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FORM 4

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

JUDGMENT IN A CIVIL CASE

FEB 16 2017

CASE NO. 2014-CP-08-01432

SC Court of Appeals

ROSALYN KRAMER MONAT-HALLER
PLAINTIFF(S)

JOHN MORRIS AGENCY, INC.
DEFENDANT(S)

Submitted by: _____	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> 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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 13, SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other;
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy or insolvency; 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 _____

FILED
 16 NOV 30 AM 9:23
 MARY P. BROWN
 CLERK OF COURT
 BERKELEY COUNTY, S.C.

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.


Master in Equity

3079
Judge Code

11/28/16
Date

Handwritten initials

Handwritten initials

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

David K. Haller,

115 River Landing Drive, Ste. 102

Charleston, SC 29407

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: _____

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)
FOR THE NINTH JUDICIAL CIRCUIT)

COUNTY OF BERKELEY)

CASE NO.: 2014-CP-08-1432)

ROSALYN KRAMER MONAT-)
HALLER)

ORDER TO SET ASIDE DEFAULT JUDGMENT)
AND RELIEF FROM JUDGMENT)

-VS-

JOHN MORRIS AGENCY, INC.)

DEFENDANT)

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FEB 16 2017

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HARRY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, S.C.

SC Court of Appeals
INTRODUCTION

This matter came before me for hearing on November 15, 2016 at the Berkeley County Courthouse at 11:15 A.M. pursuant to notice regarding the above captioned case on motion of Defendant, John Morris Agency, Inc., pursuant to Rule 55(c), SCRCF, to set aside the default judgment entered against it, and simultaneously herewith, pursuant to Rule 60(b), SCRCF for relief from the aforementioned judgment. Present at the hearing were the Plaintiff, Rosalyn Kramer Monat-Haller, Plaintiff's Counsel, David K. Haller, Esquire, Pamela Morris, John H. Morris on behalf of John Morris Agency, Inc., E. Mason West, Esquire and John S. West, Esquire, for the Defendant, both being of the West Law Firm, LLC.

After hearing arguments of counsel and consideration of the pleadings and proceedings before me, and for good cause shown, this Court hereby GRANTS the Defendant's motions and finds as follows.

PROCEDURAL HISTORY AND STATEMENT OF FACTS

Plaintiff Rosalyn Kramer Monat-Haller commenced this action by filing a summons and complaint on June 18, 2014. On August 12, 2014, Plaintiff filed the affidavit of her attorney, David K. Haller, dated August 5, 2014, which stated:

I am counsel for the plaintiff in the above matter. According to the records on file with the South Carolina Secretary of State, the registered agent for defendant John Morris Agency, Inc., is John H. Morris with an address of 870 College Park Road, Summerville, South Carolina. See Exhibit A. I am informed and believe, based on my research into public tax records, this address is located in Berkeley County. I attempted serving the defendant with the summons and complaint in this matter by certified mail, return receipt requested. See Exhibit B. The same was returned to me as service attempted, not known, unable to forward. The defendant has not complied with its statutory duty to update the current address of its agent of service and service by publication is proper.

Based on counsel's affidavit, on that same date the Clerk of the Court ordered that Defendant be served by publication.

Thereafter, on September 17, 2014, Plaintiff filed an affidavit of publication by *The Berkeley Independent*, stating that on three consecutive Wednesdays, 8/20/14, 8/27/14, and 9/03/14, the newspaper published a copy of the summons in this case. On October 24, 2014, Plaintiff filed a motion for entry of default and for a damages hearing and attached the affidavit of publication as an exhibit. Based on the affidavit of publication, on that same date, the Clerk of the Court entered default against Defendant and ordered that a damages hearing be set.

Following a damages hearing at which the Court found that Defendant did not appear after notice of the proceedings was mailed to the last known address of Defendant's registered agent as reported by the Secretary of State, on July 8, 2015, the Court entered judgment for Plaintiff in the amount of \$100,000, plus prejudgment interest from December 24, 2011. On July 15, 2015, Plaintiff's counsel filed a certificate of mailing the judgment to Defendant in care of John Morris, Registered Agent, at 870 College Park Road, Summerville, SC 29483.

Plaintiff filed a petition for supplemental proceedings on September 16, 2016. On that same date, the court issued an order directing Defendant to appear before the Court on October 19, 2016. On October 17, 2016 Defendant filed a motion to stay and/or, in the alternative, a motion to continue supplemental proceedings and motion to set aside judgment and relief from

judgment. On October 19, 2016, the parties appeared before this Court pursuant to Plaintiff's Petition for Supplemental Proceedings, and Defendant's Motion to Stay and/or, in the alternative, a Motion to Continue Supplemental Proceedings. This Court granted Defendant's Motion to Continue, and an Order for said Motion was filed October 25, 2016.

CONCLUSIONS OF LAW

The South Carolina Rules of Civil Procedure authorize this Court, "[f]or good cause shown . . . [to] set aside an entry of default and, if a judgment by default has been entered, . . . likewise [to] set it aside in accordance with Rule 60(b)." Rule 55(c), SCRPC. Rule 60(b) gives this Court the discretion to set aside a final judgment if, inter alia, that judgment is void. Rule 60(b), SCRPC. "A void judgment is one that, from its inception, is a complete nullity and is without legal effect[.]" *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). In general, void judgments are those issued in the absence of personal or subject-matter jurisdiction or where due process was not observed. *Ware v. Ware*, 404 S.C. 1, 11, 743 S.E.2d 817, 822 (2013); *Linda Mc Co. v. Shore*, 390 S.C. 543, 552, 703 S.E.2d 499, 503 (2010); *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). The July 8, 2015 default judgment in this case is void because it was entered without obtaining personal jurisdiction over Defendant.

"A court generally obtains personal jurisdiction by the service of a summons." *Taylor*, 369 S.C. at 551, 633 S.E.2d at 503. "A presumption of proper service exists when the rules governing service are followed." *Id.* at 552, 633 S.E.2d at 503.

In the case of service by publication, as occurred in this case, service is appropriate "when an affidavit, satisfactory to the issuing officer, is made stating that the defendant, a resident of the state, cannot, after the exercise of due diligence, be found, and that a cause of

action exists against him." *Wachovia Bank of S.C. v. Player*, 341 S.C. 424, 428-29, 535 S.E.2d 128, 130 (2000) (citing S.C. Code Ann. § 15-9-710(3)); see S.C. Code Ann. § 15-9-730 ("In any action or proceeding in this State in which the defendant is a corporation created by or organized under the laws of this State when no officer or agent thereof upon whom service of process can be made can, after due diligence, be found in this State and this is made to appear by affidavit, process may be served upon such corporation by publication."). Upon a determination that the requirements for service by publication are met,

The order of publication shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made, most likely to give notice to the person to be served and for such length of time as may be deemed reasonable not less than once a week for three weeks. The court, judge, clerk, master or judge of probate shall also direct that a copy of the summons be forthwith deposited in the post office directed to the person to be served at his place of residence, unless it appears that such residence is neither known to the party making the application nor can, with reasonable diligence, be ascertained by him.

S.C. Code Ann. § 15-9-740.

In general, precise compliance with the rules is not required to effect service of process. *Taylor*, 369 S.C. at 552, 633 S.E.2d at 503. However, a different rule applies in the case of service by publication. "South Carolina courts have repeatedly required strict compliance with publication statutes." *Caldwell v. Wiquist*, 402 S.C. 565, 572, 741 S.E.2d 583, 587 (Ct. App. 2013); see, e.g., *Du Bose v. Du Bose*, 90 S.C. 87, 72 S.E. 645, 646 (1911). Moreover, courts in other jurisdictions "similarly require strict compliance with publication statutes." *Caldwell*, 402 S.C. at 573-74, 741 S.E.2d at 588 (listing cases). Strict compliance with publication statutes avoids "resolving litigation by default" and is "consistent with the policy of [South Carolina] to resolve cases on the merits." *Id.* at 575, 741 S.E.2d at 588.



A court reviewing a challenge to service by publication on the ground that the plaintiff did not show due diligence in trying to find the defendant is usually bound by the finding of the clerk that due diligence was shown, absent fraud or collusion. *Player*, 341 S.C. at 429, 535 S.E.2d at 130; *see also Caldwell*, 402 S.C. at 569, 741 S.E.2d at 586. However, where the affidavit is facially deficient because it does not state facts supporting a finding of due diligence or does not even use the term due diligence, such deference is not required. *Caldwell*, 402 S.C. at 570-72, 741 S.E.2d at 586-87. In *Caldwell*, for example, the court found that trial court erred as a matter of law in denying the defendant's "motions to set aside default judgment because the affidavits requesting service by publication did not meet the statutory requirements, and were therefore, facially defective." *Id.* at 57-75, 741 S.E.2d at 588. In that case, the affidavits stated that service by publication was necessary because they stated that the plaintiffs "tried to serve a non-resident of Beaufort County only in Beaufort County," *id.* at 571, 741 S.E.2d at 587; they did not state that the plaintiffs could not be found within the state after due diligence. In fact, they did "not even contain the phrase 'due diligence.'" *Id.* at 572, 741 S.E.2d at 587.

The attorney's affidavit in support of the request for service by publication is facially deficient in at least two ways. First of all, just as in *Caldwell*, the affidavit does not use the phrase "due diligence." Second, the affidavit does not contain any statements regarding the due diligence undertaken, nor does the affidavit assert facts from which it could be inferred that Plaintiff or her counsel could not find Defendant within the State after exercising due diligence to find it. While the term "due diligence" is not defined by statute, case law demonstrates that due diligence generally means more than a single effort to effect service. *See, e.g., Ingle v. Whitlock*, 282 S.C. 391, 392, 318 S.E.2d 367, 368 (1984) (due diligence was established by an affidavit stating "that the professional process server diligently attempted to locate appellant at

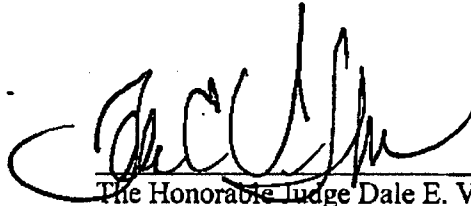
his last known address and another address; contacted the mail carriers who delivered mail to appellant; contacted appellant's stepmother; made several neighborhood inquiries and contacted Duke Power Company, Spartanburg Water Works and Correctional Release Center, all to no avail"). In this case, counsel merely asserts that he determined the address of Defendant's registered agent, as reported to the Secretary of State, and attempted to serve the summons and complaint on Defendant in Berkeley County by certified mail on a single occasion. Just as in *Caldwell*, the affidavit does not state that an effort was made to ever locate the Defendant, much less locate and serve Defendant in any other county in South Carolina. Because the affidavit was facially defective, it was improper for the Clerk to order service by publication.

Consequently, because service by publication was fatally flawed, the Court did not obtain personal jurisdiction over Defendant, and, therefore, the judgment entered against Defendant was void. Under these circumstances, whether to grant Defendant's motion "is not discretionary but a matter of right." *Richardson Constr. Co. v. Meek Eng'g & Constr., Inc.*, 274 S.C. 307, 309, 262 S.E.2d 913, 915 (1980). Accordingly, pursuant to Rules 55(c) and 60(b)(4), SCRCP, Defendant's motion to set aside the default judgment is granted, and the default judgment is set aside as void for lack of personal jurisdiction over Defendant.

ORDER

For the foregoing reasons, the Court hereby GRANTS Defendant's Motion to Set Aside Default Judgment and Relief from Judgment and sets aside the default judgment as void for lack of personal jurisdiction over Defendant.

AND IT IS SO ORDERED!



The Honorable Judge Dale E. Van Slambrook
Master-in-Equity, Berkeley County

This 28 day of November, 2016
Moncks Corner, SC

