

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge  
The Honorable Kristi Lea Harrington, Circuit Court Judge

Lower Court Case No. 2016-CP-10-1355  
Court of Appeals Case No. 2017-001479

Carolina Construction Solutions,

Respondent,

v.

Eagles Landing Properties, LLC, Myron L. Hyman, Jr.,  
Individually, and as Trustee of The Myron L. Hyman, Jr., - 1998  
Trust, Under Agreement Dated June 30, 1998 As Amended, Eagles  
Landing Restaurants, LLC, Eagles Landing International, LLC,  
Elite Construction Company, and Vincent C. Carter,

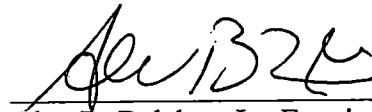
Defendants,

Of Whom, Myron L. Hyman, Jr., Individually, and as Trustee of  
The Myron L. Hyman, Jr., - 1998 Trust, Under Agreement Dated  
June 30, 1998 As Amended,

Appellants.

INITIAL BRIEF OF RESPONDENT

Respectfully submitted,



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Dated: March 6, 2018

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**STATEMENT OF ISSUES ON APPEAL**

- I. **DID THE RESPONDENT PROPERLY EFFECTUATE PROCESS OF SERVICE UPON APPELLANT OF ITS SUMMONS AND COMPLAINT TO FORECLOSE THE MECHANIC'S LIEN?**
- II. **DID THE TRIAL COURT ABUSE ITS DISCRETION IN ISSUING A DEFAULT JUDGMENT AGAINST APPELLANT?**
- III. **DID THE TRIAL COURT ABUSE ITS DISCRETION IN ISSUING AN ORDER DENYING APPELLANT'S MOTION TO DISSOLVE MECHANIC'S LIEN AND OPPOSITION TO MOTION FOR DEFAULT JUDGMENT?**
- IV. **AT THE TRIAL COURT, DID APPELLANT IMPROPERLY RELY ON RULE 55(c) IN SUPPORT OF ITS MOTION TO SET ASIDE THE DEFAULT JUDGMENT?**
- V. **ASSUMING *ARGUENDO* THAT APPELLANT PROPERLY ARGUED SETTING ASIDE THE DEFAULT JUDGMENT, DID THE TRIAL COURT ABUSE ITS DISCRETION IN DENYING EAGLES LANDING'S MOTION TO RECONSIDER, MOTION TO DISSOLVE THE MECHANIC'S LIEN AND HYMAN'S MOTION TO SET ASIDE DEFAULT AND MOTION TO DISMISS?**

## STATEMENT OF THE CASE

The Respondent, Carolina Construction Solutions (hereinafter "CCS"), seeks recovery under a Mechanic's Lien and foreclosure lawsuit against the Appellant's, Myron L. Hyman, Jr., Individually, and as Trustee of The Myron L. Hyman, Jr., - 1998 Trust, Under Agreement Dated June 30, 1998 as Amended (hereinafter "Hyman") property. CCS provided construction labor and materials for the erection, alteration and repair of a building on Hyman's property. On January 7, 2016, CCS perfected its lien by filing and serving a Notice of Claim of Mechanic's Lien and Statement of Account. See Mechanic's Lien. On March 17, 2016, CCS filed suit in the Charleston County Court of Common Pleas to foreclose the Mechanic's Lien. CCS also asserted causes of action for Suit of Verified Account against Elite Construction Company; Quantum Meruit against Hyman, Eagles Landing Properties, LLC, Eagles Landing Restaurants, LLC, and Eagles Landing International, LLC (hereinafter collectively referred to as "Eagles Landing"), and Elite Construction Company; and Suit on Guaranty against Vincent C. Carter. See generally Pls. Compl; Pls. Compl. ¶¶ 17-42.<sup>1</sup>

The Summons and Complaint were served upon Hyman pursuant to Rule 4(d)(8) of the South Carolina Rules of Civil Procedure (hereinafter "SCRCP"), by certified mail, return receipt requested, restricted delivery. The pleadings were placed in the U.S. Mail on or about March 23, 2016, and service of the pleadings was perfected upon Hyman as shown by the date of delivery on the return receipts ("green cards") as March 25, 2016. See Return Receipts/green cards. The pleadings mailed to Hyman were signed for by Donna Sweat.

After eighty-eight (88) days had elapsed and Hyman having not answered the Complaint, CCS filed an Affidavit of Default as to Hyman. See Affidavit of Default as to Hyman. On March

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<sup>1</sup> Eagles Landing, Elite Construction Company and Vincent C. Carter filed an Answer.

15, 2017, CCS filed a Motion for Entry of Default Judgment Against Hyman, Affidavit of Attorney Fees, an updated Affidavit of Default, Form 4 and proposed Order of Default, and Rule 55(b)(3) SCRCF Certificate of Service court-stamped March 20, 2017. See Motion for Entry of Default Judgment Against Hyman, Affidavit of Attorney Fees, Affidavit of Default, Form 4 and proposed Order of Default, and a Certificate of Service.

On March 30, 2017, counsel for Eagles Landing filed Eagles Landing's Motion to Dissolve Mechanic's Lien and Opposition to Motion for Default Judgment. See Eagles Landing's Motion to Dissolve Mechanic's Lien and Opposition to Motion for Default Judgment. On April 3, 2017, an Order of Default as to Hyman was entered awarding CCS Fifty One Thousand Two Hundred Twenty Nine and 17/100 (\$51,229.17) Dollars. See Order dated April 3, 2017. On April 17, 2017, Eagles Landing filed its Motion to Reconsider Order of Default. See Eagles Landing's Motion to Reconsider Order of Default. On May 17, 2017, prior to receiving a notice of hearing on Eagles Landing's Motion to Reconsider, Hyman appeared via Eagles Landing's counsel and filed a Motion to Set Aside Default and Motion to Dismiss. See Motion to Set Aside Default and Motion to Dismiss. On the same day, Eagles Landing filed Eagles Landing's Memorandum in Support of Their Motion to Dissolve the Lien, Opposition to Motion for Default Judgment and Motion to Reconsider. See Memorandum in Support of Eagles Landing's Motion to Dissolve the Lien, Opposition to Motion for Default Judgment and Motion to Reconsider. Having received a pre-filed copy of Eagles Landing's May 17, 2017 Motion and Memorandum of Law, CCS filed a Partial Response to Eagles Landing's Motion to Dissolve the Mechanic's Lien, Opposition to Motion for Default Judgment and Motion to Reconsider. See CCS' Partial Response dated May 15, 2017. On June 2, 2017, a Form 4 Judgment was entered denying Hyman's and Eagles

Landing's Motion to Reconsider Order of Default and Motion to Dissolve Mechanic's Lien. See June 2, 2017 Order.

On October 24, 2017, CCS filed an Order of Reference (to the Honorable Mikell R. Scarborough, the Master In Equity for Charleston County); and on November 9, 2017, the Order of Reference was entered by the Court. See Order of Reference. Thereafter, on November 20, 2017, Hyman filed a Motion to Reconsider (Order of Reference dated November 9, 2017). See Motion to Reconsider.<sup>2</sup> On January 29, 2018, A written Order was issued by the Honorable Deadra L. Jefferson denying Hyman's Motion. See Order Denying Defendant's Motion to Reconsider. In the interim between the June 2, 2017 Order denying Hyman's and Eagles Landing's Motions and the November 20, 2017 Motion to Reconsider, Hyman, on June 29, 2017, filed this appeal. CCS' claims against Hyman have been referred to the Honorable Mikell R. Scarborough, the Master In Equity for Charleston County, to enforce the judgment entered against Hyman.<sup>3</sup>

### **FACTS OF THE CASE**

This case arises out of CCS' efforts to procure payment for the furnishing of construction labor and materials it provided to Elite Construction Company and its owner, Vincent C. Carter, for the erection, alteration and repair of a building owned by Hyman and leased to Eagles Landing to operate an International House of Pancakes ("IHOP") restaurant.

In 2015, Eagles Landing and its principal owner, Mohamed Makawi ("Makawi") entered into a long-term lease with Hyman to utilize a commercial building owned by Hyman and situated on Hyman's property located at 771 Daniel Ellis Drive, Charleston, South Carolina. The long-term lease allowed Eagles Landing and Makawi to build and operate an IHOP restaurant.

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<sup>2</sup> Hyman's Motion to Reconsider was heard by The Honorable Deadra L. Jefferson via a telephonic hearing occurring on December 8, 2017. Judge Jefferson's written Order was issued on January 29, 2018.

<sup>3</sup> Tr. 11:5-13.

Eagles Landing and Makawi contracted with Elite Construction Company ("Elite") to perform construction related undertakings to up fit the building for use as an IHOP. Elite in turn, contracted with CCS as a subcontractor, a construction industry temporary agency, to provide labor and construction related services in the erection, alteration and repair of the building. CCS commenced providing labor and construction related services on September 24, 2015, and continued to do so through October 24, 2015.

Hyman claims he "had no knowledge of the work done on the Property".<sup>4</sup> However, such a claim is in stark contrast to the fact that Hyman and Eagles Landing/Makawi entered into a long-term lease allowing Eagles Landing to construct and operate a IHOP restaurant knowing full well that in order to do so, Eagles Landing would have to up fit the property.<sup>5</sup> Such construction related up fits would no-doubt be part and parcel of the lease for the property as Eagles Landing would have to conform to the IHOP development, construction and build-to-suit procedures. It is undisputed that Eagles Landing/Makawi is the owner and/or has ownership interest in the IHOP Restaurant and is a long-term leaseholder of the Hyman's property.

CCS filed a Notice and Claim of Mechanic's Lien and Statement of Account with the Charleston County RMC Office on January 7, 2016, claiming a Mechanic's and/or Materialman's Lien on the property owned by Hyman, any leasehold interest possessed by Hyman, or any leasehold interest possessed by a lessee of Hyman, specifically stating "Carolina Construction Solutions, hereby claims a Mechanic's and/or Materialman's Lien on the Property described and any leasehold interest possessed by Myron L. Hyman, Jr., as trustee of the Myron L. Hyman, Jr., - 1998 Trust, under agreement dated June 30,1998 as amended, or any leasehold interest

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<sup>4</sup> See Appellant's Initial Br. p. 4.

<sup>5</sup> Hyman's building was previously occupied by a Ruby Tuesday's restaurant, which had a fifteen (15) year lease with Hyman.

possessed by a lessee of Myron L. Hyman, Jr., as trustee of the Myron L. Hyman, Jr., - 1998 Trust, under agreement dated June 30, 1998 as amended." See Mechanic's Lien.

The crux of Hyman's appeal is that CCS did not properly serve him with its Summons and Complaint, and therefore, the default judgment against him should be set aside. The lower Court has denied Hyman's numerous attempts to persuade the Court otherwise.

## ARGUMENT

### STANDARD OF REVIEW

The decision whether to set aside an entry of default judgment lies solely within the sound discretion of the trial judge and will not be disturbed on appeal absent a clear showing of an abuse of that discretion. Harbor Island Owners' Ass'n v. Preferred Island Prop., Inc., 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006); therefore, the standard of review is limited to determining whether there was an abuse of discretion. Raby Const., L.L.P. v. Orr, 358 S.C. 10, 18, 594 S.E.2d 478, 482 (2004). An abuse of discretion arises when the order was controlled by an error of law or when the order is based on factual conclusions that are without evidentiary support. Tri-County Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990).

#### **I. THE RESPONDENT PROPERLY EFFECTUATED PROCESS OF SERVICE UPON APPELLANT OF ITS SUMMONS AND COMPLAINT TO FORECLOSE THE MECHANIC'S LIEN**

##### **A. Service of Process**

The principal objective of service of process is to give notice to the defendant of the proceedings against him. Rule 4 of the SCRCF serves at least two purposes. First, it confers personal jurisdiction on the court; and, second, it assures the defendant of reasonable notice of the action. Exact compliance with the Rule is not required to effect service of process. The Court must inquire whether the plaintiff had sufficiently complied with the Rules such that the Court

has personal jurisdiction of the defendant and the defendant has notice of the proceedings. Mull v. Ridgeland Realty, LLC, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010), Delta Apparel, Inc. v. Farina, 406 S.C. 257, 267, 750 S.E.2d 615, 620 (Ct. App. 2013) (noting South Carolina courts have “never required exacting compliance with the rules to effect service of process.”) (quoting Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209–10, 456 S.E.2d 897, 899 (1995). “Rather, [courts] inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.” (quoting Roche, 318 S.C. at 210, 456 S.E.2d at 899); “An agent's authority is composed of his or her actual authority, whether express or implied, together with the apparent authority which the principal by his or her conduct is precluded from denying.”. Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 10, 615 S.E.2d 112, 115 (2005). "There is a presumption of proper service when the civil rules on service are followed." Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005).

On March 17, 2016, CCS filed a lawsuit in Charleston County to foreclose the Mechanic's Lien recorded with the Charleston County Register of Deeds. See generally Pls. Compl; Pls. Compl. ¶¶ 17-42. Contrary to Hyman's contention,<sup>6</sup> CCS clearly asserted a Mechanic's Lien on the property owned by Hyman and Eagles Landing's leasehold interest avowing "Carolina Construction Solutions, hereby claims a Mechanic's and/or Materialman's Lien on the Property described and any leasehold interest possessed by Myron L. Hyman, Jr., as trustee of the Myron L. Hyman, Jr., - 1998 Trust, under agreement dated June 30,1998 as amended, or any leasehold interest possessed by a lessee of Myron L. Hyman, Jr., as trustee of

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<sup>6</sup> See Appellant's Initial Br. p. 4.

the Myron L. Hyman, Jr., - 1998 Trust, under agreement dated June 30, 1998 as amended." See Mechanic's Lien.

Prior to the filing of CCS' Mechanic's Lien, and subsequently the Summons and Complaint, CCS conducted a search of the Charleston County, South Carolina Offices of the Assessor, Auditor and Treasurer for the property located at 771 Daniel Ellis Drive, Charleston, South Carolina. Records of the Office, which would be current for property tax purposes, revealed the owner of the property to be Hyman and Hyman's address as 1401 Cherokee Drive, Suite B, Florence, South Carolina 29501. In accordance thereof, CCS' Summons and Complaint were served upon Hyman pursuant to Rule 4(d)(8) of the SCRCPP which states:

**Service by Certified Mail.** Service of a summons and complaint upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule (Individuals and Corporations and Partnerships) may be made by the plaintiff or by any person authorized to serve process pursuant to Rule 4(c), including a sheriff or his deputy, by registered or certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. 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 delivery of the process is refused or is returned undelivered, service shall be made as otherwise provided by these rules.

Rule 4(d)(8) SCRCPP.

CCS served Hyman with its Summons and Complaint by certified mail, return receipt requested, restricted delivery. The pleadings were placed in the U.S. Mail on or about March 23, 2016, and service of the pleadings was perfected upon Hyman on March 25, 2016, as shown by the date of delivery on the return receipts/green cards. The pleadings mailed to Hyman were signed for by Donna Sweat. See Return Receipts/green cards. CCS has undoubtedly established

that it performed all requirements of Rule 4(d)(8); the burden therefore, is upon Hyman to show that the return receipts/green cards were signed by an unauthorized person. Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 10, 615 S.E.2d 112, 115 (2005), Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 301, 721 S.E.2d 430, 436 n. 6 (2012), citing Roberson v. S. Fin. of S.C., Inc. Hyman argues that his office is located in Buffalo, New York, and that the Buffalo address "is on the vesting deed, which Plaintiff would have seen when filing the mechanic's lien."<sup>7</sup> Hyman's argument is speculative in nature and unfounded in that (1) when filing a Mechanic's Lien, one is not required to review the vesting deed; (2) **the vesting deed is dated November 9, 1999**; and (3) the owner's name and address of property are kept current by the Charleston County, South Carolina Offices of the Assessor, Auditor and Treasurer. The address listed with the Office is Hyman's legal address for his property and property tax records.<sup>8</sup>

#### **B. Donna Sweat**

When the civil rules on service are followed, there is a presumption of proper service.” Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). Once the plaintiff has demonstrated compliance with the rules, *the defendant can rebut an inference that service was effected only by showing “that the return receipt was signed by an unauthorized person.”* Rule 4(d)(8), SCRCF (emphasis added).

An 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. Makawi, 396 S.C. 290, 295, 721

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<sup>7</sup> CCS reviewed the vesting deed subsequent to receiving Hyman's argument. Hyman filed a long-term lease for the same property with Ruby Tuesday, Inc. on December 29, 1999. Hyman did not record his long-term lease with Eagles Landing. Hyman also argues "a simple google search would have revealed the Buffalo, NY address. A google search conducted at different time intervals revealed an address different from the deed. See Tr. 15:17-21.

<sup>8</sup> The County of Charleston sends tax records to the Cherokee Drive address. In all likelihood that's the address a sheriff would have gone to serve Hyman. See Tr. 16:20-25. Hyman argues "just because the Charleston County tax office says that's where you send the taxes, that does not deem that location as the place of business or somewhere Hyman could reasonably foresee – receive notice of the lawsuit." Tr. 18:6-11. Property taxes in the amount of \$105,459.00 has been paid since 2015. The Cherokee Drive address is the legal Charleston County address for Hyman.

S.E.2d 430, 433 (2012) See Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 615 S.E.2d 112 (2005). As with corporations, the class of persons who may receive service of process on behalf of an individual is limited. Nevertheless, an individual is as competent as any other entity to confer authority on an agent. Rule 4(d)(1), SCRCP, itself contemplates service on the agent of an individual, permitting service “[u]pon an individual ... by delivering a copy to an agent authorized by appointment ... to receive service of process.” Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 297, 721 S.E.2d 430, 434 (2012).

On March 25, 2016, service of CCS' Summons and Complaint was perfected upon Hyman. See Return Receipts/green cards executed by Donna Sweat ("hereinafter Sweat").<sup>9</sup> Hyman argues that Sweat and/or Eagles Landing does not have authority to accept service of process for Hyman and purports Sweat to be merely an "office worker" at Eagles Landing's corporate office in Florence. See Appellant's Initial Br., p. 8. "The courts 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." Hamilton v. Davis, 300 S.C. 411, 414, 389 S.E.2d 297, 298 (1990). An agent's authority is composed of his or her actual authority, whether express or implied, together with the apparent authority which the principal by his or her conduct is precluded from denying. Thus, an agent's authority must be either expressed, implied, or apparent. Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 10-11, 615 S.E.2d 112, 115 (2005), see 11 2A CJS Agency § 132 (2004). 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

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<sup>9</sup> Sweat also signed the return receipts/green cards for the notice of furnishing served upon Hyman and notice served upon Eagles Landing, Notice of Claim of Mechanic's Lien and Statement of Account served upon Hyman and Eagles Landing, Affidavit of Default served upon Hyman, and Summons and Complaint served upon Eagles Landing, of which there have been no objections or disputes. The Summons and Complaint served upon Hyman is in dispute.

agent out as possessing such authority. Roberson, 365 S.C. at 10–11, 615 S.E.2d at 115; Moore v. North Am. Van Lines, 310 S.C. 236, 239, 423 S.E.2d 116, 118 (1992).

Hyman did not argue Ms. Sweat's qualifications to accept service. Therefore, Hyman has failed to meet his burden of establishing that Ms. Sweat was not authorized to accept service.

The mailing of notice to the last known address of the party is sufficient to satisfy due process. Delta Apparel, Inc v Farina, 406 S. C. 257, 750 S.E.2d 615 (Ct App 2013), NCNB South Carolina v Floyd, 303 S.C. 261, 399 S.E.2d 794 (Ct. App 1990). Hyman maintains his legal Charleston County address of 1401 Cherokee Drive, Suite B, Florence, South Carolina 29501, instead of utilizing his alleged Buffalo, New York address for tax purposes, tax bills and no-doubt other matters. The Cherokee address also houses Eagles Landing headquarters where Sweat is HR Manager. Hyman entered into a long-term lease with Eagles Landing. Upon its face, Eagles Landing/Sweat are operating and controlling Hyman's South Carolina business, which at the very least includes occupying and sustaining a long-term leasehold on Hyman's property and Hyman's building situated thereon, all of which characterize apparent authority. There can be no dispute that Sweat maintained a high level of actual or apparent responsibility which suffices to permit service to be effective against the principal. In this case, the principal is Hyman, who is conducting business affairs with Eagles Landing and sharing a legal address with Eagles Landing. Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 295, 721 S.E.2d 430, 433 (2012) See Roberson v. Southern Finance of South Carolina, Inc., 365 S.C. 6, 615 S.E.2d 112 (2005).

Sweat's level of employment status and her ability to act on behalf of Hyman and Eagles Landing convincingly evidences conduct on the part of Hyman that could give rise to apparent authority in Sweat. Again, "The courts 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." Hamilton v. Davis, 300 S.C. 411, 414, 389 S.E.2d 297, 298 (1990). CCS properly served Hyman via certified mail, return receipt requested, restricted delivery at his last known, current legal address in Charleston County. There are return receipts/green cards signed by Sweat. The facts as stated clearly imply that Sweat had apparent authority to accept service of process for Hyman, or she wouldn't have signed the green cards.<sup>10</sup>

Hyman was provided with notice in accordance with law, and notice sufficient to satisfy the requirements of due process. We have never required exacting compliance with the rules to effect service of process." Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209–10, 456 S.E.2d 897, 899 (1995). "Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." Id. at 210, 456 S.E.2d at 899. CCS complied with Rule 4(d)(8) of the SCRCF for personal delivery and filed an Affidavit of Service with the lower court, and, thus, proper service is presumed. "The findings of the circuit court on such issues are binding on the appellate court unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law." Brown v. Carolina Emergency Physicians, P.A., 348 S.C. 569, 583, 560 S.E.2d 624, 631 (Ct. App. 2001) noting that [q]uestions of fact arising on a motion to quash service of process for lack of jurisdiction over the defendant are to be determined by the court.

Unlike the Appellant in Graham Law Firm, P.A. v. Makawi, 396 S.C. 290, 721 S.E.2d 430 (2012), CCS has offered an abundance of "evidence of declarations or conduct" on the part of Hyman that could give rise to apparent authority in Sweat.

## **II. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ISSUING A DEFAULT JUDGMENT AGAINST APPELLANT**

Rule 55 of the SCRCF governs defaults. Rule 55(a), in particular, states:

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<sup>10</sup> Tr. 15:24-25; 16:1-6, 12-13.

"Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book)."

Rule 55(a).

On March 17, 2016, CCS filed a Summons and Complaint to foreclose on its mechanic's lien, and pursuant to Rule 4(d)(8) of the SCRCF, on March 25, 2016, service was perfected upon Hyman individually and as Trustee by certified mail, return receipt requested, restricted delivery. Hyman did not file an Answer or responsive pleading with the Lower Court as required by Rule 12(a) of the SCRCF and as instructed by the Summons and Complaint served upon him. See generally Pls. Compl and Affidavit of Service on Hyman filed with the Lower Court on April 22, 2016.

Pursuant to Rule 55(a) an Affidavit of Default as to Hyman was filed with the Lower Court. On March 15, 2017, CCS filed a Motion for Entry of Default Judgment against Hyman. The following transpired thereafter:

- A. March 22, 2017 – Eagles Landing serves and on March 30, 2017 files Motion to Dissolve Mechanic's Lien and Opposition to Motion for Default Judgment.

Eagles Landing, as the tenant/leaseholder of the property being liened, does not have standing to move to dissolve a mechanic's lien on property owned by another and/or object to CCS' Motion for Default Judgment against the owner of the liened property.

- B. April 3, 2017 - Order of Default Judgment as to Hyman Entered.
- C. April 17, 2017 - Eagles Landing files Motion to Reconsider Order of Default.

Eagles Landing does not have standing to object or move to set aside a default judgment against the owner of the property subjected to a lien. A Co-Defendant does not have standing to move to set aside the default judgment of another Defendant.

- D. May 15, 2017 – Counsel for Eagles Landing files Hyman's Motion to Set Aside Default and Motion to Dismiss.

- E. May 17, 2017 – Eagles Landing files Eagles Landing's Memorandum in Support of Their Motion to Dissolve the Lien, Opposition to Motion for Default Judgment and Motion to Reconsider. In Hyman's Initial Brief, p. 6, Hyman's counsel states "Eagles Landing's attorney notified Hyman of the Default Judgment which was the first notice it received of the lawsuit and judgment." Appellant's counsel has been representing Eagles Landing for years, and in this case, since Eagles Landing filed its Answer. It is hard to fathom that counsel first notified Hyman of this case on or about May 15, 2017. Counsel also submitted as Exhibit A, an Affidavit of Mohamed Makawi, the principal owner of Eagles Landing, Co-Defendant in this case. The Affidavit states "Donna Sweat does not have authority to accept service of process for any of the Eagles Landing entities much less Hyman. We have never held her out as having such authority." This Affidavit is erroneous for two reasons. First, what Makawi says about Donna Sweat, the person who signed for Hyman's Summons and Complaint of service as not the appropriate person is of no consequence. What a Co-Defendant says about who an authorized agent of another Co-Defendant is not an issue.<sup>11</sup> Second, Donna Sweat has signed all the green cards of acceptance for Hyman and Eagles Landing without an objection or denial from Eagles Landing. This scenario follows the behavior of Eagles Landing/Makawi/IHOP in Graham Law Firm, P.A. v. Makawi, et al., 396 S.C. 290 (2012) .
- F. May 15, 2017 – CCS having been served prior to court stamped filing date, files Partial Response to Eagles Landing's Motion to Dissolve the Mechanic's Lien, Opposition to Motion for Default Judgment and Motion to Reconsider.
- G. May 17, 2017 – The Honorable Kristi Lea Harrington (hereinafter "Judge Harrington") conducted a hearing on all pending motions. CCS' counsel waived any notice requirement relating to Hyman's motions.<sup>12</sup>
- H. June 2, 2017 – Judge Harrington issues a Form 4 Order denying Eagles Landing's Motion to Reconsider, Motion to Dissolve the Mechanic's Lien and Hyman's Motion to Set Aside Default and Motion to Dismiss.

The evidence supports Judge Harrington's Order that ". . . Myron L. Hymans, Jr.'s Motion to Reconsider Order of Default [Judgment], filed 4/17/17, is denied as **Defendant has failed to demonstrate cause to set aside the default [Judgment] under SCRCP 60.**" See Order of June 2, 2017 (emphasis added).

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<sup>11</sup> Tr. 19:20-25, 20:1.

<sup>12</sup> Tr. 9:1-4.

**III. THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN ISSUING AN ORDER DENYING EAGLES LANDING'S MOTION TO DISSOLVE MECHANIC'S LIEN AND OPPOSITION TO MOTION FOR DEFAULT JUDGMENT**

On March 22, 2017, Eagles Landing served CCS, and on March 30, 2017 filed its Motion to Dissolve Mechanic's Lien and Opposition to Motion for Default Judgment. It cannot be disputed that Eagles Landing, as the tenant/leaseholder of the property subject to CCS' mechanic's lien, does not have standing to move to dissolve a mechanic's lien on property owned by another and/or object to CCS' Motion for Default Judgment against the owner of the liened property. That being said, the record reflects that on May 17, 2017, Judge Harrington conducted a hearing on all pending motions and at the hearing, counsel for CCS waived any notice requirement relating to Hyman's motions and heard Eagles Landing's motions on behalf of Hyman. Tr. 9:1-4.

While incorporating CCS' prior arguments herein without repeating them verbatim, it is clear CCS complied with Rule 4(d)(8) of the SCRCPP for personal delivery and filed an Affidavit of Service with the lower court.<sup>13</sup> Judge Harrington issued her Order on June 2, 2017 denying the Motion to Dissolve Mechanic's Lien and Opposition to Motion for Default Judgment ordering **"Defendant has failed to demonstrate that he did not receive notice of the lien. Defendant Hyman shall not be dismissed as a party to this action, as he has failed to establish a lack of service."** See Order of June 2, 2017 (emphasis added)

**IV. AT THE TRIAL COURT, APPELLANT IMPROPERLY RELIED ON RULE 55(c) IN SUPPORT OF ITS MOTION TO SET ASIDE THE DEFAULT JUDGMENT**

As a preliminary matter, Hyman suggests that the lower court erred in failing to set aside the judgment of default pursuant to Rule 55(c) of the SCRCPP. Hyman's entire argument on this

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<sup>13</sup> For the same reasons, the discussion and argument contained in Section I hereinabove are equally applicable and incorporated herein.

point is a misapplication of the Rules of Civil Procedure. Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. Bear in mind, the default judgment was entered on April 3, 2017. 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) for an entry of default. Sundown Operating Company, Inc. v. Intedger Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009).

Rule 55(c) states:

"Setting Aside Default. For good cause shown the court may set aside an entry of default and, ***if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).***"

Rule 55(c) SCRCP (emphasis added).

Pursuant to Rule 55(c), to set aside a default judgment one must utilize Rule 60(b). Rule 60(b) states:

Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;
- (4) the judgment is void;
- (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.

Rule 60(b) SCRCP.

Rule 55(c) does not apply to setting aside a default judgment. “The standard for granting relief from an entry of default is good cause under Rule 55(c) ... while the standard is more rigorous for granting relief from a default judgment under Rule 60(b)....” Ricks v. Weinrauch, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App.1987). Hyman's reliance on Rule 55(c) and its standard for setting aside the entry of default is improper.

**V. ASSUMING ARGUENDO THAT APPELLANT PROPERLY ARGUED SETTING ASIDE THE DEFAULT JUDGMENT, THE TRIAL COURT DID NOT ABUSE ITS DISCRETION IN DENYING EAGLES LANDING'S MOTION TO RECONSIDER, MOTION TO DISSOLVE THE MECHANIC'S LIEN AND HYMAN'S MOTION TO SET ASIDE DEFAULT AND MOTION TO DISMISS**

Hyman's Motion to Set Aside Default and Motion to Dismiss petitions the lower court "pursuant to Rule 55(c), SCRPC . . . for an Order setting aside entry of default and/or default judgment and dismissing the action for the failure to serve the summons and complaint and lack of personal jurisdiction."<sup>14</sup> Hyman's motion is not only procedurally incorrect, but fails to cite any supporting authority. Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. 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) for an entry of default. Sundown Operating Company, Inc. v. Intedge Industries, Inc., 383 S.C. 601, 681 S.E.2d 885 (2009). After a default judgment has been entered, 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. at 608, 681 S.E. 2d at 888-89. Indeed, the different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid default once the court has entered a judgment, which carries greater finality. Here, Hyman cites as his authority Rule 55(c), to set

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<sup>14</sup> See Hyman's Motion to Set Aside Default and Motion to Dismiss.

aside a default judgment. Judge Harrington correctly found that Hyman "failed to demonstrate cause to set aside the default [judgment] under SCRCP 60."

## **VI. CONCLUSION**

Hyman has failed to demonstrate that the trial court abused its discretion in any manner. Hyman's argument, or lack thereof, rests entirely on the proposition of improper process of service. Hyman asserts this premise as unquestionable fact, yet ignores that the record is conspicuously bare of support for this contention. The record unequivocally demonstrates that CCS did effectuate proper service upon Hyman. Moreover, Hyman's misapplication of law requires the appeal be dismissed. For all of the foregoing reasons, and any reasons appearing in the record, Carolina Construction Solutions respectfully requests this Court dismiss or deny the appeal and affirm the Orders issued by The Honorable Deadra L. Jefferson and The Honorable Kristi Lea Harrington, and to award costs and fees to Carolina Construction Solutions as permitted by the South Carolina Rules of Appellate Procedure and the South Carolina Code of Laws.

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable Deadra L. Jefferson, Circuit Court Judge  
The Honorable Kristi Lea Harrington, Circuit Court Judge

**RECEIVED**  
MAR 07 2018  
SC Court of Appeals

Lower Court Case No. 2016-CP-10-1355  
Court of Appeals Case No. 2017-001479

Carolina Construction Solutions,

Respondent,

v.

Eagles Landing Properties, LLC, Myron L. Hyman, Jr.,  
Individually, and as Trustee of The Myron L. Hyman, Jr., - 1998  
Trust, Under Agreement Dated June 30, 1998 As Amended, Eagles  
Landing Restaurants, LLC, Eagles Landing International, LLC,  
Elite Construction Company, and Vincent C. Carter,

Defendants,

Of Whom, Myron L. Hyman, Jr., Individually, and as  
Trustee of The Myron L. Hyman, Jr., - 1998 Trust, Under  
Agreement Dated June 30, 1998 As Amended,

Appellants.

**PROOF OF SERVICE**

I certify that I have served the Initial Brief of Respondent upon the Appellant by way of U.S. Mail, stamped First Class delivery, on March 6, 2017, addressed to Appellant's attorneys of record as follows:

Walker H. Willcox, Esquire  
Willcox, Buyck & Williams, P.A.  
P.O. Box 1909  
Florence, South Carolina 29503-1909

*(Signature appears on succeeding page)*



Alan R. Belcher, Jr., Esquire, Bar No. 71686

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Dated: March 6, 2018

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March 6, 2018

VIA FEDERAL EXPRESS PRIORITY OVERNIGHT

South Carolina Court of Appeals  
Clerk of Court Office  
ATTN: SHELBY SPENCER  
1220 Senate Street  
Columbia, South Carolina 29201

RECEIVED  
MAR 07 2018  
SC Court of Appeals

RE: *Carolina Construction Solutions v. Eagles Landing Properties, LLC, et al.*  
Lower Court Case No.: 2016-CP-10-1355  
Court of Appeals Case No.: 2017-001479  
HBS File No.: 7479.0005

Dear Ms. Spencer:

In accordance with Rule 208(a)(2) of the SCACR, enclosed please find the original and one copy of Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal, as well as a Proof of Service for each, with regard to the above-referenced matter. Please file the original and return a clocked copy to our office in the enclosed self-addressed, stamped envelope. By copy of this letter we are serving counsel of record with the same.

Thank you for your assistance in this matter. If you have any questions or concerns, please do not hesitate to contact our office.

Very truly yours,



Alan R Belcher, Jr.

ARB/sb

cc: Walker H. Willcox, Esquire

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TO **SHELBY SPENCER**  
**THE SOUTH CAROLINA COURT OF APPEALS**  
**1220 SENATE STREET**

**COLUMBIA SC 29201**

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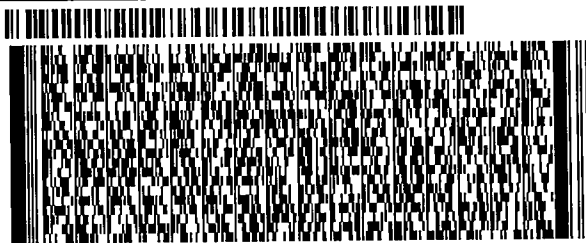
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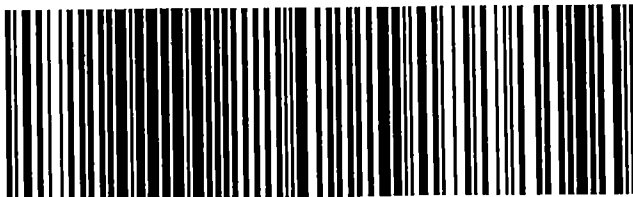
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