendant's tenant. These actions further support Defendant's defenses of estoppel, waiver, and the various equitable defenses set forth in the Answer, and they also give rise to Defendant's counterclaim for damages as a result of Plaintiff's own breach of the contract with Defendant. Lastly, the Plaintiff will not suffer any prejudice in the event Defendant is granted relief from the default judgment entered in this case. Accordingly, good cause exists for this Court to set aside entry of default and default judgment in this case.

B. RELIEF FROM JUDGMENT UNDER RULE 60(b) SCRCF

As stated in its Motion, Defendant believes that the judgment is void because it was not provided with proper due process and therefore the Court lacked subject matter jurisdiction. Additionally, and in the event this Court believes that service of process was proper, Defendant believes that it should be relieved from the judgment entered March 31, 2014, in that it would have filed an Answer asserting meritorious defenses similar to the Answer filed on April 8, 2014, but for the existence of a mistake, inadvertence, surprise or excusable neglect. Furthermore, Defendant's Rule 60(b) Motion was brought within a reasonable time of entry of the March 31, 2014 Order in that it was brought within four (4) days following entry of the Order. The decision to grant or deny a motion

under Rule 60(b), SCRC, lies within the sound discretion of the judge. See BB&T v Taylor, 369 S C 548, 633 S.E 2d 501 (S.C. 2006) (citing Coleman v. Dunlap, 306 S C 491, 494, 413 S E 2d 15, 17 (S C 1992)).

1. **Relief is Proper Under Rule 60(b)(4) because the Judgment is void.**

“The definition of ‘void’ under [Rule 60(b)(4)] only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction ” Id. at 644, 871. A “void judgment” is one that, from its inception, is a complete nullity and is without legal effect. Universal Benefits, Inc. v McKinney, 349 S C 179, 561 S.E.2d 659 (Ct App. 2002). A judgment is void if a court acts without personal jurisdiction, which is generally obtained by the service of a summons See BB&T v. Taylor, 369 S C 548, 633 S E 2d 501 (S C 2006)

In this case, the March 31, 2014 Order granting Plaintiff judgment by default against Defendant is void for want of jurisdiction. The Order is void because Defendant never received proper Service of Process and thus Defendant was not afforded proper due process. The Supreme Court has “noted that a judgment can be successfully attacked if the court issuing the judgment lacked jurisdiction and the lack of jurisdiction appears on the face of the record ” Miles v Lee, 319 S C 271, 273, 460 S.E 2d, 423, 424 (Ct App 1995), *citing* Yarborough v. Collins, 293 S C 290, 360 S.E.2d 300 (1987).

The general rule cited by the Supreme Court in Webster v Clanton, 259 S C 387, 391, 192 S E 2d 214 (1972) is as follows:

It is a fundamental doctrine of the law that a party whose personal rights are to be affected by a personal judgment must have a day in court, or opportunity to be heard, and that without due notice and opportunity to be heard a court has no jurisdiction to adjudicate such personal rights. A judgment by a court without jurisdiction of both the parties and the subject matter is a nullity and must be so treated by the courts whenever and for

whatever purpose it is presented and relied on.

“Due process is flexible and calls for such procedural protections as the particular situation demands.” Brown, at 121, 199 (quoting Stono River Envtl Prot Ass’n v S.C Dep’t of Health & Envtl Control, 305 S.C 90, 94, 406 S E2d 340, 341 (1991)). Essentially, “the Due Process Clause demands ‘notice reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and to afford them an opportunity to present their objections’ ” Brown, at 121, 199 (quoting Mullane v Cent. Hanover Bank & Trust Co., 339 U S 306, 314, 70 S Ct 652, 94 L.Ed 865 (1950)).

In this case, Defendant Pleasant Grove Properties, Inc , was not afforded proper due process and therefore the judgment is void because the Court lacked proper subject matter jurisdiction and personal jurisdiction. The Affidavit of Service filed on January 31, 2014 (“Exhibit 1”) provides that service of process on Defendant, Pleasant Grove Properties, Inc , was achieved by service on “David Peacock, as Registered Agent via Teresa Fant, Secretary and states authorized to Accept Service ” The Affidavit further states that Teresa Fant is the “Secretary of Pleasant Grove Properties, Inc.” Finally, the Affidavit provides that service as made at 4394 Wade Hampton Blvd , Taylors, South Carolina. The Affidavit of Teresa Fant (“Exhibit 2”) and the Affidavit of David Peacock (“Exhibit 3”) both provide that Teresa Fant is the Office Manager for Rental One, LLC Rental One, LLC, is a separate and distinct company owned by David Peacock, the Registered Agent of Defendant. The Affidavits further provide that Rental One, LLC does business from the offices located at 4394 Wade Hampton Blvd , Taylors, South Carolina. Defendant Pleasant Grove Properties, Inc , does not even have offices at 4394

Wade Hampton Blvd., Taylors, South Carolina. The registered agent's address for Defendant is 1425B S. Buncombe Rd, Greer, South Carolina 29651, as evidenced by a print out of the Registered Agent's information from the South Carolina Secretary of State's website, attached as "Exhibit #4" and incorporated herein by reference

The Affidavit of Service clearly shows that the service was ineffective as proper service on the registered agent of Defendant Rule 4(d)(3), SCRCP, states that service shall be made on a corporation as follows

Upon a corporation . . . which is subject to suit under a common name, 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 law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the Defendant.

The Affidavit of Service filed in this case and attached as Exhibit 1 demonstrates that service of process was ineffective pursuant to Rule 4(d)(3), SCRCP, because the summons and complaint were not delivered to an officer, a managing or general agent, or to any other agent authorized by appointment or law to receive service of process. Teresa Fant is neither an officer or agent of Defendant Pleasant Grove Properties, Inc. Teresa Fant is the Office Manager of Rental One, LLC, which just happens to also have David Peacock as its registered agent. Accordingly, Defendant, nor its registered agent, were ever properly served with a summons and complaint in the within action, and, as such, the Order entered March 31, 2014 is void for lack of subject matter and personal jurisdiction.

2. Relief is Proper Under Rule 60(b)(1) because Defendant would have filed an Answer to the Summons but for the existence of mistake, inadvertence, surprise or excusable neglect.

In the event this Court were to determine that service of process as hereinabove

described was proper, Defendant believes that relief from the March 31, 2014, Order is still proper under Rule 60(b)(1), SCRCP, because the Defendant would have filed its Answer and Counterclaim but for the existence of mistake, inadvertence, surprise or excusable neglect

The Affidavit of Teresa Fant attached as "Exhibit 2" indicates that an individual came to the office of Rental One, LLC, and delivered an envelope that was sealed with packing tape and had David Peacock's name hand-written on the outside. Ms. Fant indicates that the individual asked her to sign for delivery, which she did do. Ms. Fant states that the individual did not ask her whether she was authorized to "accept service." It appears that the package then sat on a desk that David Peacock uses when he goes to the Rental One, LLC office. Ms. Fant then states that she mentioned the package during a telephone conversation with Mr. Peacock several days later. Ms. Fant stated that Mr. Peacock instructed her to contact an attorney and to inquire as to how the attorney recommended that the package be handled. Ms. Fant faxed then subsequently opened the package and faxed its contents to the attorney.

Obviously some period of time passed between the time the package was delivered to Rental One, LLC and the time the package was opened by Ms. Fant, at the direction of David Peacock, registered agent for Rental One, LLC and Defendant Pleasant Grove Properties, Inc., and faxed to an attorney for review. Even if the Court determines that delivery to the offices of Rental One, LLC, of a plain, sealed white envelope with "David Peacock" handwritten on the outside was effective service of process on David Peacock as registered agent of Defendant Pleasant Grove Properties, Inc., the delay in the package and its contents being sent to an attorney for review was

clearly the result of a mistake, inadvertence, surprise or excusable neglect. The outside of the envelope gave no indication that it pertained to Defendant Pleasant Grove Properties, Inc , or any indication of its contents. Ms Fant is not authorized to open mail sent to David Peacock, so it was reasonable that she put the package on a desk and forgot about it for several days until she and Mr Peacock had another phone conversation

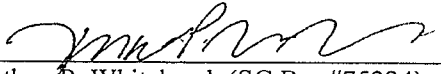
Other matters contributed to the delay in that the office manager and the attorney were unable to connect on the telephone for a period of time. Within six (6) days of the package being sent to its Attorney, the Attorney contacted Defendant and informed Defendant about the March 31, 2014 default judgment. Upon learning of entry of the Order, Defendant, by and through its Attorney, acted as expeditiously as possible in preparing the within Motion and supporting Affidavits. The Motion was filed within four (4) days of entry of the Judgment and supporting Affidavits were filed within eight (8) days of entry of the Judgment. The reasons set forth above as to why Defendant did not timely file an Answer to the Summons demonstrate that all actions were the result of mistake, inadvertence, surprise or excusable neglect. Lastly, there will be no prejudice to Plaintiff in the event the requested relief is granted as the Court will have the opportunity to hear the case on its merits and make its findings and rulings based on the same.

III. CONCLUSION

Defendant is entitled to an Order of this Court setting aside entry of default for good cause shown pursuant to Rule 55(c), SCRCP, and for Relief from the Order granting default judgment entered March 31, 2014 in this matter pursuant to Rule 60(b)(4) and/or (1), SCRCP. Defendant believes that such relief is proper in that it filed its Motion within four (4) days of entry of the Order, there exists meritorious defenses

and counterclaims regarding these matters, and there will be little to no prejudice to Plaintiff in the event relief is granted. Furthermore, Defendant is entitled to Relief from judgment under Rule 60(b)(4) because the Judgment is Void for want of jurisdiction and lack of due process. The Affidavit of Service ("Exhibit 1"), the Affidavits in Support of Defendant's Motion ("Exhibits 2 and 3"), and the registered agent information for Defendant from the South Carolina Secretary of State's office demonstrate that proper service of process was not made in accordance with Rule 4(d)(3), SCRCP, in that an officer, manager, or authorized agent of Defendant Pleasant Grove Properties, Inc., was not served with the Summons and Complaint. Moreover, and in the event this Court determines that David Peacock, as Registered Agent for Defendant, was properly served with a copy of the Summons and Complaint, Defendant is still entitled to relief under Rule 60(b)(1) because Defendant's actions in not filing an Answer to the Summons was the result of mistake, inadvertence, surprise or excusable neglect as hereinabove described. Accordingly, for these reasons the Defendant respectfully requests that this Court grant Defendant's Motion to set aside entry of default and for relief from default judgment entered March 31, 2014.

Respectfully Submitted,


Jonathan P. Whitehead, (SC Bar #75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E. Butler Rd., Ste. E.
Mauldin, South Carolina 29662
(P) 864-561-8011
(F) 864-675-0205
Attorney for Defendant

Mauldin, South Carolina

Date 5/20/14

EXHIBIT 1

Affidavit of Service filed January 31, 2014

STATE OF SOUTH CAROLINA,
COUNTY OF GREENVILLE
NAI Earle Furman, LLC
Plaintiff(s)
vs.
Pleasant Grove Properties, Inc.
Defendant(s).

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

FILE NO: 2013-CP-23-05891

FILED-CLERK OF COURT
GREENVILLE S.C.
PAUL WICKS
2014 JAN 31 PM 1:35

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn

says that (s)he served the Summons and Complaint in this action
(Describe document(s) served)

on David Peacock, as Registered Agent via Teresa Fant - Secretary and states
authorized to Accept Service, by delivery to
(Name of party served)

☒ David Peacock, as Registered Agent via Teresa Fant - Secretary and states
authorized to Accept Service personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served;

David Peacock, as
Registered Agent via
Teresa Fant - Secretary
and states authorized to
☒ Accept Service, the Secretary of Pleasant Grove Properties, Inc
(Name of person served) (Title) (Name of corporate party served)

and leaving with ☐ (him) ☒ (her) a copy at
4394 Wade Hampton Blvd
(Street address)

in Taylors Greenville County, South Carolina,
(City or Town) County

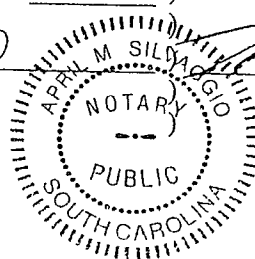
on January 21, 2014 at 12:51 PM o'clock

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith

☐ Unable to locate and serve the above process on the defendant after diligent efforts to do so
The process is returned unexecuted

Sworn to and Subscribed before me
this 21st day of January, 2014.

[Signature]
Notary Public for South Carolina



[Signature]
Signature of Deponent

SCCA 402 (Revised 12/07)
My Commission Expires
February 26, 2020

Post Office Box 641
Mauldin, SC 29662
(864) 907-3590

EXHIBIT 2

Affidavit of Teresa Fant filed April 8, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

Civil Action No.: 2013-CP-23-05891

NAI Earle Fuiman, LLC,)

Plaintiff,)

vs)

AFFIDAVIT OF TERESA FANT

Pleasant Grove Properties, Inc ,)

Defendant)

I, TERESA FANT, being duly sworn, do hereby depose, swear, and affirm as follows

1 I am a citizen and resident of Anderson County, South Carolina, and I am employed by Rental One, LLC (hereinafter "Rental One"), as the Office Manager of its business office located at 4394 Wade Hampton Blvd , Taylors, South Carolina 29687

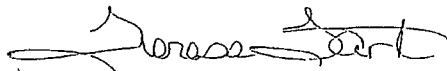
2 The owner of Rental One and my employer requested that I give this Affidavit concerning the receipt of a package from an individual who presented himself at the business office of Rental One, identified himself as Paul Silvaggio, and asked me if I would sign for an envelope that was sealed with packing tape and had David Peacock's name written on the outside To the best of my knowledge and memory, this occurred on or about February 3rd or 4th, 2014

3 I have been informed by Attorney Jonathan P Whitehead that an Affidavit of Service was filed with the Greenville County Court of Common Pleas that provides that I stated that I was authorized to "Accept Service " This statement is absolutely untrue Furthermore, I did not know what service means and still don't understand what was in the envelope I reiterated to the individual delivering the package that I was not authorized to accept anything on behalf of David Peacock

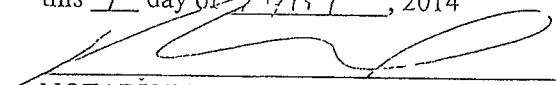
4 As the office manager of Rental One, I am specifically not permitted to open any mail and/or packages that are delivered and addressed to anyone other than Rental One, LLC, especially items addressed or sent to David Peacock. Mr. Peacock generally reviews any such items when he stops by the business office from time to time.

5 Several days after the above package was delivered, I mentioned the package to Mr. Peacock during one of our telephone conversations. He inquired as to who left the package, I informed him that the business card the individual left said "Private Investigator", he then informed me to send to Attorney Jonathan Whitehead for his review and handling.

6 On the same date I spoke with David Peacock I contacted Mr. Whitehead and asked how he wanted me to get the package to him. He informed that he wanted me to open package and fax to his office. I called David Peacock as asked if it was permissible for me to open and fax to Mr. Whitehead as he had requested. He responded by instructing me to do as Mr. Whitehead requested.


Teresa Fant

SWORN to and subscribed before me
this 11th day of April, 2014


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires 2/15/23

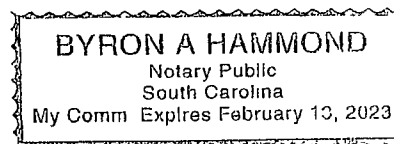


EXHIBIT 3

Affidavit of David Peacock filed April 8, 2014

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	Civil Action No.: 2013-CP-23-05391
	)	
NAI Earle Furman, LLC,	)	
	)	
Plaintiff,	)	AFFIDAVIT OF DAVID PEACOCK
	)	
vs	)	
	)	
Pleasant Grove Properties, Inc ,	)	
	)	
Defendant	)	
_____	)	

I, DAVID PEACOCK, being duly sworn, do hereby depose, swear and affirm as follows

1 I am a citizen and resident of Walton County, Florida, and I am the President and Owner of Defendant Pleasant Grove Properties, Inc (hereinafter "Pleasant Grove") As such, I am duly authorized to give the herein Affidavit

2 In addition to Pleasant Grove, I own and/or have an interest in several other companies with principal offices located in Greenville and Spartanburg County, South Carolina One such company is Rental One, LLC ("Rental One"), which is located at 4394 Wade Hampton Blvd , Taylors, South Carolina 29687

3 On or about March 20, 2014, I received word from Teresa Fant, who I employee as the Office Manager for Rental One, that an individual stopped by the business and asked her to sign for an envelope that was sealed with packing tape and included my name handwritten on the outside

4 I asked her who delivered the package and she said the individual that delivered it left a business card that said he was a Private Investigator

5 I contacted attorney Jonathan P Whithead to see if he was available to

see what the package contained being it was left by a Private Investigator, which as I understand also works as a process server

6 I called Ms Fant back and requested that she contact Mr Whitehead and see how he wanted it delivered

7 She called me back the day she contacted Mr Whitehead and said he wanted her to open and fax to him and wanted my approval to do so I informed her that I wanted her to do as Mr Whitehead wanted and to cooperate with him as requested

8 After Mr Whitehead received the fax he contacted me and informed me that it was a Summons and Complaint Mr Whitehead informed me that the Plaintiff had filed this action against Pleasant Grove on November 1, 2013 Although I was never served with a Summons or other Notice of this action, my attorney informed me that a Final Order from the Court had been filed on March 31, 2014, awarding the Plaintiff a Default Judgment against Pleasant Grove in the amount of \$12,930.00

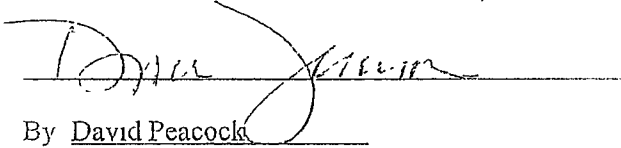
9 I always thought that the registered agent or their authorized representative had to be served with a copy of the Summons and Complaint when they were being sued My attorney tells me that an Affidavit of Service was filed in this case alleging that I was served as the registered agent of Pleasant Grove when the Summons and Complaint was delivered to Teresa Fant, my Office Manager for Rental One, LLC, which is a separate and distinct company from Pleasant Grove I do not understand how a judgment could have been obtained against my company, Pleasant Grove Properties, Inc., in a lawsuit in which I, as the registered agent, was not served with the Summons and Complaint or given any other notice

10 I understand from my attorney that I have a good faith and meritorious

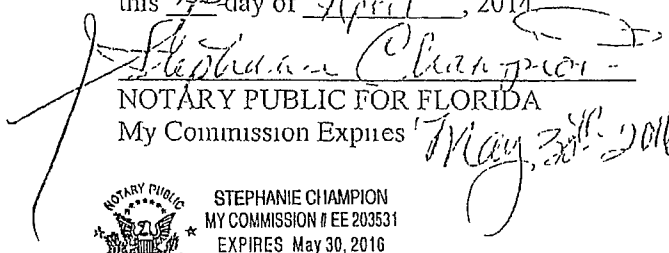
defense to the cause of action filed against me by the Plaintiff herein and that I may also have a valid counterclaim against the Plaintiff regarding the subject matter of the action. However, my attorney informs me that he cannot assert my meritorious defense and bring my counterclaim as long as the Final Order in this action remains valid.

11 I certainly do not think it is just or fair that I cannot now assert my defense and counterclaim against the Plaintiff because of an Order that was obtained in a lawsuit in which I was never afforded notice or proper service of process.

PLEASANT GROVE PROPERTIES, INC.


By David Peacock
Its President and Owner

SWORN to and subscribed before me
this 4th day of April, 2014

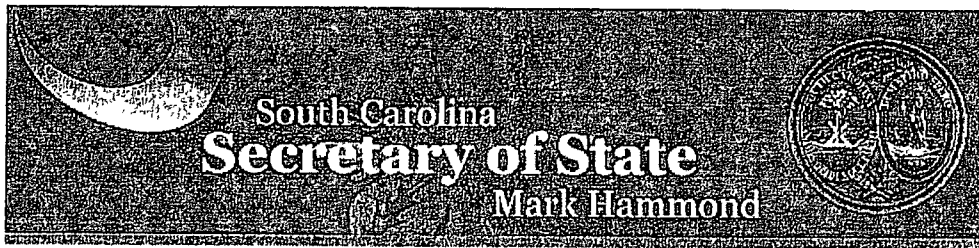

NOTARY PUBLIC FOR FLORIDA
My Commission Expires May 30th 2016



STEPHANIE CHAMPION
MY COMMISSION # EE 203531
EXPIRES May 30, 2016
Bonded thru Budget Notary Services

EXHIBIT 4

**Registered Agent Information
for Defendant, Pleasant Grove Properties, Inc.
South Carolina Secretary of State's Website**

**PLEASANT GROVE PROPERTIES, INC.**

Note This online database was last updated on 3/31/2014 6 01 50 PM
See our Disclaimer

DOMESTIC / FOREIGN	Domestic
STATUS	Reinstatement
STATE OF INCORPORATION	SC
/ ORGANIZATION	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME	DAVID PEACOCK
ADDRESS	1425B S BUNCOMBE RD
CITY	GREER
STATE	SC
ZIP	29651
SECOND ADDRESS	
FILE DATE	04/28/1983
EFFECTIVE DATE	04/28/1983
DISSOLVED DATE	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Reinstatement	06/15/2004	REINSTATEMENT	
Agent	04/05/2004	CH AGT/ADD FR-P WARREN MCLEOD	
Forfeiture	01/19/2000	FORFEITURE #2	Image
Incorporation	04/28/1983	ART	Film

Disclaimer The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

NAI Earle Furman, LLC,

vs

Pleasant Grove Properties, Inc ,

Plaintiff,

Defendant

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO 2013-CP-23-05891

**MOTION AND ORDER INFORMATION
FORM AND COVER SHEET**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B WICKENS IMER
2013 AUG 4 AM 10:49

Plaintiff's Attorney Paul S Landis, Bar No 76120 Address P O Box 10207, Greenville, SC 29603 Phone 864-233-0445 Fax 864-233-4781 E-mail paul@fayssoulaw.com Other _____	Defendant's Attorney Jonathan P Whitehead, Bar No 76124 Address 410 E. Butler Rd , Ste E , Mauldin, SC 29662 Phone 864-561-8011 Fax 864-675-0205 E-mail jon@jwhiteheadlaw.com Other _____
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion Motion to Reconsider, Alter or Amend Order entered July 23, 2014 Estimated Time Needed 15 minutes Court Reporter Needed ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted _____	
SECTION III: Motion Fee ☒ PAID - AMOUNT \$ 25.00 ☐ EXEMPT (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCPP) ☐ Proposed order submitted at request of the court, or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter _____ ☐ Other _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order ☐ Other _____	JUDGE CODE _____ Date _____
CLERK'S VERIFICATION Collected by _____ Date Filed _____ ☐ MOTION FEE COLLECTED \$ _____ ☐ CONTESTED - AMOUNT DUE \$ _____	

SCCA 233 (11/2003)

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

C.A. No.: 2013-CP-23-05891

**NOTICE OF MOTION AND MOTION
TO RECONSIDER, ALTER OR AMEND
AND MEMORANDUM IN SUPPORT**

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKENS/MSR
JUL 24 4 49 PM '14

TO: PLAINTIFF AND ITS ATTORNEY, PAUL S. LANDIS:

PLEASE TAKE NOTICE that the Defendant, Pleasant Grove Properties, Inc., by and through its undersigned counsel, will move before the Court of Common Pleas of Greenville County, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for reconsideration of, or an Order altering or amending, an Order entered in the within case by the Honorable Alison Renee Lee on July 23, 2014, and received by Defendant's counsel on July 24, 2014

This motion will be based on the common laws and applicable statutory laws of the State of South Carolina, including Rule 59(e) of the South Carolina Rules of Civil Procedure, and is made on the following grounds

I. INTRODUCTION

This case was commenced with the filing of a Summons and Complaint on November 1, 2013, seeking commission fees arising out of a Commission Agreement between Plaintiff and Defendant. An Affidavit of Service was thereafter filed stating 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. Subsequently,

an affidavit of default and motion for default judgment were filed by the Plaintiff. On March 20, 2014, the Honorable Letitia Verdin awarded judgment by default, which was entered on March 31, 2014. On April 4, 2014, just four (4) days after entry of the default judgment, Defendant filed a motion to set aside the default and to seek relief from default judgment. Defendant's motion was supported by affidavits of Teresa Fant and David Peacock. On July 23, 2014, the Honorable Alison Renee Lee entered an Order denying Defendant's motion to set aside default and for relief from default judgment. A copy of the Order is attached as **Exhibit A**. Defendant now moves this Court to reconsider, alter or amend the July 23, 2014 Order.

II. ARGUMENT

This Honorable Court should reconsider, alter or amend the attached Order denying Defendant's Motion to Set Aside Default and for Relief from Default Judgment. Specifically, this Court should reconsider, alter or amend its finding that the "[d]efendant was properly served and the judgment is not void" and/or, alternatively, that there did not exist mistake, inadvertence or excusable neglect on the part of Defendant in failing to file an Answer or responsive pleading to the Complaint.

1. The Default Judgment is void because the Defendant was not properly served and therefore the Court lacked jurisdiction.

This Honorable Court should reconsider, alter or amend its ruling that Defendant was afforded due process when a process server attempted to serve a Summons and Complaint upon the Office Manager of Rental One, LLC, a separate and distinct company owned by the Registered Agent of Defendant.

In the Order dated July 23, 2014, Judge Lee notes that Plaintiff was unable to achieve service upon Defendant's registered agent personally or by United States Mail. The Order provides discussion on whether Defendant adequately maintained current and updated

information with the Secretary of State and how Defendant has the responsibility to keep such records updated. Though this discussion may call into question Defendant's record keeping practices, it only supports Defendant's assertions that it was not properly served with a copy of the Summons and Complaint. Clearly, Plaintiff attempted service by mailing copy of the pleadings to Defendant's Registered Agent at multiple different addresses and the Exhibits submitted by Plaintiff demonstrate that such mail was sent U S Certified, Return Receipt Requested, and Restricted Delivery, as required pursuant to Rule 4(d)(8) of the South Carolina Rules of Civil Procedure. However, it is also clear that none of the mailings were signed for by Defendant's Registered Agent.

Rule 4(d)(8), SCRCP, sets forth the requirements for service by Certified Mail. The Rule provides, in sum, that it must be restricted delivery to the addressee and that service is effective upon the date of delivery as shown on the return receipt. Furthermore, the rule provides that "[s]ervice pursuant to this paragraph shall not be the basis for the entry of a default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant." Id. And, finally, "[i]f delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules." Id.

Here, the Plaintiff submitted several copies of Certified Mail correspondence wherein it attempted to serve the Defendant's Registered Agent via Certified Mail. None of the Exhibits submitted by the Plaintiff contained a signed return receipt. Whether Defendant maintained adequate records and updated addresses with the Secretary of State is not set forth as a contingency under Rule 4(d)(8) and, as such, it should not have been a consideration of the Court in the instant case. In fact, Defendant submits that Rule 4(d)(8) contemplates just such a situation as exists in this case where it states that service shall be made as otherwise provided by

these rules when “delivery of the process is refused ” Arguably, failure to keep updated records with the Secretary of State is no different than refusing to sign for the service

The Order goes on to point out that service upon the registered agent is only one of the ways that a corporation may be served pursuant to Rule 4, SCRCP Judge Lee then cites Graham Law Firm, P.A v Makawi, 396 S C 290, 721 S E 2d 430 (2012) and Richardson v P V, Inc., 383 S C 610, 682 S E 2d 263 (2009), wherein the South Carolina Supreme Court addressed proper service of process upon an agent of a corporation and/or individual In Graham Law Firm, the Supreme Court stated that “[s]ervice on an employee is effective when the employee has apparent authority to receive it on behalf of the employer ” 396 S C 290, 721 S E 2d 430, 433 (citing Richardson, 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))

In support of its Motion to Set Aside Default and for Relief from Default Judgment, Defendant submitted Affidavit of Teresa Fant and Affidavit of David Peacock The affidavits provided in sum that Teresa Fant was an employee and office manager of Rental One, LLC, a separate and distinct company owned by David Peacock Peacock is the Registered Agent for Rental One, LLC and the Defendant Company The affidavits also provide that Teresa Fant regularly receives mail on behalf of Peacock but cannot open it and Peacock reviews the mail when he comes to the office That is, the offices of Rental One, LLC Teresa Fant also stated in her affidavit that she did not tell the process server that she was authorized to accept service of process, despite the Affidavit of Service providing that service was made upon “David Peacock, as Registered Agent **via Teresa Fant – Secretary and states authorized to Accept Service** ” (emphasis added).

In the July 23, 2014, Order, it appears that Judge Lee concluded that Teresa Fant had authority to accept service of process on behalf of Defendant Pleasant Grove Properties, Inc. or that she had authority to accept service of process on behalf David Peacock, Defendant's registered agent, simply because she was the Office Manager for a separate and distinct company owned by David Peacock. It also appears that Judge Lee relied on the Richardson and Graham Law Firm cases in concluding that Teresa Fant had such authority. Defendant submits that these cases are clearly distinguishable from the facts in the instant case and that Teresa Fant did not have authority, actual or apparent, to accept service on behalf of Defendant Pleasant Grove Properties, Inc.

In Richardson v. P.V., Inc., the South Carolina Supreme Court held that hotel desk clerk had apparent authority to accept service on behalf of the Defendant hotel. 383 S.C. 610, 682 S.E.2d 263 (2009). The facts in the Richardson case were that Plaintiff was suing the owner of a hotel after a person drowned in the pool on the hotel premises. The process server went to the hotel to serve a copy of the Summons and Complaint and a woman named Cruel was the only person working at the hotel. Cruel was the hotel desk clerk. The Plaintiff in the Richardson case argued that her being the only employee present demonstrated that she had apparent authority to accept service of process. However, a closer reading of the case indicates that there were additional facts that the Court obviously took into consideration. All parties—the process server, Cruel, and the registered agent—in the Richardson case acknowledged that Cruel called the registered agent while the process server was present. The process server testified that when he talked to the registered agent on the phone, he identified himself as a process server and explained the reason for his visit and that the registered agent then told him that he could leave the papers with Cruel or that he could come back when he was there. The process server also

testified that Cruel told him that the registered agent gave her permission to accept the papers and she said “yes ” The registered agent also testified that he told the process server that it was up to him whether or not to leave the papers Plaintiffs in the Richardson case were awarded a default judgment after the registered agent did not file an Answer

In holding that the hotel desk clerk in Richardson had authority to accept service of process, the South Carolina Supreme Court noted that Rule 4 of the South Carolina Rules of Civil Procedure “serves at least two purposes it confers personal jurisdiction on the court and **assures the defendant of reasonable notice of the action** ” 383 S C at 615, 682 S E 2d at 265 (citing Roche v Young Bros , Inc of Florence, 318 S C 207, 209, 456 S E 2d 897, 899 (1955)) The Court further noted that “[e]xacting compliance with the rules is not required to effect service of process ” Id. However, the Court then clarified its “exacting compliance” statement when it stated that “[w]hether an employee may accept service on behalf of a corporation depends on the authority the corporation conferred upon the employee[.]” and, further, that “the court must look to the circumstances surrounding the relationship and find authority which is either express or implied from the type of relationship between the defendant and the alleged agent ” Richardson, 383 S C at 615, 682 S E 2d at 265 (citing Moore v Simpson, 322 S C 518, 523, 473 S E 2d 64, 67 (Ct App 1996)).

The Richardson court then noted that Cruel had apparent authority to accept service of process (383 S C at 615, 682 S E 2d at 265), that Cruel was the only employee present when the process server entered the hotel, which represented to third parties that she was in charge (Id.), that the process server testified that the registered agent told him that he could leave the papers with Cruel or that he could come back (383 S C at 615-616, 682 S E 2d at 265-266), and that the registered agent testified that he told the process server that it was up to him whether to leave

the papers (383 S C at 616, 682 S E 2d at 266) The Richardson court then reasoned that under those facts, “we find that [the Registered Agent] knowingly permitted Cruel to exercise authority to accept service of process and further find that his manifestations to [the process server] indicated that Cruel had such authority ” Id The Court then concluded that Cruel was authorized to accept service

Here, the facts in the within case are clearly distinguishable from the facts in Richardson First, the process server and registered agent in Richardson discussed the matter on the telephone while the process server was present David Peacock and the process server never discussed what was in the package that was delivered to Teresa Fant Second, the process server in Richardson asked the hotel desk clerk where the registered agent was and if she would call him to discuss the situation Here, there is no evidence in the record to establish that the process server requested that Teresa Fant try to contact David Peacock Lastly, and perhaps most importantly, the process server in the Richardson case was actually at the Defendant’s hotel, while the process server in the instant case was at an entirely separate and distinct business There is no evidence in the record to indicate that Teresa Fant was an employee of Defendant Pleasant Grove Properties, Inc The only evidence as to her employment was the affidavits submitted by Defendant, which indicated that Teresa Fant was an employee of Rental One, LLC, not Defendant Pleasant Grove Properties, Inc

The Richardson case requires that the Court look to all circumstances surrounding the relationship of Teresa Fant and Defendant Pleasant Grove Properties, Inc and determine whether authority, express or implied, exists from the type of relationship between the defendant and the alleged agent Here, the only circumstance that the Court appears to have considered is the Exhibits submitted by Plaintiff that showed that Teresa Fant signed for certified mail that was

addressed to Defendant "Pleasant Grove Properties, Inc c/o David Peacock, President" at the mailing address for Rental One, LLC, a separate and distinct company owned by David Peacock. The mail was sent back in September 2013 and was not sent restricted delivery. Teresa Fant is the Office Manager for Rental One, LLC, and signed the return receipt on that letter.

The Plaintiff also submitted Exhibits showing that it attempted to serve the Registered Agent (David Peacock) for Defendant by U S Certified Mail, Return Receipt Requested, Restricted Delivery, by sending the mail to several addresses, including the address of Rental One, LLC. Plaintiff's Exhibits show that the return receipts were never signed for on the attempts to serve process through the mail. Clearly, Teresa Fant was not authorized to go to the post office and sign for mail that was sent restricted delivery to David Peacock.

In the July 23, 2014, Order, Judge Lee states that "Peacock never states in his affidavit that Fant is not authorized to receive documents or mail on his behalf." The Affidavits of Fant and Peacock make it clear that Fant was allowed to accept mail on behalf of Peacock, but that she was not allowed to open it. In her Affidavit, Teresa Fant specifically disputed the Affidavit of Service which purported to claim that Teresa Fant stated she was authorized to accept service. The Affidavits established that Teresa Fant was not even the Secretary of Defendant Pleasant Grove Properties, Inc., despite the fact that the Affidavit of Service states "via Teresa Fant – Secretary . . ." Just because David Peacock never specifically stated that Fant is not authorized to receive documents or mail on his behalf does not show that Fant had authority, express or implied, to accept service on behalf of a Defendant Corporation for which she does not work.

In Graham Law Firm, P A. v. Makawi, 396 S C 290, 721 S E 2d 430 (2012), the South Carolina Supreme Court addressed the issue of service of process upon a corporation and an individual when service was claimed to have been achieved by Rule 4(d)(8), SCRCP.

Specifically, the issue of whether the person(s) who signed the return receipt were authorized to do so on behalf of the corporation and the individual defendant. In Graham Law Firm, the Plaintiff was awarded a default judgment after the Defendant failed to file an Answer to the Summons and Complaint. The trial court initially denied Defendant's Rule 60(b) motion to set aside the default, but subsequently granted it after reconsidering the matter. In Graham Law Firm, the Defendant, concurrently with its motion to reconsider, filed a second affidavit providing that the persons who signed for the certified mail were not authorized to do so. The Plaintiff appealed the trial court's decision to grant Defendant relief from the judgment.

The Graham Law Firm court stated that "[w]hen the civil rules on service are followed, there is a presumption of proper service." (quoting Roche v. Young Bros., Inc., 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995)). Furthermore, that "[o]nce a Plaintiff has demonstrated compliance with the rules, the defendant can rebut an inference that service was effected only by showing [that the Agent purporting to accept service was unauthorized]" (citing Rule 4(d)(8), SCRCPP).

Here, the Plaintiff failed to follow the rules for service of process on a corporate defendant. Here, the Plaintiff relied on an Affidavit of Service which purported to serve process on a Corporate Defendant (Defendant Pleasant Grove) by serving process on the Office Manager of a separate and distinct company (Rental One, LLC), a company that happens to be owned by the same person who owns the Corporate Defendant. Defendant submitted affidavits in support of its motion to set aside default and for relief from the default judgment that indicated that Teresa Fant was not authorized to accept service. The affidavits indicated that she was employed by an entirely separate and distinct corporation. The only evidence of Teresa Fant's "authority" to accept service on behalf of Defendant appears to have been that she signed for certified mail.

that was sent to Defendant Corporation some six (6) months prior to entry of the default judgment and when such mail was sent to the address where Teresa Fant works as the Office Manager of a separate and distinct company. None of the other Exhibits submitted by the Plaintiff at the May 23, 2014 hearing provide any insight into the “authority” of Teresa Fant to accept service on behalf of the Defendant. The Plaintiff failed to follow the rules on effecting service of process on a corporate defendant. The Defendant submits that the line of reasoning set forth by the courts in the Roche and Graham Law Firm cases indicates that Plaintiff should have been required to set forth evidence to support that Teresa Fant had authority to accept service of process on behalf of Defendant. Nevertheless, Judge Lee seems to indicate in her Order that because David Peacock did not specifically state that Fant was not authorized to accept service on behalf of the Defendant, she must have been authorized. It appears that Plaintiff was afforded a presumption of proper service of process that should have only been warranted were the rules to have been followed. The Plaintiff should have had the burden to show that Fant was authorized to accept service.

For instance, in Graham Law Firm, the South Carolina Supreme Court noted that “the trial court’s finding that [the alleged agents] were unauthorized persons within the meaning of Rule 4(d)(8) is sufficiently supported by the evidence in the record—or, specifically, the lack of evidence in the record to rebut [Defendant’s] affidavit.” 396 S.C. at 298, 721 S.E.2d at 434. The Graham Law Firm court further noted that “[plaintiff] had not offered ‘any evidence of declarations or conduct on the part of the [Defendants] that could potentially give rise to apparent authority in [Agents].’” Like Graham Law Firm, the Plaintiff in the instant case has failed to offer sufficient evidence that Fant had authority to accept service of process on behalf of a Defendant Corporation that she was not even employed by at the time the alleged service of

process occurred. In fact, the only piece of evidence offered to show that Fant had such authority in this case was that she had signed for a piece of certified mail sent to Defendant Company at the address where Fant works as the Office Manager for a separate and distinct company. The Order entered July 23, 2014, in the within case seems to indicate that simply because an individual signs for certified mail on behalf of a corporation—when that mail was sent to an address for a different company where the individual is employed by the different company—then that individual must have been authorized to accept service of process on behalf of the corporation for which the individual does not work. The Defendant submits that such a holding could lead to a great deal of misinterpretation in all future cases in which one person owns multiple corporations, and, further, that such a holding is inconsistent with the case law relied upon in the instant case.

In Graham Law Firm, while discussing persons authorized to accept service on behalf of a corporation, the South Carolina Supreme Court stated that “[a] rule permitting certain persons to receive service of process on behalf of others does not imply that ‘anyone who happens to pick up the mail’ can stand in for the defendant.” Here, the Plaintiff’s only evidence that Fant was authorized to accept service of process for Defendant was an Exhibit showing that she had previously signed for certified mail addressed to Defendant at the address of a separate and distinct company that employed Fant as its Office Manager.

Here, the holding that Defendant was properly served was based upon the conclusion that Fant had apparent authority to accept service of process on behalf of Defendant. The Defendant submits that this holding is wholly unsupported by the evidence or, alternatively, that the conclusion was the result of an error of law. Accordingly, for the hereinbefore set forth reasons, the Defendant requests that this Court reconsider, alter or amend its Order dated July 23, 2014,

wherein it denied Defendant's motion to set aside entry of default and for relief from default judgment entered March 31, 2014, as a result of the fact that service of process was never achieved upon Defendant and that the judgment is void for lack of jurisdiction

2. The Default Judgment should be set aside for mistake, inadvertence, surprise or excusable neglect.

In the event this Court determines that service of process was proper, the Defendant submits that the Court should still reconsider, alter or amend its Order denying Defendant's motion to set aside entry of default and for relief from default judgment in that its failure to file an Answer or otherwise respond to the Complaint in this case was the result of mistake, inadvertence, surprise or excusable neglect.

In the event this Court maintains that service upon Teresa Fant was proper service upon Defendant Pleasant Grove Properties, Inc., the Defendant would still submit that good cause exists to set aside entry of default and for relief from default judgment as a result of mistake, inadvertence, surprise or excusable neglect. The package delivered to Teresa Fant was simply a sealed white envelope with the name "David Peacock" written on the outside of the envelope. The process server did not tell Teresa Fant what was inside when he delivered it. Teresa Fant did not open the package. David Peacock did not instruct Teresa Fant to open the package when he first learned of it. He instructed her to contact an attorney immediately to see how to handle the package. Defendant has asserted that there did exist a delay between Fant and Defendant's attorney being able to communicate about the package. The affidavits and arguments of Defendant indicate that David Peacock was not aware of the contents of the package until six (6) days after it was finally sent to Defendant's attorney for review.

In the July 23, 2014, Order, Judge Lee found that Defendant failed to establish a factual basis for mistake or surprise. The Order provides that there is no evidence of any surprise as

Defendant was aware that Plaintiff had hired an attorney to collect the commission based upon the letter sent in September 2013. Defendant would submit that knowledge of the fact that Plaintiff requested an attorney to send a demand letter in September 2013, is not the same as knowledge that Plaintiff had filed a Summons and Complaint against it when an unmarked package was delivered to a totally separate and distinct company owned by David Peacock almost six (6) months later. Defendant submits that it was surprised when it learned that Plaintiff had filed the within action. Defendant submits that it was also surprised when it learned that a default judgment had been entered against it when he had just received notice of a pending suit.

Moreover, Defendant submits that it was excusable neglect that Defendant did not file an Answer or otherwise respond to the Complaint in the within case. The excusable neglect is that it took time for the contents of the package, all of which were unknown to the Defendant as established by the affidavits, to be submitted to its attorney for review. Judge Lee found that such a delay is not a basis to set aside a judgment and cited 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).

The Defendant submits that the facts and circumstances of the Hill case are readily distinguishable from the facts and circumstances of this case. In Hill, the Defendant was actually served with a copy of the Summons and Complaint. The Defendant knew he had been served and he failed to file an Answer. The Plaintiff in the case was awarded a default judgment.

In discussing the grounds for relief from a default judgment, the Hill Court noted that "[i]n determining whether a default judgment should be set aside under Rule 60(b)(1), '[t]he promptness with which relief is sought, the reasons for the failure to act promptly, the existence of [a] meritorious defense, and the prejudice to the other parties are relevant.'" Hill, 345 S.C. at

309, 547 S E 2d at 897 (quoting New Hampshire Ins. Co. v. Bev Corp., 312 S C 47, 50, 435 S E 2d 377, 379 (Ct App 1993) (citations omitted) In Hill, the Defendant failed to satisfy the fourth factor, the reason for the failure to act promptly 345 S C at 310, 547 S E 2d at 897 The Court noted that his failure to understand the legal process was not a sufficient reason to excuse his tardy reply Further, as Judge Lee cited, “[a] party has a duty to monitor the progress of his case Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard that is applied to an attorney ” Id

Here, the affidavits establish that neither Teresa Fant nor David Peacock knew what was enclosed inside of the sealed package delivered to Rental One, LLC Their only knowledge consisted of knowing that it had David Peacock’s name written on the outside Though Peacock stated in his affidavit that he knew that the private investigator who delivered the package sometimes served process on people, it did not say that he knew for a fact that Plaintiff had filed suit against Defendant. Unlike the defendant in Hill, Peacock did not know what was inside the package He did not know that a Summons and Complaint was inside Peacock’s affidavit establishes that he did not know what was inside of the package until his attorney contacted him with that information Even though he did not know what was inside the package, he instructed Teresa Fant to immediately get it to the Attorney for review and handling

Even if this Court deems that Defendant was properly served with process, this Court should have set aside the default and granted Defendant relief from the default judgment in this case because all factors above were satisfied The Defendant filed a Motion to Set aside the default and for relief from the default judgment within six (6) days of entry of the default judgment and within four (4) days of learning of its entry The Defendant’s reasons for failure to act promptly were that it did not have sufficient knowledge or notice that the within action was

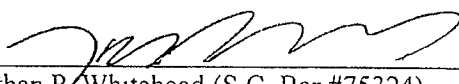
pending Defendant was waiting to hear from its attorney as to the contents of the package. The Defendant has a meritorious defense to the complaint in this case, as was demonstrated in the Answer filed concurrently with its Motion to set aside default and for relief from default judgment. Lastly, there is absolutely no prejudice and no evidence of any prejudice to Plaintiff in the event Defendant's was granted the requested relief.

III. CONCLUSION

For the foregoing reasons, Defendant requests that this Honorable Court reconsider, alter or amend the Order entered in the within case on July 23, 2014, denying Defendant's April 4, 2014, Motion to set aside default and for relief from default judgment in the within case. The Defendant submits that the relief requested in its April 4, 2014, Motion is proper in that the judgment by default is void in that the Defendant was not afforded due process and/or, in the alternative, should the court find that the judgment by default is valid, relief is still appropriate in that there exists mistake, inadvertence, surprise or excusable neglect such that the Court may relieve the Defendant from the judgment by default.

The Defendant requests that this Court reconsider, alter or amend its July 23, 2014 Order and enter an Order granting Defendant's April 4, 2014 Motion to set aside default and for relief from default judgment for the reasons hereinabove set forth.

RESPECTFULLY SUBMITTED,


Jonathan P. Whitehead (S C Bar #75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E Butler Rd, Ste E
Mauldin, South Carolina 29662
(P) 864-561-8011
(F) 864-675-0205
Attorney for the Defendant

Mauldin, South Carolina

Date 8/4/14

EXHIBIT A

FORM 4

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

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

7/23/2014

Date

CPFORM4Cm
SCCA SCRPC Form 4C (Revised 3/2013)

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

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

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 nearing 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

ORDER

FILED-CLERK OF COURT
GREENVILLE CO S.C.
PAUL E WICKENSIMER
2014 JUL 23 PM 12 17

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,

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

and
#2

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

and
x3

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), 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.*

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, 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

ad
84

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.

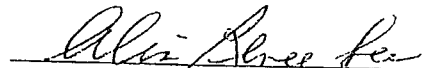
and
x5

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

af
86

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
NAI Earle Furman, LLC,)
Plaintiff,)
v.)
Pleasant Grove Properties, Inc ,)
Defendant.)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

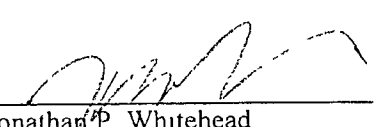
CASE NO. 2014-CP-23-05891

CERTIFICATE OF SERVICE
BY MAIL

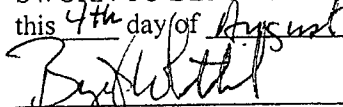
FILED-CLERK OF COURT
GREENVILLE SC 296
PAUL B WICKER
2014 AUG 6 AM 8 50

The undersigned hereby certifies that he is over the age of eighteen (18) years, that he is competent to serve papers, and that on this date he did cause one (1) original clocked-copy of Defendant's **Notice of Motion and Motion to Reconsider, Alter or Amend and Memorandum in Support filed August 4, 2014** to be mailed to The Honorable Alison Renee Lee pursuant to Rule 59(g), SCRCP, by depositing the same in the United States Mail, postage prepaid, and addressed as follows

The Honorable Alison Renee Lee
P O Box 192
Columbia, SC 29202


Jonathan P Whitehead

SWORN TO BEFORE ME
this 4th day of August, 2014.


Notary Public for South Carolina
My Commission Expires 9-20-21

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
NAI Earle Furman, LLC,)
Plaintiff,)
v.)
Pleasant Grove Properties, Inc ,)
Defendant.)

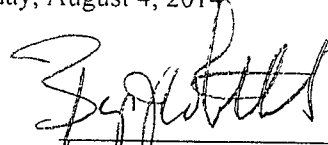
IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2014-CP-23-05891

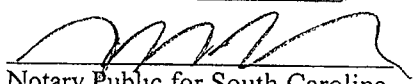
AFFIDAVIT OF SERVICE

FILED-CLERK OF COURT
GREENVILLE, S.C.
PAUL B. WICKERHOFER
2014 AUG 6 PM 8 51

The undersigned hereby certifies that he is over the age of eighteen (18) years, that he is competent to serve papers, that he has no interest in the within action, and that on this date he did cause one (1) clocked-copy of Defendant's **Notice of Motion and Motion to Reconsider, Alter or Amend and Memorandum in Support** filed August 4, 2014 to be served upon the Plaintiff, NAI Earle Furman, LLC, by personally delivering a copy thereof to the Plaintiff's Attorney, Paul S. Landis, at the Fayssoux Law Firm, located at 209 E Washington Street, Greenville, South Carolina 29601, at approximately 12 31 P M on Monday, August 4, 2014.


Byron J. Whitehead

SWORN TO BEFORE ME
this 4th day of AUGUST, 2014


Notary Public for South Carolina
My Commission Expires: 12/6/16

State of South Carolina.,) In the Common Pleas
) Court of Greenville
)
County of Greenville.,) Case No.: 2013-CP-23-05891

NAI Earle Furman., LLC.,)
)
Plaintiff.,)
)
-vs-) Transcript of Record
)
Pleasant Grove Properties.,)
)
Defendant.)
)
)

May 23, 2014
Greenville, South Carolina

B E F O R E:

The Honorable Alison Renee Lee., Judge.

A P P E A R A N C E S:

Mr. Paul S. Landis
Attorney at Law
Fayssoux Law Firm., P.A.
209 E. Washington Street
P.O. Box 10207 29603
Greenville, South Carolina 29601
864-233-0445
paul@fayssouxlaw.com
For the Plaintiff

Mr. Jonathan P. Whitehead
Attorney at Law
410 E. Butler Road, Suite E
Maudlin, South Carolina 29662
864-561-8011
jonathanwhiteheadlaw@gmail.com
For the Defendant

Wanda Nelson, CVR-M
Official Court Reporter
Sixteenth Judicial Circuit
To the Honorable John C. Hayes, III

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X

E-X-A-M-I-N-A-T-I-O-N

WITNESS

BY:

PAGE NO.

No witnesses were called.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I-N-D-E-X - CON'T

E-X-H-I-B-I-T-S

<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EVD.</u>
------------	--------------------	------------	-------------

No Exhibits were received into the record.

1 (COURT IN SESSION IN THE MATTER OF NAI EARLE FURMAN V.
2 PLEASANT GROVE PROPERTIES, FRIDAY, MAY 23, 2014 AT 11:40
3 A.M..)

4 THE COURT: And I think the last matter I have this
5 morning is Docket No. 2013-CP-23-0-5-8-9-1, *NAI Earle*
6 *Furman, LLC., versus Pleasant Grove Properties*
7 *Incorporated*. The Plaintiff is represented by Paul Landis.

8 MR. LANDIS: That's correct, Your Honor. Good
9 morning.

10 THE COURT: Good morning. And the Defendant is
11 represented by Jonathan Whitehead.

12 MR. WHITEHEAD: That's correct, Your Honor.

13 THE COURT: All right, I have had the opportunity to
14 look at your information that is in the file in the motion.
15 I believe it's a motion by the Defendant to set aside the
16 default and the default judgment. Is that correct?

17 MR. WHITESIDE: That's correct, Your Honor.

18 THE COURT: And I received a memorandum from the
19 Defendant earlier this week which I've had the chance to
20 review. And I have looked at all of the documents that are
21 in the file relating to the Summons and Complaint and the
22 Certificate of Service and the information relating to the
23 default.

24 I understand there was an answer and counterclaim that
25 was filed and there has been a reply. I really did not

1 look at those at all and I understand that part of the
2 Defendant's argument is that they do have a substantive
3 meritorious defense as the basis to set aside the default.
4 But I didn't read that other than what's been cited in your
5 brief so I'll be happy to hear from you. Yes, sir.

6 MR. WHITEHEAD: Thank you, Your Honor.

7 Your Honor, basically this is an action that was
8 filed, an affidavit of service was filed on January 31st
9 reporting to have served the defendant's registered agent
10 David Peacock. I attached a copy of that of course to the
11 memorandum, I believe you said you had read.

12 THE COURT: Yes, sir.

13 MR. WHITEHEAD: Your Honor, basically we've - the
14 first we'd heard of this was around or about March 25th, it
15 was sent to my office. We learned on or about April 1st a
16 judgment had been entered on March 31st. We tried that as
17 promptly as we could in notifying opposing counsel to see
18 if we could work something out in terms of him letting us
19 out of it and we this motion filed and affidavits of course
20 prepared which are attached.

21 Your Honor, the affidavit of service states that
22 service was achieved by service on the registered agent
23 David Peacock by serving Teresa Fant, secretary of the
24 defendant, who states that she's authorized to accept
25 service. You can follow, the affidavits would clearly

1 dispute that. Also we would dispute that Teresa Fant is
2 even an agent, officer or manager of the defendant. It
3 clearly states that she does in fact the office manage of
4 another company that David Peacock is the registered agent
5 for, Rental One, LLC. In fact the location where the
6 process server served or allegedly attempted to serve was
7 the address of Rental One where Rental One, LLC., operates
8 its business.

9 Your Honor, so basically we, you know, we believe that
10 good cause exist to set aside default and we believe that
11 relief is warranted in this case because it's a void
12 judgment, there wasn't proper service under 4 (d) 3 as the
13 affidavit shows Ms. Fant was not an agent of the defendant.
14 And, Your Honor, she was not entitled to accept service of
15 process on behalf of the defendant.

16 THE COURT: Let me ask you this, you know there's some
17 slight discrepancies between the two affidavits between Ms.
18 Fant and the registered agent Mr. Peacock. One, Ms. Fant
19 seems to indicate that she may have received it sometime
20 prior to the date that Mr. Peacock indicates that she
21 called him to talk about the fact that papers had been
22 served. Is there any real significance to the
23 discrepancies in those dates?

24 I understand the idea was that she was an employee of
25 another company and that she was there present and that she

1 states that he came in and gave her a document that would
2 address to Mr. Peacock was sealed and that she was not
3 authorized to open it or to otherwise and nobody said
4 anything to her about being served with any summons and
5 complaint. Is there any real significance to the
6 discrepancies between the times that they said and of
7 course they came in to deliver the documents?

8 MR. WHITESIDE: Your Honor, I don't believe - I know
9 that needs some explanation. My understanding is that this
10 white envelop that just had David Peacock handwritten on
11 the outside. There was not a David Peacock registered
12 agent to Pleasant Grove Properties or anything like that.
13 It was delivered to the office manager there; she puts it
14 on a desk and Mr. Peacock very - I mean he's very rarely if
15 ever comes in there to that desk. He lives in Florida and
16 runs these businesses here in Greenville. And so as far as
17 the dates, Your Honor, I'm not sure.

18 I think obviously Ms. Fant remembered it being
19 February 3rd of 4th when Mr. Silvaggio came by when
20 actually the affidavit of service would say that he was
21 there sometime in January so I think those dates were sort
22 of a bit of a discrepancy as well. And I think that there
23 was some period of time I guess where Ms. Fant and Mr.
24 Peacock were having a phone conversation so otherwise I
25 think somebody brought something by here.

1 Your Honor, he contacts me and I tell him send it over
2 I'll be glad to take a look at it. I guess he then tells
3 her to send it to me. She contacts me and it takes us a
4 while to hook up. She finally gets it faxed to my office
5 on March 25th. Your Honor, admittedly it did set on my
6 desk until April 1st at which time I picked it up and
7 obviously looked at the public index and realized we had a
8 serious problem; called Mr. Peacock and he was surprised
9 when I phoned him.

10 THE COURT: A couple of questions. So as I read your
11 memorandum and all the documentation, you're basic claim is
12 set aside the judgment is the fact that it's void because
13 there was not proper service to begin with because they
14 served - For two reasons: They served Teresa Fant and
15 claimed that she was authorized - authorized to accept
16 service on behalf of Mr. Peacock which the affidavit said
17 she was not. And additionally because the registered agent
18 for Pleasant Grove Properties is Mr. Peacock but at a
19 different address and so it was not even the appropriate
20 address for Pleasant Grove Properties Incorporated.

21 And then the third reason is that there was no notice
22 and you made reference to it in your brief that there was
23 no notice that the plaintiff intended to - no notice
24 serving you with the serving the agent with the
25 documentation seeking - indicating that they would seek a

1 default judgment?

2 MR. WHITESIDE: That's correct, Your Honor.

3 THE COURT: Anything further?

4 MR. WHITESIDE: Your Honor, just that you know if
5 opposing counsel tries to say that Ms. Fant was in some way
6 an agent of the registered agent, I think that the case -
7 and it's not cited in my memorandum, Your Honor, but
8 opposing counsel just delivered me a copy of it - I guess
9 it's *Richardson versus PV Inc.*, 383 S.C. 16 a 2009 case
10 that specifically goes into not every employee of a
11 corporation is an agent, so on and so forth, Your Honor.

12 The whole point here is that Mr. Peacock is the
13 registered agent of the Defendant; he was never provided
14 adequate service under Rule 4(d) and he - certainly the
15 court was without personal jurisdiction and he wasn't given
16 an opportunity to have his day in court if you will.

17 I think the court's are generally in favor of the
18 party deciding all cases on the merits. I think we have a
19 meritorious defense; we set that forth in the memorandum as
20 well as the answer. We'd ask the Court to grant us relief
21 from that judgment and permit us to proceed with this case.

22 THE COURT: Mr. Landis.

23 MR. LANDIS: Yes, Your Honor.

24 THE COURT: And I'm familiar with *Richardson*. This is
25 about the third or fourth case this week I've had

1 insufficient of service and process ---

2 MR. LANDIS: Okay.

3 THE COURT: --- and relating to the service of the
4 registered agent and the agent of the agent. There are a
5 couple of issues that appeal to me about from what I've
6 read and that is the fact that first of all they didn't
7 even serve the agent at the correct location. Apparently
8 it appears that Mr. Peacock is the registered agent but the
9 address for the defendant is 1425 South Buncombe Road in
10 Greer and that a person at a completely different address
11 from a completely different business was served on behalf
12 of or in an attempt to serve Mr. Peacock.

13 And then the other thing is that seems to appeal to me
14 is the fact that generally there is a requirement that
15 there be some notice to the individual that or to the
16 defendant that there is an attempt to seek a default
17 judgment. At least serving at the last known address or
18 where - what ever it is at least provide some of those and
19 there doesn't seem to be any indication in the file there
20 was any certificate of service or any documentation to show
21 that the motion for a default judgment was sent. I guess
22 it was liquidated damages.

23 MR. LANDIS: It was liquidated damages with no
24 attorney's fees sought, Your Honor.

25 THE COURT: And so I guess your argument's going to be

1 that they didn't have to provide - you didn't have to
2 provide notice.

3 MR. LANDIS: That's correct, Your Honor.

4 THE COURT: Well talk to me about the service.

5 MR. LANDIS: Be glad to. May it please the Court.

6 Thank you, Your Honor. And I absolutely
7 wholeheartedly agree with what Mr. Whitehead said that
8 there is a preference resolving cases on the merits.

9 Your Honor, I have passed up a couple of things. One
10 - or cases - particularly *McClurg v. Deaton* both at the
11 Court of Appeals level and also as it was affirmed by the
12 South Carolina Supreme Court. I've also passed up
13 *Richardson versus PV Incorporated*. Your Honor has those
14 and I know is very familiar with them.

15 I've also passed up the rest of the story. And, Your
16 Honor, if I may briefly by way of factual background, there
17 are two reasons that this case is not a normal case in
18 which somebody may be relieved from a default judgment and
19 there are two reasons for that. One is there is absolutely
20 no meritorious defense. And, Your Honor, I won't go
21 through the factors cause I know Your Honor is well aware
22 of 'em but when it comes to meritorious defense,
23 meritorious defense is more than a fact. It's a
24 requirement for relief from judgment.

25 . And then the other thing is in regard to service.

1 And, Your Honor, with regard to service I have passed up a
2 variety of documents and all that show several things. One
3 is - and this is all in the record as well - but this is a
4 simple action to collect a commission on a lease extension.
5 I represent NAI Earl Furman here in town; specifically
6 Brice Hunt and Ford Borders were the real estate brokers
7 involved in representing the landlord with respect to the
8 lease from Schmolz and Bickenbach.

9 This happened about this time last year that the lease
10 extension was executed. My client sent an invoice to 4394
11 Wade Hampton Boulevard which is the same address where
12 service was ultimately effectuated for Mr. Peacock and in
13 response to that invoice Mr. Peacock sent a check to my
14 client for Two Hundred Ten Dollars. That Two Hundred Ten
15 Dollar check was one sixtieth of the commission owed which
16 was Twelve Thousand, Six Hundred Dollars.

17 Basically it was an attempt, Your Honor, in response
18 to the invoice which was received at the 4394 Wade Hampton
19 Boulevard address by Mr. Peacock. Mr. Peacock attempted to
20 slow pay my client. So in response my client sends a
21 letter to Mr. Peacock in August and he attaches all the
22 documents and he sends it to the address that Mr. Peacock
23 provided in the lease for notice under the lease which is a
24 P.O. Box 2103 in Greer.

25 THE COURT: Let me stop you for just a moment, Mr.

1 Landis, cause the letter though appears that it was sent at
2 least - I guess I'm looking at one in September - and
3 that's after the fact after the receipt of the Two Hundred
4 and Ten Dollars so you're first letter that you're
5 referring to is -

6 MR. LANDIS: Was sent by my client directly. It's in
7 the package.

8 THE COURT: Directly. Okay.

9 MR. LANDIS: It was the August letter from Brice Hunt
10 to Mr. Peacock.

11 THE COURT: There is an August 6th letter.

12 MR. LANDIS: That's it.

13 THE COURT: Sent to the Post office box in Greer.

14 MR. LANDIS: The 2103. And that's the address
15 provided by Pleasant Grove Properties in the actual lease.

16 THE COURT: Okay.

17 MR. LANDIS: And then in September - And the whole
18 time Mr. Peacock - nobody at Pleasant Grove Properties
19 responds to anything after they send the check for Two
20 Hundred and Ten Dollars. They tried to slow pay NAI my
21 client.

22 So in response to the August 6th letter my client
23 receives no response. So on September 17th and by that
24 time I was fairly familiar due to dealing with my client
25 and looking at the situation of the way that Mr. Peacock

1 does things. And that's why if you look at the September
2 17th Demand Letter, Your Honor, that I sent, I sent it to
3 three addresses. I sent it to 4394 Wade Hampton Boulevard
4 which is where the invoice was sent and we knew Mr. Peacock
5 held an office and did business and we knew he had received
6 correspondence there and responded to it. We also sent it
7 to P.O. Box 2103 which is the address at the Pleasant Grove
8 Properties and Mr. Peacock provided in their lease for
9 notice to the landlord. We also, Your Honor, sent it to
10 1425 B South Buncombe Road which was listed on the
11 Secretary of State's web site as the information for the
12 registered agent, Your Honor, so we sent it to everywhere
13 where there was a legitimate tie or we thought we could
14 find.

15 And, Your Honor, the P.O. Box 2103 address which is
16 the very address that he put in the lease he refused to
17 pick up. 1424 B South Buncombe Road, Your Honor, he
18 wouldn't sign for it. Your Honor, with regard to 4394 Wade
19 Hampton Boulevard the lady who is identified as an office
20 manager and I understand - she - that address as Your Honor
21 can see in the letter it was addressed to Pleasant Grove
22 Properties Incorporated care of David Peacock.

23 Teresa Fant signed for that letter for Pleasant Grove
24 Properties Incorporated. That's important in and of itself
25 that you've got an office manager accepting and signing for

1 Pleasant Grove Properties but it's also important because
2 we know from a concession from Mr. Peacock that he received
3 the invoice, he received the letter from my client, and he
4 also received the letter from me. Those were at 4394 Wade
5 Hampton Boulevard and then P.O. Box 2103. So he's got a
6 history there. Teresa Fant accepting important information
7 for Pleasant Grove Properties Incorporated in accepting
8 that on their behalf.

9 So, in response to my September 17th letter I received
10 no response. In that September 17th letter that they
11 acknowledge Mr. Peacock acknowledges he received via Teresa
12 Fant on behalf of Pleasant Grove Properties Incorporated.
13 I specifically said I'm gonna bring an action in ten days
14 if I don't - if my client doesn't receive payment and I'm
15 not gonna give any further notice. So in response to my
16 letter that he acknowledges he received, there is no
17 response.

18 So, on November 1st of 2013 I filed this action. As I
19 said it's a simple action for collection of commission
20 that's due under the lease; it's a three percent with a
21 total lease value total lease value being Four Hundred and
22 Twenty Thousand Dollars. It's a cashed out lump sum due
23 upon the execution of the lease extension and so I filed
24 the action November 1st, 2013 and I hired process servers.
25 I hired a process servers in South Carolina and in Florida.

1 We received some evidence as Mr. Whitehead indicated and
2 I've included that in our stack of efforts to serve him.
3 Then he gave his address his Florida; we sent a process
4 server down there and she couldn't get him served. She
5 found the location, couldn't get him served at that
6 location.

7 He also had a residence that he maintained in Duncan,
8 South Carolina the River Falls Plantation. We sent a
9 process server there Paul Silvaggio who is a homicide
10 detective here in Greenville County for probably thirty
11 years. But anyway - And Mr. Silvaggio tried and tried and
12 tried again to get Mr. Peacock served; felt he was dodging
13 service and could not get him served.

14 So ultimately all of these things that we've been
15 diligently trying to do to get him served are not working
16 so in January as I've outlined in the stack of documents
17 that I've provided Your Honor I send letters for service of
18 process and normally I would do that first. When it comes
19 to a corporation normally I would do that first. But
20 because I knew the way that Mr. Peacock was doing business
21 and because of the dealings that my client and I have
22 already had trying to track him down and get him served
23 when he was dodging us then in January I sent again copies
24 of the summons and complaint via certified mail return
25 receipt requested restricted delivery to the three

1 addresses that I talked about a moment ago.

2 They would not sign for any of those.

3 So, at that same time Mr. Silvaggio had been going by
4 I think routinely and diligently trying to find Mr. Peacock
5 and finally he went to the 4394 Wade Hampton Boulevard
6 address and Ms. Fant indicated to Mr. Silvaggio that she
7 was authorized to accept service and that's in his
8 affidavit.

9 And so as a result he provides her with the
10 documentation addressed to Mr. Peacock as the registered
11 agent for Pleasant Grove Properties. And, Your Honor, I
12 think this situation is almost identical to the situation
13 that presented in Richardson where the default judgment in
14 that case was affirmed. I can't imagine, I was stunned when
15 I found Richardson and even though I probably run across it
16 before and just didn't have good memory, but I was stunned
17 at how similar the facts were.

18 And in that case I'm not even sure that the employee
19 was as high of a level employee as Ms. Fant who had already
20 accepted correspondence that got to Mr. Peacock.

21 Furthermore, Your Honor, we know that Mr. Peacock in
22 fact received the summons and complaint via Teresa Fant on
23 behalf of Pleasant Grove Properties, Inc. I understand
24 there is an issue of timing but Teresa Fant effectively got
25 that to Pleasant Grove Properties, Incorporated via it's

1 registered agent David Peacock.

2 So, sitting here today I can honestly say to the court
3 over the past several months with everything that we did we
4 feel that there is absolutely nothing available to us to
5 get him served past what we did. And I understand an order
6 of publication which would have been our next step if we
7 had not gotten him served through his authorized agent
8 Teresa Fant. And there is a parent agency there, Your
9 Honor, I think Richardson covers that. I don't think there
10 is any question that when under the facts of this case when
11 she states that Mr. Silvaggio, that she is authorized to
12 accept service, and she in fact gets it to Pleasant Grove
13 Properties that that's enough.

14 THE COURT: Talk to me about or tell me about what
15 impact the fact that the mail is sent certified mail return
16 receipt requested restricted delivery and it is unclaimed
17 by the addressee and presumably it was unclaimed at both
18 the post office boxes, it was unclaimed at the Buncombe
19 Road address and perhaps even - I don't know whether the
20 Wade Hampton address it was returned - but from the
21 documentation that you've sent if I've schemed through it
22 properly it looks like there was no attempt by the
23 registered agent of the corporation the person who is
24 designated to receive service on behalf of the corporation;
25 there is no attempt by them to fulfill their duties as the

1 agent and pick up the mail.

2 MR. LANDIS: And that is David Peacock.

3 THE COURT: So does that give rise to the idea that or
4 is there any inferences that can be drawn from that as it
5 relates to service?

6 MR. LANDIS: There are a couple of things, Your Honor.
7 One is certainly that and candidly it is not in the record
8 but presumably the rent checks are going to P.O. Box 2103.
9 Your Honor, what all this establishes is a clear design by
10 Mr. Peacock who is the registered agent of Pleasant Grove
11 Properties, Incorporated to dodge service. There is no
12 question about it when you look at the pattern that we've
13 established especially when we're seeing he's picking up
14 rent checks from the same P.O. Box where he's refusing to
15 sign when he sees it's from my law firm.

16 And he already knows that I've sent him a demand
17 letter cause he's acknowledged that he's received it saying
18 I'm gonna sue him if he doesn't respond in ten days and pay
19 my client for the commissions that are clearly owed. And
20 so under the *Richardson* case, Your Honor, exacting
21 compliance with the rules is not required to effect service
22 of process. And even though I think that we certainly
23 served an office manager who had apparent authority and who
24 said she had authority per Mr. Silvaggio to accept this on
25 behalf of Pleasant Grove Properties the fact that she had

1 already signed for correspondence on behalf of Pleasant
2 Grove Properties makes it abundantly clear to us that Ms.
3 Fant was authorized and in fact did get this type of
4 correspondence to Mr. Peacock that he acknowledges that he
5 received.

6 And so I think Richardson couldn't be more on point
7 for the facts that are before Your Honor. And so with
8 regard to service, I think that the January 21st service
9 upon Ms. Fant as an apparent agent of Pleasant Grove
10 Properties is certainly sufficient to effect process but I
11 will mention again that exacting compliance with the rules
12 is not required to effect.

13 Now, I believe I've covered our position on service of
14 process and I'll be very brief, Your Honor, on meritorious
15 defense.

16 THE COURT: Yes, sir.

17 MR. LANDIS: There are a couple of things that the
18 defendant is obligated to do to establish a meritorious
19 defense. One is there has got to be a factual legal basis
20 to support a meritorious defense.

21 Secondly, they have to present evidence of that
22 meritorious defense. Your Honor, that's the law and that I
23 think is stated very clearly both in *Richardson* as well as
24 for *McClurg v. Deaton*.

25 Your Honor, the materials that have been submitted,

1 the affidavit, talk about service. The materials that were
2 submitted via affidavit don't talk about meritorious
3 defense. There has been nothing submitted - and the
4 Supreme Court's has been clear that they must present
5 evidence. And the Court even says - the Supreme Court -
6 these aren't my words, these are the Supreme Court said a
7 memorandum is not evidence.

8 THE COURT: So not even by the filing of the answer or
9 what the answer might have been or the documentation that
10 would - that would have been the answer that's not
11 sufficient?

12 MR. LANDIS: That's correct, Your Honor. First of all
13 that's not sufficient. Allegations are not evidence.
14 Second of all even if --

15 THE COURT: But there are always gonna be allegations.
16 I mean otherwise the defense if they submit evidence of the
17 defense and the defense would be established but there has
18 to be a reasonable factual basis to assert the defense but
19 it doesn't have to be evidence that - I guess what I'm
20 saying is I mean that the allegations contained in an
21 answer are simply they're still allegations they are not
22 facts in an answer that would prove the defense out they
23 were allegations which would raise a defense that may be
24 viable and it has to be a viable defense not one that they
25 just simply throw up for the purposes of establishing a

1 defense.

2 MR. LANDIS: Your Honor, I believe if he had signed
3 verification saying that he had personal knowledge of the
4 allegations that he put out there that that would be an
5 affidavit sufficient to if he had personal knowledge of
6 facts sufficient to do a meritorious - give a meritorious
7 defense. So that's sort of the first part is that there
8 was no evidence and that it wasn't verified so there is no
9 affidavit. There is nothing factually to support what
10 they're throwing out there.

11 Now, secondly, if you and certainly without waiving
12 that argument the second part of that is if you look at the
13 allegations and if we assume as Your Honor suggested that
14 the answer that they put out there in the memorandum are
15 sufficient to assert or to allege facts supporting a
16 meritorious defense, their defense is no meritorious and
17 here's why. And the facts are not sufficient and here's
18 why.

19 THE COURT: Okay. And meritorious doesn't mean that
20 they have to prevail on it.

21 MR. LANDIS: I understand. I understand.

22 THE COURT: It just means that there is controversy, a
23 real controversy about what's been alleged.

24 MR. LANDIS: And, Your Honor, if there were real
25 controversies I'd be out of a job so I appreciate that and

1 understand it and in support of myself and my family and
2 depend on controversies so I appreciate that, Your Honor.

3 And so with regard to that, there were two people
4 within NAI, N-A-I Earle Furman, and this is in the record -
5 who were involved in representing the landlord. Those
6 individuals are Brice Hunt - they are actually dear
7 friends of mine - Brice Hunt and Ford Borders.

8 There has been no allegation, no innuendo, no
9 evidence, affidavit, verification, document, otherwise that
10 Brice Hunt or Ford Borders were involved in the conduct
11 alleged by Mr. Whitehead. And the reason that's important,
12 Your Honor, as Your Honor is well aware we're talking about
13 real estate brokers in the context of a lease. So first of
14 all we're talking about real estate brokers and not a law
15 firm so the conflicts are not imputed to others.

16 Secondly we're talking about a lease of a commercial
17 building and not a sale. Leases are specifically exempted
18 from the conflict rules and the dual agency disclosures and
19 all of that. They're exempted via the statute Section 40-
20 57-139 in that whole section. So as far as dual agency
21 stuff basically Mr. Whitehead has not suggested and Mr.
22 Peacock has not suggested or alleged or ask the Court to
23 assume or imply anything that Brice or Ford were involved
24 in any of the conduct that they allege.

25 Basically they say that there was some sort of

1 courting of a tenant and that you know what I think
2 probably happened, Your Honor, is that there was another
3 agent within NAI Earle Furman who was doing his job. And
4 if he was representing a tenant then he was doing his job.
5 So within NAI Earle Furman as we're all aware its not like
6 a law firm you don't - every single day in every large
7 commercial real estate or residential real estate firm in
8 this town in this state you have agents within those firms
9 representing landlords and tenants. So the same brokerage
10 within the same firm representing landlords and tenants.

11 If he's alleging that Brice Hunt and Ford Borders
12 breached a duty, then maybe perhaps if he can come up with
13 facts to show that they don't exist, Your Honor. But if he
14 alleged something to that effect or that Brice and Ford had
15 concocted some scheme to cause damage to the landlord then
16 maybe we can fight about that. We can have a controversy
17 about that but he hasn't done it and so - cause the facts
18 don't exist, Your Honor.

19 This is nothing more much like his attempt to slow pay
20 my client. This is just an attempt to drag this thing out.
21 This is not a meritorious defense; this is just an attempt
22 to drag this thing out so he doesn't have to pay it. And
23 so for the reasons that I've given regarding service, Your
24 Honor, supported by *Richardson versus PV* as well as the
25 fact that there is absolutely nothing in the record to

1 establish meritorious defense we'd ask that you deny the
2 motion and allow the judgment to stand, Your Honor.

3 THE COURT: Mr. Whitehead.

4 MR. WHITEHEAD: Thank you, Your Honor, may it please
5 the court. Your Honor, there were some statements made in
6 terms of Mr. Peacock refusing to sign the service - the
7 return receipt, Your Honor. I looked through and all those
8 appear to have been returned from unable to forward and
9 unclaimed and I don't see anything that was marked to
10 refuse the service.

11 THE COURT: Unclaimed is synonymous with refusing
12 service.

13 MR. WHITEHEAD: Right. Well, Your Honor, I would come
14 back to the idea of Teresa Fant having apparent authority
15 to accept service. She specifically stated in her
16 affidavit she's not authorized to accept service and
17 signing a return receipt that's not a restricted delivery
18 is not one in the same as accepting service.

19 Also, Your Honor, -

20 THE COURT: Let me ask you this. You made the comment
21 earlier that your client was in Florida and that he rarely
22 or seldom comes to Columbia or goes by the office at least
23 where Ms. Fant's located. As a registered agent for a
24 corporation is there not a duty that - and then listed by
25 the corporation as the person who's authorized to accept

1 service is there not some duty or responsibility to keep up
2 with what's going on and to accept documents or to make
3 sure that they give someone authority to be able to pick up
4 mail that's sent to them as restricted or to be able to
5 accept documents when they are not in the state or they're
6 not at the business?

7 I mean if he's not gonna be there he's not you know
8 not gonna be available to accept service does he not have
9 the responsibility or duty to delegate that responsibility
10 to somebody who would be able to run the office and be able
11 to fulfill those duties as a registered agent?

12 MR. WHITEHEAD: Your Honor, certainly I understand. I
13 understand the court's view there but I would say, Your
14 Honor, some of that's going into I believe some factual
15 things about how he runs his business that I can't speak to
16 today. Certainly you know we acknowledge receipt of those
17 invoices and the demand letters, Your Honor, but those were
18 sent months ago. Those were sent back in August and June
19 and September of 2013.

20 Your Honor, I don't know and I wish I could tell this
21 court that I know that David Peacock checks that post
22 office box every how may weeks or what not but, Your Honor,
23 I don't know that. And I don't know that he wouldn't have
24 eventually signed this thing when he was in town cause it
25 was restricted delivery. I can't speak to that but I would

1 come back to the fact that the affidavit of service in this
2 case doesn't mention any of this.

3 Your Honor, it mentions that they served Ms. Fant and
4 that she states she was authorized to accept service and
5 says that she's the secretary of defendant. The
6 affidavit's been presented that dispute that specifically.
7 And also, Your Honor, going forward with the meritorious
8 defense, you know, the defendant is not necessarily alleged
9 Bryce Hunt or Ford Borders. As opposing counsel says he
10 said agents of the plaintiff.

11 Your Honor, he gets into some dual representation or
12 whatnot and all that, well, Your Honor, they've
13 specifically said they made themselves a third party
14 beneficiary under those prior leases and it says in there
15 agent is named as a party to contract solely for the
16 purpose of enforcing it's rights, blah blah blah, and that
17 agent is acting solely in the capacity as agent for lessor
18 and that's the defendant, Your Honor.

19 Mr. Peacock has alleged - Mr. Peacock has alleged that
20 he saw or had reason to believe agents of plaintiff NAI
21 Earle Furman were showing that tenant other properties.
22 That's a breach of the duty of loyalty or at least
23 allegations of such. And, Your Honor, I wish - I can't put
24 my hands on it but I know I read a case somewhere that this
25 court doesn't have to make specific factual findings of a

1 meritorious defense, it just has to believe that there does
2 exist a meritorious defense that should - is deserving of
3 being tried on it's merits.

4 And, Your Honor, certainly a few of the other elements
5 that we have not talked about is that we did act as
6 promptly as we could and there is certainly no prejudice to
7 plaintiff by granting us the relief requested.

8 THE COURT: Counsel, I will review the documentation.
9 Again, let me ask Mr. Landis, what you've handed up, is
10 this a copy for me or is a copy that you --

11 MR. LANDIS: No those are intended to be exhibits to
12 the hearing, Your Honor.

13 THE COURT: For the Clerk's file?

14 MR. LANDIS: I have an extra one.

15 THE COURT: Okay. I was just trying to figure out
16 what I needed to make a copy.

17 MR. LANDIS: How about if I do both? I have an extra
18 so one is Your Honor's.

19 THE COURT: Do you need a copy?

20 MR. LANDIS: I have a copy so one for the Court and
21 one for Your Honor.

22 THE COURT: If you'll just keep those the original.

23 I will review the exhibits along with the memoranda
24 and other documents that have been presented and the cases
25 again and then I will issue a written order.

1 MR. WHITEHEAD: Thank you very much, Your Honor.
2 MR. LANDIS: Enjoy your weekend.
3 THE COURT: Thank you. You all do the same.
4 MR. LANDIS: Thank you very much.
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 23rd day of May, 2014.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

Wanda Nelson
Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021
DATE: November 1 2014

- 1 Copy of letter from NAI Earle Furman, LLC to Dave Peacock Pleasant Grove Properties dated August 6, 2013
- 2 Copies of letters from Fayssoux Law Firm to Pleasant Grove Properties, Inc c/o David Peacock dated September 17, 2013 mailed Certified Mail to the following address:

4394 Wade Hampton Blvd
 Taylors, SC 29687
 Mail Receipt 7007 0710 0000 9466 5125
 Signed for by Teresa Fant on September 18, 2013

PO Box 2103
 Greer, SC 29652
 Mail Receipt 7007 0710 0000 9466 5149
 Unclaimed

ENTERED COMPUTER

2013 SEP 18 11 13 AM
 46

1425B S. Buncombe Road
 Greer, SC 29651
 Mail Receipt 7007 0710 0000 9466 5156
 Return to Sender/No Such Street/Unable to Forward

3. Copy of Memorandum for Service of Process on Defendant at 4394 Wade Hampton Blvd dated November 4, 2013.

Copy of Email to Emerald Coast Protective Services for Service on Mr Peacock's "Primary Residence" in Miramar Beach, FL.

Copy of Email updating local Process Server to attempt service at Defendant's home in Duncan, SC.

- 4 Copy of letters for service of process of the Summons and Complaint dated January 15, 2014 mailed Certified Mail, Return Receipt Requested, Restricted Delivery to the following addresses

4394 Wade Hampton Blvd
 Taylors, SC 29687
 Mail Receipt 7011 2970 0002 9705 0251
 Unclaimed

PO Box 2103
 Greer, SC 29652
 Mail Receipt 7011 2970 0002 9705 0268
 Unclaimed

1425B S. Buncombe Road
 Greer, SC 29651

Scanned

Documents Filed Pursuant to SCRPC 5(e)

By Judge: LEE

Hearing Date: 5/23/14

82

Mail Receipt 7011 2970 0002 9705 0244
Return to Sender/No Such Street/Unable to Forward

5. Copy of Affidavit of Service upon Teresa Fant, who claimed to have authorization to accept service on behalf of Pleasant Grove Properties, Inc dated January 21, 2014
- 6 Supporting documentation

NAI Earle Furman, LLC

Commercial Real Estate Services, Worldwide

tel 864 232 9040
fax 864 235 4300
www.naiearlefurman.com

101 E Washington St
Suite 400
Greenville SC 29601

August 6, 2013

Dave Peacock
Pleasant Grove Properties
PO Box 2103
Greer, SC 29652

Dave,

We are in receipt of the \$210.00 check, however, this amount is insufficient and unacceptable. Pursuant to the commission agreement dated November 12, 2007 between NAI Earle Furman, LLC and Pleasant Grove Properties, Inc. Paragraph 2 states that the commission for any renewal will be a 3% cashed out value based on the volume of the lease at the time of execution.

It is again stated in the lease between Pleasant Grove Properties, Inc. and Schmolz & Bickenbach USA, Inc. dated February 9, 2008, Paragraph 36 that 3% of the total value of the lease is to be paid at execution of the lease renewal.

We have enclosed the following items:

- A revised invoice for 3% of the total lease renewal volume of \$420,000, the amount due is \$12,600.00
- Commission Agreement dated November 12, 2007
- Lease Agreement dated February 9, 2008
- Lease Amendment dated May 31, 2013
- The check we received from Pleasant Grove Properties, Inc. in the amount of \$210.00

The enclosed invoice is past due and payable immediately, please remit payment before August 21, 2013.

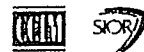
Sincerely,

NAI Earle Furman, LLC

Grice Hunt

JGH/wec

Individual Member of



Build on the power of our network ~ Over 375 offices worldwide ~ www.naiglobal.com

COMMISSION AGREEMENT

THIS AGREEMENT, made this 12th day of November, 2007, by and between Pleasant Grove Properties (hereinafter called "Lessor") and NAI Earle Furman, LLC (hereinafter called "Agent")

WITNESSETH:

WHEREAS, Pleasant Grove Properties (Lessor) and Schmolz & Bickenbach (Lessee) are negotiating to enter into a new Lease agreement which would include a built out expansion of the current +/- 10,500 sf building which Lessee occupies located at 1425 B South Buncombe Rd in the city of Greer, in the state of South Carolina

WHEREAS, Lessor recognizes that valuable services are being rendered by the Agent in securing the said Lease Agreement

NOW, THEREFORE, in consideration of and in compensation for services being rendered by the agent in securing the aforesaid Lease Agreement, the parties hereto do agree

- 1 Lessor shall pay to Agent a commission to be calculated as follows A cashed-out amount equal to six percent (6%) of the aggregate rents to accrue during the initial term of the new Lease as well as for any expansion space leased by Lessee Commission owed to Agent will be for any additional built out square footage and any new lease term which has not already been paid for on the existing +/- 10,500 sf Lessee currently occupies and Agent has already been paid for The total of such commission to be paid by Lessor to Agent upon execution of the new Lease Agreement
- 2 In the event this Lease is renewed or extended or a new Lease is entered into between the Lessor or Lessee, then in either or said events, Lessor shall pay to agent, as further compensation a cashed-out equal to three percent (3%) of any extensions or renewals payable upon execution of such
- 3 In the event of a sale or an assignment of the demised premises, Lessor agrees to secure a written agreement whereby such Purchaser or Assignee assumes the obligation of payment to NAI Earle Furman, LLC of all fees due, failing in which such obligation shall become immediately due and payable, in full, by the Lessor named herein
- 4 This agreement shall inure to the benefit and be binding upon the parties hereto, their respective transferees, representatives, successors, heirs or assigns

IN WITNESS WHEREOF, the parties hereto have set their hands and seals on the day and year first written above

WITNESS:

C.S. Appligato

LESSOR: Pleasant Grove Properties, Inc

By Donna J. Hunt

Print Name: DAVE PEACOCK

Title: PRESIDENT

Date: 11-12-2007

WITNESS:

Eric E. Harman

AGENT: NAI Earle Harman, LLC

By: Eric E. Harman

Print Name: Eric E. Harman

Title: Agent

Date: 11-13-07

LEASE AMENDMENT

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO THE LEASE AGREEMENT (the "Amendment") is made this 31st day of May, 2013, by and between Pleasant Grove Properties, Inc (Lessor), whose address for the purpose of this Lease is P O Box 2103, Greer, SC 29652 and Schmolz & Bickenbach (Lessee), whose address for the purpose of this Lease is 365 Village Drive, Carol Stream, IL 60188

WITNESSETH:

WHEREAS, the Lessor and Lessee have previously executed that certain lease agreement dated 9th day of February, 2008 (the "Lease") pursuant to the terms of which Lessee has leased 16,800 square feet located at 1425C, South Buncombe Road, Greer, SC 29651

WHEREAS, the Lessor and Lessee have agreed to make certain modifications to the Lease

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, effective August 1, 2013, the parties agree as follows

SECTION 2

Is amended to strike the first sentence and inserting in lieu thereof the following "It is understood and agreed that the Lease Continuation shall commence as of the 1st day of August 2013, and shall end on the 31st day of July 2018, both days inclusive " This is a continuation of the February 9, 2008 Lease Agreement and prior terms and conditions are incorporated herein

SECTION 3

Is amended to strike the "Yearly rate of \$104,475 00" and inserting in lieu thereof the following terms "Yearly rate of \$84,000 00"

Is amended to strike the "monthly installment of \$8,706 25" and inserting in lieu thereof the following term "monthly installment of \$7,000 00"

Except as modified by the terms of this Amendment, all other terms and conditions of the Lease

Lessor



Lessee



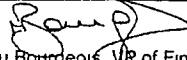
shall remain in full force and effect

LESSOR: Pleasant Grove Properties, Inc

By 
David Peacock, President/CEO

Date JUNE 7, 2013

LESSEE: Schmolz & Bickenbach USA, Inc.

By 
Mathieu Bourgeois, VP of Finance & CFO

Date June 8th, 2013

Lessor 

Lessee 

JAMES W FAYSSOUX, SR.
JAMES W FAYSSOUX, JR



PAUL S. LANDIS
T. HUNT REID

September 17, 2013

VIA CERTIFIED MAIL

Pleasant Grove Properties, Inc
c/o David Peacock, President
4394 Wade Hampton Blvd
Taylors, SC 29687

Pleasant Grove Properties, Inc
c/o David Peacock, President
P.O. Box 2103
Greer, SC 29652

Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
1425B S Buncombe Road
Greer, SC 29651

RE Commission due to NAI Earle Furman, LLC
Subject Premises – 1425C S Buncombe Road

Dear Mr. Peacock:

This letter is to advise you that I have been engaged by NAI Earle Furman, LLC for the purpose of collecting a commission that is due by virtue of a Lease Amendment dated May 31, 2013. As you are aware, Pleasant Grove Properties, Inc. was obligated through its Commission Agreement with my client to pay the total commission upon execution of the new lease extension agreement. In spite of its obligation, Pleasant Grove Properties has submitted two payments in the amount of \$210.00, which were not in compliance with the Commission Agreement and have therefore been rejected. The full commission is overdue and remains unpaid.

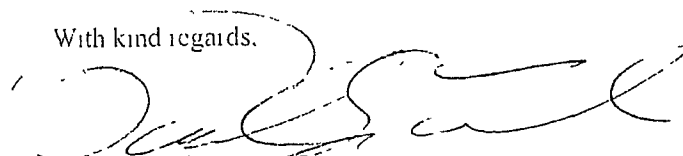
I have attached a copy of Invoice #5750 in the amount of \$12,600.00 which was submitted to you for payment on or about June 18, 2013. My client has made subsequent demands for payment which have been unsuccessful in resolving this matter without my assistance.

Accordingly, please allow this to serve as a final notice to you, prior to litigation, that the total commission of \$12,600 must be paid on or before September 27, 2013. If the

Post Office Box 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864 233 0445 • 864 233 4781 FAX • WWW.FAYSSOULAW.COM

commission is not paid in full by that date, we will institute litigation without further notice and will pursue all remedies available to collect the commission due

With kind regards,



Paul S Landis

Enclosure (as stated)

NAL Earle Furman, LLC

Commercial Real Estate Services, Worldwide

101 E Washington Street, Ste 400
Greenville, SC 29601

Invoice

DATE	INVOICE #
6/18/2013	5750

BILL TO
Rental One Equipment Solutions Attn: Dave Peacock 4394 Wade Hampton Blvd Tavlor, SC 29687

SUBJECT PROPERTY
1425 C S Buncombe Rd

TERMS	BROKER
Due upon receipt	JGH

DESCRIPTION	AMOUNT
Total Commission Due	12 600 00
Lessor Pleasant Grove Properties Inc Lessee Schmolz & Bickenbach Square feet 16 800 Term 60 months Rate 3% Total Lease Volume \$420 000	
Total	
	\$12 600 00

(864) 232-9040 Office / (864) 235-1300 Fax
PLEASE VISIT US AT www.NALEarleFurman.com

English

Customer Service

USPS Mobile

Register / Sign In



Search USPS.com or Track Packages

Quick Tools

Find

Ship a Package

Send Mail

Manage Your Mail

Shop

Business Solutions

Find USPS Location

Buy Stamps

Schedule a Pickup

Create a Mailbox

Post a Letter

Post a Package

Post a Priority Mail

Post a Registered Mail

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Post a Signature Required

Track & Confirm

YOUR LABEL NUMBER

SERVICE

STATUS OF YOUR ITEM

DATE & TIME

LOCATION

FEATURES

7009282000384441413

Delivered

August 14, 2013 1:29 pm

GREER SC 29650

Certified Mail™

Show Details

700928200038441786

Delivery status information is not available for your item via this web site. A return receipt, when mailing may be available through your local Post Office.

GET EMAIL UPDATES

PRINT DETAILS

Check on Another Item

What's your label (or receipt) number?



LEGAL

Privacy Policy

Terms of Use

FOIA

No FEAR Act EEO Data

ON USPS.COM

Government Services

Buy Stamps & Shop

Print a Label with Postage

Customer Service

Delivering Solutions to the Last Mile

Site Index

ON ABOUT USPS.COM

About USPS Home

Newsroom

USPS Service Alerts

Forms & Publications

Careers

OTHER USPS SITES

Business Customer Gateway

Postal Inspectors

Inspector General

Postal Explorer



Copyright © 2013 USPS. All Rights Reserved.

U.S. Postal Service®
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Send To: Dave Pearce / Pleasant Grove Prop.
 Street Apt. No. or PO Box No. PO Box 2103
 City, State ZIP+4 Greer, SC 29652

PS Form 3800, August 2006 See Reverse for Instructions

U.S. Postal Service®
CERTIFIED MAIL™ RECEIPT
 (Domestic Mail Only; No Insurance Coverage Provided)
 For delivery information visit our website at www.usps.com

Postage	\$	Postmark Here
Certified Fee		
Return Receipt Fee (Endorsement Required)		
Restricted Delivery Fee (Endorsement Required)		
Total Postage & Fees	\$	

Send To: Dave Pearce / Pleasant Grove Prop.
 Street Apt. No. or PO Box No. 1425 S. Boncombe Rd
 City, State ZIP+4 Greer, SC 29652

PS Form 3800, August 2006 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits

1 Article Addressed to Ltr 09-17-13

Pleasant Grove Properties, Inc
c/o David Peacock, President
4394 Wade Hampton Blvd
Taylors, SC 29687

COMPLETE THIS SECTION ON DELIVERY

A. Signature *Terese Hart* ☐ Agent ☐ Addressee
B. Received by (Printed Name) Terese Hart C. Date of Delivery 9/18/13
D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.
4. Restricted Delivery? (Extra Fee) ☐ Yes

2 Article Number 7007 0710 0000 9466 5125
(Transfer from service label)

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

U.S. Postal ServiceTM
CERTIFIED MAIL[®] RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information, visit our website at www.usps.com

7007 0710 0000 9466 5125

DEFERRED USE

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To
Street Apt No.
or PO Box No
City State ZIP+4
PS Form 3800, August 2006 See Reverse for Instructions

JAMES W FAYSSOUX, SR
JAMES W FAYSSOUX, JR

FAYSSOUX
LAW FIRM P A

PAUL S LANDIS
T HUNT REID

September 17, 2013

VIA CERTIFIED MAIL

Pleasant Grove Properties, Inc
c/o David Peacock, President
4394 Wade Hampton Blvd
Faylois, SC 29687

Pleasant Grove Properties, Inc
c/o David Peacock, President
P O Box 2103
Greer, SC 29652

Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
1425B S Buncombe Road
Greer, SC 29651

RE Commission due to NAI Earle Furman, LLC
Subject Premises - 1425C S Buncombe Road

Dear Mr Peacock

This letter is to advise you that I have been engaged by NAI Earle Furman, LLC for the purpose of collecting a commission that is due by virtue of a Lease Amendment dated May 31, 2013. As you are aware, Pleasant Grove Properties, Inc. was obligated through its Commission Agreement with my client to pay the total commission upon execution of the new lease extension agreement. In spite of its obligation, Pleasant Grove Properties has submitted two payments in the amount of \$210.00, which were not in compliance with the Commission Agreement and have therefore been rejected. The full commission is overdue and remains unpaid.

I have attached a copy of Invoice #5750 in the amount of \$12,600.00 which was submitted to you for payment on or about June 18, 2013. My client has made subsequent demands for payment which have been unsuccessful in resolving this matter without my assistance.

Accordingly, please allow this to serve as a final notice to you, prior to litigation, that the total commission of \$12,600 must be paid on or before September 27, 2013. If the

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864 233 0445 • 864 233 4781 FAX • WWW.FAYSSOULAW.COM

commission is not paid in full by that date, we will institute litigation without further notice and will pursue all remedies available to collect the commission due

With kind regards,

A handwritten signature in black ink, appearing to read "Paul S. Landis", written over a dashed line.

Paul S Landis

Enclosure (as stated)

NAL Earle Furman, LLC

Commercial Real Estate Services, Worldwide

101 E Washington Street, Ste 400
Greenville, SC 29601

Invoice

DATE	INVOICE #
6/18/2013	5750

BILL TO
Rental One Equipment Solutions Attn: Dave Peacock 4394 Wade Hampton Blvd Taylors, SC 29687

SUBJECT PROPERTY
1425 C S Buncombe Rd

TERMS	BROKER
Due upon receipt	JGH

DESCRIPTION	AMOUNT
Total Commission Due	12,600.00
Lessor: Pleasant Grove Properties, Inc. Lessee: Schmolz & Bickenbach Square feet: 16,800 Term: 60 months Rate: 3% Total Lease Volume: \$420,000	
Total	\$12,600.00

(864) 232-9040 Office / (864) 235-4300 Fax
PLEASE VISIT US AT www.NALEarlefurman.com

FAYSSOUX
LAW FIRM P A

Post Office Box 10207
Greenville, SC 29603

Net. 10-10

CERTIFIED MAIL



7007 0710 0000 9466 5149



Pleasant Grove Properties Inc
c/o David Peacock, President
P.O. Box
Greer, SC

RETURN TO SENDER
UNCLAIMED
UNABLE TO FORWARD

SC 29603020707 *0954-02280-17-37

296030207
296030207

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

7007 0710 0000 9466 5149

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To
Street Apt. No.
or PO Box No.
City, State ZIP+4

JAMES W. FAYSSOUX, SR.
JAMES W. FAYSSOUX, JR.

FAYSSOUX
LAW FIRM P A

PAUL S. LANDIS
T. HUNT REID

September 17, 2013

VIA CERTIFIED MAIL

Pleasant Grove Properties, Inc.
c/o David Peacock, President
4394 Wade Hampton Blvd
Taylors SC 29687

Pleasant Grove Properties, Inc.
c/o David Peacock, President
P.O. Box 2103
Greer, SC 29652

Pleasant Grove Properties, Inc.
c/o David Peacock, Registered Agent
1425B S. Buncombe Road
Greer SC 29651

RE: Commission due to NAI Earle Furman, LLC
Subject Premises - 1425C S. Buncombe Road

Dear Mr. Peacock:

This letter is to advise you that I have been engaged by NAI Earle Furman, LLC for the purpose of collecting a commission that is due by virtue of a Lease Amendment dated May 31, 2013. As you are aware, Pleasant Grove Properties, Inc. was obligated through its Commission Agreement with my client to pay the total commission upon execution of the new lease extension agreement. In spite of its obligation, Pleasant Grove Properties has submitted two payments in the amount of \$210.00, which were not in compliance with the Commission Agreement and have therefore been rejected. The full commission is overdue and remains unpaid.

I have attached a copy of Invoice #5750 in the amount of \$12,600.00 which was submitted to you for payment on or about June 18, 2013. My client has made subsequent demands for payment which have been unsuccessful in resolving this matter without my assistance.

Accordingly, please allow this to serve as a final notice to you, prior to litigation, that the total commission of \$12,600 must be paid on or before September 27, 2013. If the

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864.233.0445 • 864.233.4781 FAX • WWW.FAYSSOULAW.COM

commission is not paid in full by that date, we will institute litigation without further notice and will pursue all remedies available to collect the commission due

With kind regards,



Paul S Landis

Enclosure (as stated)

NAIL Earle Furman, LLC

Commercial Real Estate Services, Worldwide

101 E. Washington Street, Ste 400
Greenville, SC 29601

Invoice

DATE	INVOICE #
6/18/2013	5750

BILL TO
Rental One Equipment Solutions Attn: Dave Peacock 4394 Wade Hampton Blvd Taylors, SC 29687

SUBJECT PROPERTY
1425 C S Buncombe Rd

TERMS	BROKER
Due upon receipt	JG11

DESCRIPTION	AMOUNT		
Total Commission Due	12,600.00		
Lessor: Pleasant Grove Properties, Inc. Lessee: Schmolz & Bickenbach Square feet: 16,800 Term: 60 months Rate: 3% Total Lease Volume: \$420,000			
<table> <tr> <td>Total</td><td>\$12,600.00</td></tr> </table>		Total	\$12,600.00
Total	\$12,600.00		

(864) 232-9040 Office / (864) 235-4300 Fax
PLEASE VISIT US AT www.NAILearlefurman.com

FAYSSOUX
LAW FIRM P A

Post Office Box 10207
Greenville, SC 29603

9-25

10-9

UTF

7007 0710 0000 9466 5156

CERTIFIED MAIL



7007 0710 0000 9466 5156

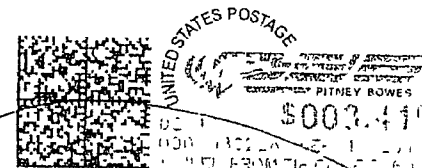
Pleasant Grove Properties, Inc.
c/o David Peacock Registered Agent
1425B S Run
Greer SC 29615

NIXIE 296 SE 1009 0009/19/13

RETURN TO SENDER
NO SUCH STREET
UNABLE TO FORWARD

29603 00207
29603 00207

SC 29603 00207 37 10034-23482-17-37



POSTAGE DUE 2.70

U.S. Postal Service™
CERTIFIED MAIL™ RECEIPT
(Domestic Mail Only; No Insurance Coverage Provided)
For delivery information visit our website at www.usps.com

Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$

Postmark
Here

Sent To
Street Apt No
or PO Box No
City State ZIP+4

PS Form 3800, August 2008

See www.usps.com for instructions

MEMORANDUM

TO Silvaggio Investigations
FROM. Paige Wilson
Fayssoux Law Firm, P A
RE Service of Process
DATE November 4, 2013

Please **personally** serve David Peacock, as Registered Agent of Pleasant Grove Properties, Inc
at the following location.

4394 Wade Hampton Blvd
Taylors, SC 29687

Thank you

Paige Wilson

From: Paige Wilson
Sent: Wednesday, November 13, 2013 10:21 AM
To: 'info@emeraldcpd.com'
Cc: 'rpeak@knology.net'
Subject: RE: Service of Process
Attachments: 20131113_104248.pdf

Please find attached a copy of the filed Summons and Complaint that will need to be PERSONALLY served on Mr. Dave Peacock. Records indicated that he owns and lives at 89 Shipwatch Lane, Miramar Beach, FL 32550. Mr. Peacock will need to be served as Registered Agent of Pleasant Grove Properties, Inc.

If you have any questions whatsoever, please do not hesitate to contact me.

Thank you and have a great day.

Paige Wilson
Paralegal
Fayssoux Law Firm, P.A.
209 E. Washington Street (29601)
PO Box 10207
Greenville, SC 29603
864-233-0445
864-233-4781 FAX
www.FAYSSOULAW.COM

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation.

-----Original Message-----

From: Emerald Coast Protective Services, Inc [<mailto:info@emeraldcpd.com>]
Sent: Wednesday, November 13, 2013 9:38 AM
To: Paige Wilson
Cc: rpeak@knology.net
Subject: Re: Service of Process

This area runs \$50. Email is fine. Send documents to this address. I'll set you up our system for automated updates.

Rolan Peak

> I need an individual personally served in Miramar Beach. Please let
> me know your fees and if you will accept and emailed copy of the
> Summons and Complaint.

>
>
>
> Thank you.

> [image: Fayssoux Sig]
>
>
>

> Paige Wilson
>
> Paralegal
>
> Fayssoux Law Firm, P.A.
>
> 209 E. Washington Street (29601)
>
> PO Box 10207
>
> Greenville, SC 29603
>
> 864-233-0445
>
> 864-233-4781 FAX
>
> www.FAYSSOXLAW.COM
>
>
>

> CONFIDENTIALITY NOTICE: This electronic mail transmission has been
> sent by a lawyer. It may contain information that is confidential,
> privileged, proprietary, or otherwise legally exempt from disclosure.
> If you are not the intended recipient, you are hereby notified that
> you are not authorized to read, print, retain, copy or disseminate
> this message, any part of it, or any attachments. If you have
> received this message in error, please delete this message and any
> attachments from your system without reading the content and notify
> the sender immediately of the inadvertent transmission. There is no
> intent on the part of the sender to waive any privilege, including the
> attorney-client privilege, that may attach to this communication.
> Thank you for your cooperation.
>

Rolan Peak, AFPS
Emerald Coast Protective Services, Inc
13800 Panama City Beach Parkway
Suite 106D
Panama City Beach, FL 32407
Ph: 850-527-0726
Fax: 850-236-8548

www.EmeraldCPS.com
Member of FAPPS & NAPPS

Paige Wilson

From: paul@silvaggioinvestigations.com
Sent: Tuesday, December 17, 2013 3:31 PM
To: paige@fayssouxlaw.com
Subject: Re: Service

Thank you!!! I will personally take care of it.

Merry Christmas to you and your family!!!

Paul

----- Original Message -----

Subject: Service
From: Paige Wilson <paige@fayssouxlaw.com>
Date: Dec 17, 2013 2:44 PM
To: paul@silvaggioinvestigations.com
CC:

Some time back I gave your office papers for service on Mr. Dave Peacock.
I have finally located another address that I would like for you to try and have him served

The address is 289 River Falls Drive, Duncan, SC.

Please let me know if you have any questions.

Thank you.

[image: Fayssoux Sig]

Paige Wilson

Paralegal

Fayssoux Law Firm, P.A.

209 E. Washington Street (29601)

PO Box 10207

Greenville, SC 29603

864-233-0445

864-233-4781 FAX

www.FAYSSOXLAW.COM

CONFIDENTIALITY NOTICE: This electronic mail transmission has been sent by a lawyer. It may contain information that is confidential, privileged, proprietary, or otherwise legally exempt from disclosure. If you are not the intended recipient, you are hereby notified that you are not authorized to read, print, retain, copy or disseminate this message, any part of it, or any attachments. If you have received this message in error, please delete this message and any attachments from your system without reading the content and notify the sender immediately of the inadvertent transmission. There is no intent on the part of the sender to waive any privilege, including the attorney-client privilege, that may attach to this communication. Thank you for your cooperation

JAMES W FAYSSOUX, SR
JAMES W FAYSSOUX, JR

FAYSSOUX
LAW FIRM P A

PAUL S LANDIS
T HUNT REID

January 14, 2014

Certified Mail
Return Receipt Requested, Restricted Delivery
7011 2970 0002 9705 0251

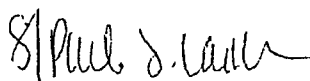
Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
4394 Wade Hampton Blvd.
Taylors, SC 29687

Re NAI Earle Furman, LLC v Pleasant Grove Properties, Inc
C.A No 2013-CP-23-05891

Dear Mr Peacock

Please find enclosed for service upon you a filed copy of the Summons and Complaint with regard to the above captioned action along with a Certificate of Service by Mail

Yours truly,


Paul S Landis

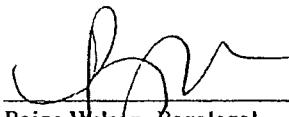
PSL/pw
Enclosures (as stated)

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864 233 0445 • 864 233 4781 FAX • WWW.FAYSSOUXLAW.COM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
NAI Earle Furman, LLC,	)	C A No 2013-CP-23-05891
	)	
Plaintiff,	)	
v	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Pleasant Grove Properties, Inc ,	)	
	)	
Defendant	)	

THE UNDERSIGNED person hereby certifies that she is employed with FAYSSOUX LAW FIRM, P A , 209 E. Washington Street, Greenville, S.C 29601, and is a person of such age and discrimination as to be competent to serve papers She deposes and says that on January 15, 2014 she mailed the Summons and Complaint by placing it/ them in an envelope(s), addressed to the party/ parties at the address(es) shown below, which envelop(s) was/were sealed and postage thereon fully prepaid, Certified Mail, Return Receipt Requested, Restricted Delivery, 7011 2970 0002 9705 0251 and that there is regular communication between the place of mailing and the place(s) addressed as follows

Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
4394 Wade Hampton Blvd
Taylors, SC 29687



Paige Wilson, Paralegal
FAYSSOUX LAW FIRM, P A
Post Office Box 10207
Greenville, South Carolina 29603
864-233-0445
864-233-4781 (fax)

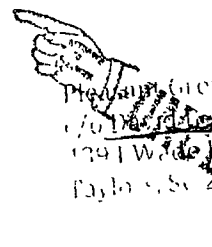
FAYSSOUX
LAW FIRM P.A.

Post Office Box 10205
Greenville SC 29603

Restricted



7011 2970 0002 9705 0251



Pleasant Grove Properties, Inc.
c/o David Peacock, Registered Agent
4304 Wade Hampton Blvd
Taylors, SC 29687

1/16/14

1-21-14

7011 2970 0002 9705 0251

152 11/14
395
285
145

Pleasant Grove Properties, Inc.
c/o David Peacock, Registered
Agent
4304 Wade Hampton Blvd
Taylors, SC 29687

JAMES W. FAYSSOUX, SR
JAMES W FAYSSOUX, JR

FAYSSOUX
LAW FIRM P A

PAUL S. LANDIS
T HUNT REID

January 14, 2014

Certified Mail
Return Receipt Requested, Restricted Delivery
7011 2970 0002 9705 0268

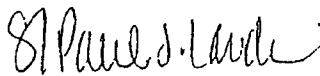
Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
PO Box 2103
Greer, SC 29652

Re NAI Earle Furman, LLC v Pleasant Grove Properties, Inc.
C A No 2013-CP-23-05891

Dear Mr. Peacock

Please find enclosed for service upon you a filed copy of the Summons and Complaint with regard to the above captioned action along with a Certificate of Service by Mail.

Yours truly,



Paul S Landis

PSL/pw

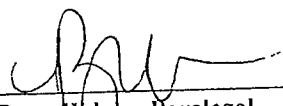
Enclosures (as stated)

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864 233 0445 • 864 233 4781 FAX • WWW.FAYSSOUXLAW.COM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
NAI Earle Furman, LLC,	)	C A No. 2013-CP-23-05891
	)	
Plaintiff,	)	
v.	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Pleasant Grove Properties, Inc ,	)	
	)	
Defendant	)	

THE UNDERSIGNED person hereby certifies that she is employed with FAYSSOUX LAW FIRM, P A , 209 E Washington Street, Greenville, S.C 29601, and is a person of such age and discrimination as to be competent to serve papers She deposes and says that on January 15, 2014 she mailed the Summons and Complaint by placing it/ them in an envelope(s), addressed to the party/ parties at the address(es) shown below. which envelop(s) was/were sealed and postage thereon fully prepaid, Certified Mail, Return Receipt Requested, Restricted Delivery, 7011 2970 0002 9705 0268 and that there is regular communication between the place of mailing and the place(s) addressed as follows

Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
PO Box 2103
Greer, SC 29652

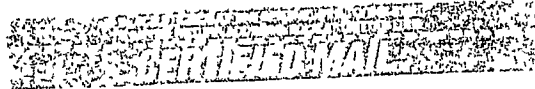


Paige Wilson, Paralegal
FAYSSOUX LAW FIRM, P A
Post Office Box 10207
Greenville, South Carolina 29603
864-233-0445
864-233-4781 (fax)

FAYSSOUX

LAW FIRM P A

Post Office Box 10207
GREENVILLE, SC 29603



7011 2970 0002 9705 0268

Class of Service

NIXIE

296524177-1N

03/04/14

RETURN TO SENDER

UNCLAIMED

UNABLE TO FORWARD

RETURN TO SENDER



U.S. Postal Service CERTIFIED MAIL RECEIPT

(Insurance coverage provided by the U.S. Postal Service)

8920 5026 2000 0262 1107

Postage	1.53	115.04
Postage Fee	2.95	
Insurance Fee	2.35	
Registration Fee	14.55	111.31

Pleasant Grove Properties, Inc
c/o David Peacock, Registered
Agent
PO Box 2103
Greer, SC 29652

JAMES W FAYSSOUX, SR
JAMES W FAYSSOUX, JR

FAYSSOUX
LAW FIRM P A

PAUL S LANDIS
T HUNT REID

January 14, 2014

Certified Mail
Return Receipt Requested, Restricted Delivery
7011 2970 0002 9705 0244

Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
1425B S Buncombe Road
Greer, SC 29651

Re NAI Earle Furman, LLC v Pleasant Grove Properties, Inc
C A No 2013-CP-23-05891

Dear Mr. Peacock

Please find enclosed for service upon you a filed copy of the Summons and Complaint with regard to the above captioned action along with a Certificate of Service by Mail

Yours truly,



Paul S Landis

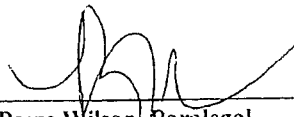
PSL/pw
Enclosures (as stated)

POST OFFICE BOX 10207 • GREENVILLE, SC 29603
209 EAST WASHINGTON STREET • GREENVILLE, SC 29601
864 233 0445 • 864 233 4781 FAX • WWW.FAYSSOUXLAW.COM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
NAI Earle Furman, LLC,	)	C A No · 2013-CP-23-05891
	)	
Plaintiff,	)	
v	)	CERTIFICATE OF SERVICE BY MAIL
	)	
Pleasant Grove Properties, Inc ,	)	
	)	
Defendant	)	

THE UNDERSIGNED person hereby certifies that she is employed with FAYSSOUX LAW FIRM, P A , 209 E Washington Street, Greenville, S C. 29601, and is a person of such age and discrimination as to be competent to serve papers She deposes and says that on January 15, 2014 she mailed the Summons and Complaint by placing it/ them in an envelope(s), addressed to the party/ parties at the address(es) shown below, which envelop(s) was/were sealed and postage thereon fully prepaid. Certified Mail, Return Receipt Requested, Restricted Delivery, 7011 2970 0002 9705 0244 and that there is regular communication between the place of mailing and the place(s) addressed as follows

Pleasant Grove Properties, Inc
c/o David Peacock, Registered Agent
1425B S. Buncombe Road
Greer, SC 29651



Paige Wilson, Paralegal
FAYSSOUX LAW FIRM, P A
Post Office Box 10207
Greenville, South Carolina 29603
864-233-0445
864-233-4781 (fax)

FAYSSOUX

LAW FIRM P.A.

Post Office Box 10207
Greenville SC 29603



7011 2970 0002 9705 0244

1-25

2-11

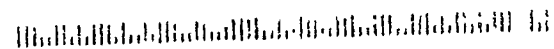
WTF

NIXIE

296511039-1H

01/23/10

RETURN TO SENDER
UNABLE TO FORWARD
UNABLE TO FORWARD
RETURN TO SENDER



4420 5046 2000 0452 1102

152

11514

295

255

455

71137

Pleasant Grove Properties, Inc
c/o David Peacock, Registered
Agent
1125B S Buncombe Road
Greer, SC 29651

STATE OF SOUTH CAROLINA,)
)
COUNTY OF GREENVILLE)
)
NAI Earle Furman, LLC)
) Plaintiff(s))
vs)
)
Pleasant Grove Properties, Inc)
) Defendant(s))

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

AFFIDAVIT OF SERVICE

FILE NO 2013-CP-23-05891

PERSONALLY PREPARED BEFORE ME, the undersigned deponent, who being duly sworn

says that (s)he served the Summons and Complaint in this action
(Describe document(s) served)

on David Peacock, as Registered Agent via Teresa Fant - Secretary and states
authorized to Accept Service, by delivery to
(Name of party served)

☒ David Peacock, as Registered Agent via Teresa Fant - Secretary and states
authorized to Accept Service personally;
(Name of party served)

☐ _____ the _____ of the party served,
(Name of person served) (Note relationship to party)

and a person of discretion residing at the residence of the party served,

David Peacock, as
Registered Agent via
Teresa Fant - Secretary
and states authorized to

☒ Accept Service, the Secretary of Pleasant Grove Properties, Inc
(Name of person served) (Title) (Name of corporate party served)

and leaving with ☐ (him) ☒ (her) a copy at 4394 Wade Hampton Blvd
(Street address)

in Taylors Greenville County, South Carolina,
(City or Town) County

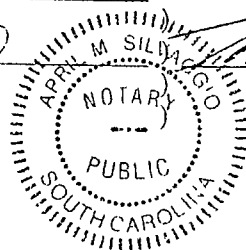
on January 21, 2014 at 12 51 PM o'clock

that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith

☐ Unable to locate and serve the above process on the defendant after diligent efforts to do so
The process is returned unexecuted

Sworn to and Subscribed before me
this 21st day of January, 2014

[Signature]
Notary Public for South Carolina

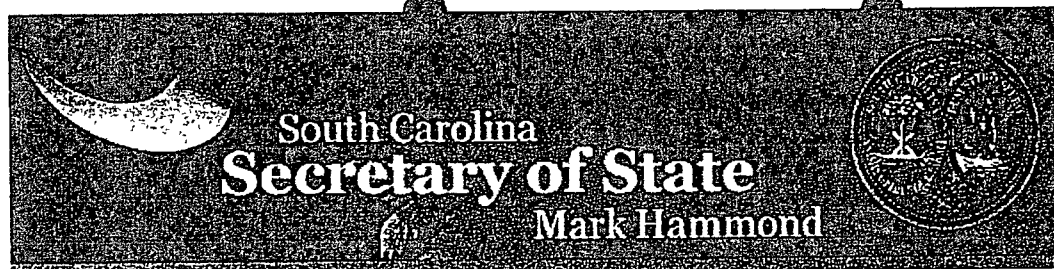


[Signature]
Signature of Deponent

SCCA 402 (Revised 12/07)

My Commission Expires
February 26, 2020

Post Office Box 611
Mauldin, SC 29662
(864) 907-3590



PLEASANT GROVE PROPERTIES, INC.

Note This online database was last updated on 4/7/2014 6 01 27 PM
See our Disclaimer

DOMESTIC / FOREIGN:	Domestic
STATUS:	Reinstatement
STATE OF INCORPORATION	SC
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	DAVID PEACOCK
ADDRESS	14258 S BUNCOMBE RD
CITY	GREER
STATE	SC
ZIP:	29651
SECOND ADDRESS	

FILE DATE	04/28/1983
EFFECTIVE DATE	04/28/1983
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Reinstatement	06/15/2004	REINSTATEMENT	
Agent	04/05/2004	CH AGT/ADD FR-P WARREN MCLEOD	
Forfeiture	01/19/2000	FORFEITURE #2	Image
Incorporation	04/28/1983	ART	Film

Disclaimer. The South Carolina Secretary of State's Business Filings database is provided as a convenience to our customers to research information on business entities filed with our office. Updates are uploaded every 48 hours. Users are advised that the Secretary of State, the State of South Carolina or any agency, officer or employee of the State of South Carolina does not guarantee the accuracy, reliability or timeliness of such information, as it is the responsibility of the business entity to inform the Secretary of State of any updated information. While every effort is made to insure the reliability of this information, portions may be incorrect or not current. Any person or entity who relies on information obtained from this database does so at his own risk.

STATE OF FLORIDA DECLARATION OF DOMICILE

TO THE CLERK OF THE CIRCUIT COURT
OF WALTON COUNTY THIS IS MY DECLARATION
OF DOMICILE IN THE STATE OF FLORIDA THAT I AM FILING
THIS DAY IN ACCORDANCE AND IN CONFORMITY WITH
SECTION 222.17 FLORIDA STATUTES I HEREBY DECLARE
THAT I RESIDE IN AND MAINTAIN A PLACE OF ABODE AT

ADDRESS 89 SHIPWATCH LANE, MIRAMAR BEACH, FL 32550

LEGAL DISCRPTION LOT 22, PHASE 1 OF SHIPWATCH, A PLANNED UNIT DEVELOPMENT
IN SECTION 33, TOWNSHIP 2 SOUTH, RANGE 21 EST, ACCORDING TO THE PLAT THEREOF
AS RECORDED IN PLATA BOOK 8, PAGE 46, OF THE PUBLIC RECORDS OF WALTON
COUNTY, FLORIDA

"DATE I BECAME A RESIDENT" Nov 4, 2011

WHICH PLACE OF RESIDENCE I RECOGNIZE AND INTEND TO MAINTAIN AS MY PERMANENT
HOME AND, IF I MAINTAIN ANOTHER PLACE OR PLACES OF ABODE IN SOME OTHER STATE OR
STATES, I HEREBY DECLARE THAT MY ABOVE-DESCRIBED RESIDENCE AND ABODE IN THE
STATE OF FLORIDA CONSTITUTES MY PREDOMINANT AND PRINCIPAL HOME AND HOMESTEAD,
AND I INTEND TO CONTINUE IT PERMANENTLY AS SUCH, UNTIL SUCH TIME AS I DECLARE
OTHERWISE IN WRITING I AM, AT THE TIME OF MAKING THIS DECLARATION, A BONA FIDE
RESIDENT OF THE STATE OF FLORIDA

I FORMERLY RESIDED AT
289 RIVER FALLS DR
DUNCAN, SC from SEPT 2008 to Nov 4, 2011 and
_____ from _____ to _____

Charles DeShazo
Witness Print Name Charles DeShazo

C David Peacock
By C DAVID PEACOCK

James C. Cribb
Witness Print Name James C. Cribb

State of Florida
County of Walton



The foregoing Declaration of Domicile was acknowledged before me this 30 day of
December, 2011 by C David Peacock who is personally known to me or has produced
FL DL as identification

(Affix Notary Seal)

Kimberly Watson Sewell
Notary Public
Notary Name Printed Kimberly Watson Sewell
My Commission Expires 09-19-2013

NAPPS

LEASE AMENDMENT

FIRST AMENDMENT TO LEASE AGREEMENT

THIS FIRST AMENDMENT TO THE LEASE AGREEMENT (the "Amendment") is made this 31st day of May, 2013, by and between Pleasant Grove Properties, Inc (Lessor), whose address for the purpose of this Lease is P O Box 2103, Greer, SC 29652 and Schmolz & Bickenbach (Lessee), whose address for the purpose of this Lease is 365 Village Drive, Carol Stream, IL 60188

WITNESSETH:

WHEREAS, the Lessor and Lessee have previously executed that certain lease agreement dated 9th day of February, 2008 (the "Lease") pursuant to the terms of which Lessee has leased 16,800 square feet located at 1425C, South Buncombe Road, Greer, SC 29651.

WHEREAS, the Lessor and Lessee have agreed to make certain modifications to the Lease

NOW THEREFORE, in consideration of the mutual promises contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, effective August 1, 2013, the parties agree as follows

SECTION 2

Is amended to strike the first sentence and inserting in lieu thereof the following

"It is understood and agreed that the Lease Continuation shall commence as of the 1st day of August 2013, and shall end on the 31st day of July 2018, both days inclusive " This is a continuation of the February 9, 2008 Lease Agreement and prior terms and conditions are incorporated herein

SECTION 3

Is amended to strike the "Yearly rate of \$104,475 00" and inserting in lieu thereof the following terms "Yearly rate of \$84,000 00"

Is amended to strike the "monthly installment of \$8,706 25" and inserting in lieu thereof the following term "monthly installment of \$7,000 00"

Except as modified by the terms of this Amendment, all other terms and conditions of the Lease

Lessor

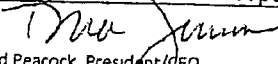


Lessee

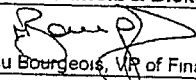


shall remain in full force and effect

LESSOR: Pleasant Grove Properties, Inc

By  David Peacock, President/CEO	Date JUNE 7, 2013
--	----------------------

LESSEE: Schmolz & Bickenbach USA, Inc.

By  Mathieu Bourgeois, VP of Finance & CFO	Date June 3 rd 2013
--	-----------------------------------

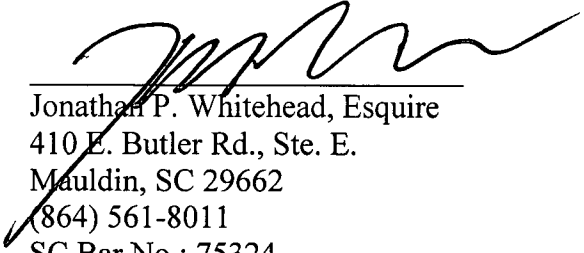
Lessor, 

Lessee 

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 13, 2015



Jonathan P. Whitehead, Esquire
410 E. Butler Rd., Ste. E.
Mauldin, SC 29662
(864) 561-8011
SC Bar No.: 75324
Attorney for Appellant

RECEIVED

APR 20 2015

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2013-CP-23-05891

NAI Earle Furman, LLC, ...Respondent,

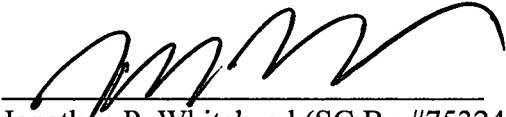
v.

Pleasant Grove Properties, Inc., ...Appellant.

PROOF OF SERVICE

I certify that I have, this 17th day of April, 2015, served one (1) bound copy of the Record on Appeal in the within appellate case upon the Attorney of Record for Respondent, Paul S. Landis, by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

Paul S. Landis, Esq.
Fayssoux Law Firm, P.A.
209 E. Washington Street
Greenville, South Carolina 29601


Jonathan P. Whitehead (SC Bar#75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E. Butler Rd., Suite E.
Mauldin, South Carolina 29662
(864) 561-8011

Attorney for Appellant

April 17, 2015

RECEIVED
APR 20 2015
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Alison Renee Lee, Circuit Court Judge

Case No. 2013-CP-23-05891

NAI Earle Furman, LLC, ...Respondent,

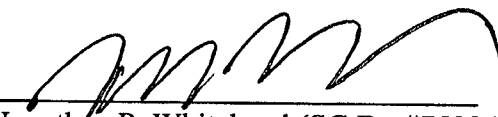
v.

Pleasant Grove Properties, Inc., ...Appellant.

PROOF OF SERVICE

I certify that I have, this 17th day of April, 2015, served one (1) bound copy of the Record on Appeal in the within appellate case upon the Attorney of Record for Respondent, Paul S. Landis, by depositing a copy of the same in the United States Mail, postage prepaid, and addressed as follows:

Paul S. Landis, Esq.
Fayssoux Law Firm, P.A.
209 E. Washington Street
Greenville, South Carolina 29601


Jonathan P. Whitehead (SC Bar#75324)
The Law Offices of Jonathan P. Whitehead, LLC
410 E. Butler Rd., Suite E.
Mauldin, South Carolina 29662
(864) 561-8011

Attorney for Appellant

April 17, 2015

RECEIVED
APR 20 2015
SC Court of Appeals