

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
 Patricia Danyea Emory,)
 Plaintiff,)
 vs.)
 Grace Hospitality, LLC, JHM Enterprises,)
 Inc., and JHM Hotels, LLC d/b/a)
 Charleston Marriott,)
 Defendants.)

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO.: 2015-CP-10-2616

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 2016 MAR 22 AM 9:09
 JULIE J. ARMSTRONG
 CLERK OF COURT

**ORDER DENYING DEFENDANTS'
 MOTION TO SET ASIDE AND VACATE
 ENTRY OF DEFAULT AND VACATE
 ORDER OF REFERRAL TO SPECIAL
 REFEREE**

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SC Court of Appeals

This matter came before me on Defendants' Motion to Set Aside and Vacate Entry of Default and Vacate Order of Referral to Special Referee. Defendants and Plaintiff briefed the Motion extensively and submitted arguments on the record during a hearing held on February 24, 2016. For the reasons below, Defendants' Motion is DENIED in its entirety.

FACTS

On May 5, 2013, Plaintiff traveled to the Marriott hotel on Lockwood Boulevard in Charleston, South Carolina. On May 6, 2013, Plaintiff was injured when she slipped and fell at the Marriott hotel. On May 7, 2015, Plaintiff filed suit naming Grace Hospitality, LLC d/b/a Charleston Marriott as the sole Defendant. On May 29, 2015, Plaintiff filed her Amended Complaint naming Grace Hospitality, LLC, JHM Enterprises, Inc., and JHM Hotels, LLC d/b/a Charleston Marriott, as Defendants.

On June 15, 2015, by certified mail, return receipt requested, restricted delivery, Plaintiff mailed a Summons and Amended Complaint to the Registered Agent of each Defendant, in accordance with SCR 4(d)(8). Also on June 15, 2015, Plaintiff mailed a courtesy copy of the

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pleadings to Donald J. Currotto, Esquire at Shutts & Bowen LLP in Orlando, Florida. Mr. Currotto is listed on the Defendants' website as Defendants' General Counsel.

On June 17, 2015, a Summons and Amended Complaint was served upon: Luke W. Finlay as Registered Agent for Defendant Grace Hospitality, LLC, by certified mail, return receipt requested, restricted delivery; J. P. Rama as Registered Agent for Defendant JHM Enterprises, Inc., by certified mail, return receipt requested, restricted delivery; and Jayanti P. Rama as Registered Agent for Defendant JHM Hotels, LLC d/b/a Charleston Marriott, by certified mail, return receipt requested, restricted delivery. Dianne Pickelsimer, Defendants' 30-year veteran employee, signed the return receipts for each Summons and Amended Complaint. On June 22, 2015, Plaintiff emailed another courtesy copy of the pleadings to General Counsel Currotto. Plaintiff received no response from Mr. Currotto nor any representative of Defendants. No Answer, Motion, Notice of Appearance, or any responsive pleading was made by any of the Defendants, all of whom were served on June 17, 2015.

One hundred days after service, on September 24, 2015, Plaintiff filed an Entry of Default Against Grace Hospitality, LLC, JHM Enterprises, Inc., and JHM Hotels, LLC d/b/a Charleston Marriott and Order of Referral to Special Referee. On October 19, 2015, Defendants filed this Motion to Set Aside and Vacate Entry of Default and Vacate Order of Referral to Special Referee. Defendants argued that the entry of default and referral to special referee were void and contended that Plaintiff had not accomplished valid service. The foundation of Defendants' arguments was their contention that Ms. Pickelsimer did not have the authority to accept service on behalf of Defendants.



LAW / ANALYSIS

Rule 4(d)(8) of the South Carolina Rules of Civil Procedure states, in relevant part, “Service 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. Any such default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person.”

If a party has “failed to plead or otherwise defend as provided by [the South Carolina Rules of Civil Procedure] and that fact is made to appear by affidavit or otherwise, the clerk of court shall enter his default upon the calendar.” S.C.R. Civ. P. 55(a). Under Rule 53(b), SCRCPP, “in a default case. . . some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court.” Further, under Rule 53(c), “[o]nce referred, the master or special referee shall exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter.” Once an entry of default or order of default judgment has been entered, a party seeking relief from the entry must do so under the “good cause” standard established under Rule 55(c), SCRCPP.

I. SERVICE OF PROCESS WAS VALID ON ALL DEFENDANTS.

Ms. Pickelsimer was an authorized person to accept service of process on behalf of all Defendants. In *Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263, 265 (2009), the South Carolina Supreme Court addressed the issue of whether or not a certain employee of a corporation was an agent of the corporation for the purposes of service of process. The Court held in relevant part:

Whether an employee may accept service on behalf of a corporation depends on the authority the corporation conferred

upon the employee. In order to determine whether an employee is an authorized agent, *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. While actual authority is expressly conferred upon the agent by the principal, *apparent authority is when the principal knowingly permits the agent to exercise authority*, or the principal holds the agent out as possessing such authority.

Id. at 383 S.C. 610, 682 S.E.2d 263, 265 (2009) (emphasis added) (internal citations omitted). Furthermore, “[a]n agent’s high level of actual or apparent responsibility suffices to permit service to be effective as against the principal.” *Graham Law Firm, P.A. v. Madawi*, 396 S.C. 290, 295-96, 721 S.E.2d 430, 433 (2012).

Here, Ms. Pickelsimer worked for Defendants for approximately thirty years. Significantly, Ms. Pickelsimer has worked for Luke Finlay, Defendants’ Chief Financial Officer and Registered Agent of Grace Hospitality, LLC for roughly seventeen years – including the thirteen years Mr. Finlay has served as Grace Hospitality, LLC’s Registered Agent. While Affidavits filed by Defendants state that Ms. Pickelsimer is “an administrative assistant” and her duties “include receiving the mail,” she actually has a much higher level of responsibility at Defendants’ businesses. For example, in addition to Ms. Pickelsimer’s duties with regard to handling all certified mail on behalf Defendants’ entities and Registered Agents, she has the responsibility of filing general liability claims with insurance companies for premises liability injuries after she receives approval from Daniel Hart, Esquire, Defendants’ Director of Legal Services. Mr. Pickelsimer is also responsible for building maintenance, travel arrangements for employees, and she acts as Defendants’ sole spokesperson with regards to all visitors to the company. Ms. Pickelsimer is indeed the “gatekeeper” at Defendants’ place of business which is also the address for service of process for all three entities.

Mr. Finlay (CFO) has testified concerning his relationship with Ms. Pickelsimer and the authority she has been expressly given with regard to receiving certified mail on behalf of the Defendant entities and their Registered Agents in this case:

Q. Okay. But as part of her job responsibilities or duties, she's been given that responsibility to handle certified mail when it comes in?

A. Yes.

Q. Okay. Is that something that you trust her to do to take care of?

A. Yes.

Q. In her role of receiving the mail then she's permitted to sign on behalf of who it's sent to; is that correct?

A. Yes.

Q. Okay. And then she delivers it to whoever that person is?

A. Yes.

Q. And you trust her to sign for mail on your behalf?

A. Yes. I can't think of another – in 17 years this is the only time we've had, as far as I can recall, any kind of certified mail go missing.

Q. Okay.

A. So, yes, she's, you know, she's very professional and I completely rely on her.

(Finlay Dep. at 7:17-24; 12:9-23.) In fact, Mr. Finlay does not believe that he personally has ever signed for certified mail in his seventeen years with Defendants. (Finlay Dep. at 6:14-18.) Ms. Pickelsimer's testimony confirms that Defendants not only knowingly permit her to perform this duty, but expressly direct her to perform it:

Q. Okay. Do you sign for all certified mail that comes through?

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A. Yes, sir. I do.

Q. Okay. And obviously it's fair to say that Mr. Rama, or Finlay, or Hart, or whoever, they trust you to receive the mail?

A. Yes. I think they do.

Q. Okay. And they trust that you'll be responsible to make sure that it goes to the right place, whether it's the mailroom or whether it's to the officers or how you explained earlier; is that right?

A. I think so, yes.

Q. And that's your responsibility at the company?

A. One of them, yes.

Q. Okay. Has that sort of procedure for receiving certified mail, has that changed at all since you can remember?

A. Well, we've been in this office almost 10 years, and I've dealt with it that long. And I was involved with it to a degree prior to moving here. So, I would say -- I can't say that's been forever because we were very small at one point and we have grown. But basically I think that is exactly the way it's been.

Q. Okay. And is it fair to say that your expectation when you receive some correspondence that comes like Exhibit 1 from a law office, that then one of the officers, directors then deal with that mail?

A. Depending upon how it's addressed. But certainly it would go to the person it was addressed to or our legal representative.

Q. Okay. And so is it fair to say that when you receive certified mail, you know what return receipt requested means, you have to sign for it on there?

A. Yes.

Q. Okay. Fair to say that when you receive certified mail return receipt requested, that you sign for it?



A. I do.

Q. Okay. And then you make sure it gets delivered to that person for whom you sign; is that right?

A. Or someone responsible for legal issues. As I said before, if they're not available, it would go to Mr. Daniel Hart.

Q. Mr. Daniel Hart?

A. It's treated seriously, let me put it that way. And sometimes you can't tell an ad from the real thing. And Mr. Hart gets all of these as well.

(Pickelsimer Dep. at 12:18-20; 20:20 – 21:25; 19:9 – 20:4.)

Further, the evidence has shown that this was *not* the first time Ms. Pickelsimer had accepted service of process. At the hearing on this Motion, Plaintiff's counsel introduced as an exhibit a 2007 Summons and Complaint filed in the Charleston County Court of Common Pleas where Grace Hospitality, L.L.C. was a named Defendant. As in this case, Ms. Pickelsimer accepted service of process. The exhibit contained a copy of Ms. Pickelsimer's signature on the return receipt for the delivery of the Summons and Complaint. Defendant Grace Hospitality, L.L.C.'s Answer, also part of the exhibit, contained no defense for improper service due to Ms. Pickelsimer's acceptance of service nor a defense for lack of personal jurisdiction.

Additional support of the authority Defendants had conferred upon Ms. Pickelsimer can be found from the fact that on November 4, 2015, she signed for yet another mailing from Plaintiff's counsel served just like the three lawsuits – by certified mail, return receipt requested, restricted delivery. Importantly, this acceptance was made by Ms. Pickelsimer *after* she, Luke Finlay (CFO), and Daniel Hart, Esquire (Defendants' Director of Legal Services), signed Affidavits dated October 7, 2015 that are being used by Defendants in their attempt to argue she is not authorized to accept service. Again, this is more evidence that not only do Defendants

knowingly permit Ms. Pickelsimer to accept service, it is the responsibility Defendants have expressly conferred upon her and one in which they “trust” and “completely rely” on her to perform on their behalf. Because Ms. Pickelsimer was an authorized person to accept service on behalf of Defendants, personal jurisdiction attached and the referral to a special referee was valid.

II. DEFENDANTS ARE NOT ENTITLED TO RELIEF FROM DEFAULT UNDER THE “GOOD CAUSE” STANDARD OF RULE 55(c).

Defendants cannot provide the satisfactory explanation of their failure to file a timely Answer required to meet the minimal good cause standard under Rule 55(c), and, therefore, is not entitled to relief from the entry of default. *Sundown Operating Co., Inc. v. Intedg Industries, Inc.*, 383 S.C. 601, 681 S.E. 2d 885 (2009). Only “[o]nce a party has put forth a *satisfactory explanation* for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” *Sundown Operating Co., Inc. v. Intedg Industries, Inc.*, 383 S.C. 601, 607-08, 681 S.E. 2d 885, 889 (2009) (emphasis added) (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E. 2d 499, 501-02 (Ct. App. 1989)). “The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause.” *Id.*

Here, Mr. Finlay’s testimony that the Complaints “got lost in the shuffle” after being sent to Daniel Hart, Esquire, Defendants’ Director of Legal Services, undoubtedly fails to meet the good cause standard of Rule 55(c):

Q. Okay. And so when you say “goes missing”, is that sort of your understanding of what happened? Because I’ll just tell you, three identical lawsuits that she signed for on the same day, which is quite a bit of paper, not just the single page letter. These things are, you

know, 20, 30 pages each. What is your understanding of what happened to these?

A. So I think what happened is we did get them, and we did send them to Daniel, but they weren't marked as urgent requiring response and **they kind of got lost in the shuffle.** That's what I think happened. And so when we get something via registered mail, that's not what is supposed to happen. If we got it via summons it would not have happened, so...

Q. So, is it your testimony today that this is the first time you've ever seen the documents in Exhibit 4?

A. She may have brought it to me. It's possible. I don't know for a fact.

Q. Okay.

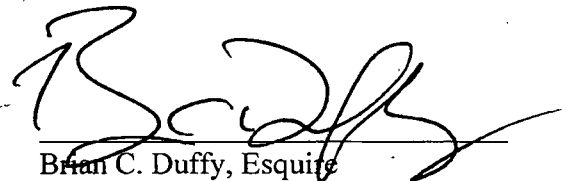
A. **I do know that it didn't get treated as an urgent item the way that it should have been.**

(Finlay Dep. at 13:6-23) (emphasis added). This testimony shows that not only is there no *satisfactory* explanation, there's no explanation at all and good cause does not exist for the entry of default to be set aside. Accordingly, Defendants are not entitled to relief from default in this case.

CONCLUSION

For the foregoing reasons, Defendants' Motion to Set Aside and Vacate Entry of Default and Vacate Order of Referral to Special Referee is hereby DENIED.

IT IS SO ORDERED.



Brian C. Duffy, Esquire
Special Referee
Ninth Judicial Circuit

March 21, 2016
Charleston, South Carolina