

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

LM INSURANCE CORPORATION, )  
 )  
Plaintiff, )

Civil Action No. 2017-CP-32-00507

v. )

JOSH STEELE, )  
 )  
Defendant/Third-Party )  
Plaintiff, )

**ORDER  
GRANTING THIRD-PARTY  
DEFENDANT ERNIE YARBOROUGH  
D/B/A YARBOROUGH INSURANCE  
AGENCY'S MOTION TO DISMISS**

v. )

ERNIE YARBOROUGH D/B/A )  
YARBOROUGH INSURANCE AGENCY, )  
 )  
Third-Party Defendant. )

**RECEIVED**  
OCT 20 2017  
SC Court of Appeals

NOW BEFORE THE COURT is Third-Party Defendant Ernie Yarborough d/b/a Yarborough Insurance Agency's ("Yarborough") Motion to Dismiss the Third-Party Complaint filed by Defendant/Third-Party Plaintiff Josh Steele ("Steele"). A hearing was held on August 2, 2017. Present at the hearing were Morgan S. Templeton, Esquire, on behalf of the Plaintiff, LM Insurance Corporation ("LM"), Robert D. Dodson, Esquire, on behalf of Steele and Elizabeth M. McMillan on behalf of Yarborough. The Court, having heard arguments of counsel and fully considering the matter, grants Yarborough's motion.

**BACKGROUND**

This matter comes before me upon Yarborough's Motion to Dismiss for Insufficient Service of Process pursuant to Rule 12(b)(5) of the South Carolina Rules of Civil Procedure. On or around April 21, 2017, Steele attempted to serve Yarborough by certified mail, with

instructions that delivery should be restricted to Yarborough. However, Sandy Pike, a sales and service representative employed by Yarborough signed the certified mail return receipt while Yarborough was out of the office. Yarborough asserts that Pike has no ownership interest in his agency and that her duties do not include signing for certified mail delivered to Yarborough's office. Additionally, Yarborough states that he has never represented that she is authorized to sign for certified mail or accept service on his behalf. Subsequently, Yarborough has not been personally served or any other manner contemplated by the Rules of Civil Procedure.

### **FINDINGS OF FACT AND LAW**

Rule 4 of the South Carolina Rules of Civil Procedure specifies the methods in which the Summons and Complaint can be served to effectuate process on a defendant. "Rule 4, SCRPC, 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). Pursuant to Rule 4(d)(8), SCRPC, a plaintiff may serve a the defendant "by registered or certified mail, return receipt requested **and restricted to the addressee.**" (emphasis added). Where, as here, service is accomplished by certified mail, delivery must be restricted to and the return receipt signed by the addressee. Langley v. Graham, 322 S.C. 428, 431, 472 S.E.2d 259, 260-61 (1996).

In this case, the Third-Party Complaint was addressed to Ernie Yarborough, an individual. It is undisputed that Sandra Pike, a sales and service representative of Yarborough's company, received delivery of and signed the return receipt for the Third-Party Complaint. As a result, Steele has failed to comply with the requirements of Rule 4(d)(8) and his attempt to serve Yarborough by mail is defective.

Further, even had Steele complied with the requirements regarding receipt and delivery,

Pike was not capable of accepting service on behalf of Yarborough. For service to be effective under Rule 4(d)(8), a plaintiff must serve the addressee or “an authorized person” for the individual. Graham Law Firm, P.A. v. Makawi and MKKM, Inc., 396 S.C. 290, 721 S.E. 2d 430, 433 (2012). The class of persons who may receive service of process on behalf of an individual or corporation as set forth in Rule 4(d)(8) is limited. See Rule 4(d)(1), SCRCPP (limiting service on individuals to the named individual, a person of suitable age and discretion who resides at the individual’s home, or with an agent authorized by appointment or law); Rule 4(d)(3), SCRCPP (limiting service on a corporation or partnership to officer, managing or general agents, or an agent authorized by appointment or law). For an agent to have implied authority, the agent must believe she had such authority. Roberson v. S. Fin. of S.C., Inc., 365 S.C. 6, 11, 615 S.E. 2d 112, 115 (2005) (citing 2A CJS *Agency* § 132 (2004)). In regard to apparent authority, an agent has apparent authority only where the principal knowingly permits the agent to exercise authority or the principal holds the agent out as possessing such authority. Id. Whether an agent has apparent authority is established by the actions and statements of the principal, not the agent. Id.

Here, the only evidence before me is that Pike did not have express, apparent, or implied authority to accept service on behalf of Yarborough. Yarborough submitted an affidavit in which he states that he did not give Pike express permission to accept service of process on his behalf or for his company and has never given Pike such authority. Similarly, Pike submitted an affidavit in which she confirms that Yarborough never gave her permission to accept service or sign on his behalf for certified mail. Furthermore, despite the Court granting Steele thirty days to conduct discovery regarding Pike’s authority to accept service, he has failed to present any evidence to the Court which contradicts Pike’s and Yarborough’s sworn statements.

Therefore, based upon the applicable law and facts before me, I grant Yarborough's motion to dismiss for insufficient service of process.

**AND IT IS SO ORDERED.**

\_\_\_\_\_  
The Honorable R. Knox McMahon  
Administrative Judge

Dated: \_\_\_\_\_



Lexington Common Pleas

**Case Caption:** LM Insurance Corporation VS Josh Steele

**Case Number:** 2017CP3200507

**Type:** Order/Other

So Ordered

s/ R. Knox McMahon, #2145

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