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CASE Court of Appeals

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

JUDGMENT IN A CIVIL CASE
CASE NO: 2015CP2306119

FILED IN COURT
GREENVILLE CO. S.C.
PAUL B. WICKES SIMER
2016 DEC 22 AM 10:50

Meredith Paige Moore vs. Vivian Grano

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 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; Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

PRESIDING JUDGE - R Markley Dennis

This judgment was entered on the , and a copy mailed first class this , to attorneys of record or to parties (when appearing pro se) as follows:

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ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) C.A. No.: 2015-CP-23-06119

Meredith Paige Moore,
Plaintiff,

v.

Vivian Grano; Lawrence Potter; David Robertson;
Carolina Mountain Real Estate, LLC; Irving W.
Hunt; Keller Williams Realty; Guy Roofing, Inc.;
and The Cliffs at Glassy, Inc.,
Defendants.

ORDER

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL B. WICKENSIMMER
2016 DEC 22 AM 10 46

Date of Hearing: September 1, 2016
Judge: Honorable R. Markley Dennis
Attorneys in Attendance:
For Plaintiff: M. Stokely Holder, Esq.
For Defendant The Cliffs at Glassy, Inc.: W. Taylor Stanley, Esq.

The instant matter came before me pursuant to the Motion to Set Aside Default Judgment filed by Defendant, The Cliffs at Glassy, Inc. (the "Defendant").

FACTUAL SUMMARY

This matter was commenced by Plaintiff with the filing of the Summons and Complaint on October 9, 2015. Plaintiff served the Summons and Complaint upon Defendant on October 15, 2015 by way of certified mail, return receipt on Defendant's registered agent for service of process, CT Corporation System ("CT Corp"). The return receipt was signed by CT Corp, and filed of record with a Certificate of Service by Plaintiff.

CT Corp was the identified registered agent for Defendant as listed on the South Carolina Secretary of State website as of the date of service. As indicated by the records of the Secretary

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of State, CT Corp had been the registered agent for the Defendant since November 2003, and remained so even after the subject Motion was filed by Defendant¹.

According to the August 26, 2016 affidavit presented by CT Corp and filed with the Court prior to the subject hearing, CT Corp received the Complaint on October 15, 2015. The CT Corp affidavit further provided, as follows:

CT Corp. took the process for the Cliffs and forwarded it to the Cliffs pursuant to the delivery instructions that CT Corp. had on file at that time for The Cliffs, which was by Federal Express 2 Day delivery to: Scott Carlton, The Cliffs Communities, P.O. Box 1549, Travelers Rest, SC 29690-1206. However, because a P.O. Box cannot receive delivery from Federal Express, the Federal Express package was returned to CT Corp. undelivered. Thereafter, CT Corp. investigated the matter to identify a street address for Scott Carlton at The Cliffs Communities so that it could effectuate delivery. CT Corp. was able to identify a street address, and thereafter forwarded the Process by Federal Express 2 Day delivery to: Scott Carlton, The Cliffs Communities, 3598 Highway 11, Travelers Rest, SC 29690-1206. ... Based on documentation available from Federal Express, someone by the name of C. Stone took delivery of the Federal Express package on November 2, 2015 at 1:46 pm, and signed for the package.

No responsive pleading was filed by Defendant. So three and a half months (104 days) after service of the Summons and Complaint, Plaintiff filed its Motion for Entry of Default on January 27, 2016 and on the same date, Plaintiff provided notice of the motion to CT Corp. On January 29, 2016, the Court signed the Order of Entry of Default, which was received on February 3, 2016 by the Clerk of Court and then filed.

Thereafter, on February 8, 2016, Plaintiff received a copy of a letter from CT Corp that was apparently generated for mailing by CT Corp on February 1, 2016². The letter was addressed to the Court, notifying the Court that CT Corp had received the Motion for Entry of Default and that it was experiencing issues with their client, Defendant, in that they had no known forwarding address for the Defendant. The letter further advised the court that CT Corp was

¹ The subject Motion was filed on June 17, 2016. The Defendant changed its registered agent from CT Corp to James B. Anthony on August 2, 2016.

² The date shown on the header of the letter is January 28, 2016; however, the stamp at the footer of the letter references a date ("2/1/2016") when the document was apparently printed by CT Corp.

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leaving the Motion with the Court. CT Corp concluded the letter by stating: "we take no position as to the validity of the service. We are merely stating that after reasonable efforts, we do not have any address to which to forward the papers." However, no information regarding any resignation of the registered agent, any new registered agent, or any new address for service of process was provided by anyone to the Court, the Plaintiff, or anyone else; and, no changes were made with the Secretary of State.

Plaintiff then provided notice of the Order of Entry of Default on CT Corp, as this remained the last known address for the Defendant, and was still the address on record with the Secretary of State as being that of its registered agent. CT Corp again sent a letter to the Court notifying the Court of its receipt of the Order of Entry of Default, that CT Corp had no last known address for Defendant, and that CT Corp was leaving a copy of the Order of Entry of Default with the Court.

On February 25, 2016, Plaintiff filed its Motion for Default Judgment, serving CT Corp with it and the subsequent Notice of Hearing on March 28, 2016. The Registered Agent for the Defendant was still CT Corp. In response, CT Corp sent another letter to the Court notifying the Court of its receipt of the papers, that CT Corp had no last known address for Defendant, and that CT Corp was leaving a copy of the papers with the Court.

A hearing was held on April 28, 2016, wherein Plaintiff was awarded damages in the amount of \$260,026.48. The Order of Default Judgment was electronically filed on May 12, 2016. Plaintiff filed a writ of execution on May 31, 2016, which was subsequently returned *nulla bona* on June 17, 2016. Defendant then filed the subject Motion to Set Aside Default Judgment.

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ANALYSIS

The issues before the Court are: (1) whether service, via certified mail, return receipt to the registered agent identified by Defendant with the Secretary of State is proper service under South Carolina law of a Summons and Complaint on a corporation such as Defendant; (2) whether proper notice was provided to the Defendant for the: Motion for Entry of Default, Motion for Default Judgment, and the Default Judgment Hearing Notice (collectively, "Subsequent Papers"); and (3) whether the Defendant's failure to properly respond was the result of a particularized mistake, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party.

1. Acceptable Service of Process of Summons and Complaint

In regards to the service by Plaintiff of the Summons and Complaint upon Defendant, nothing stated in the Defendant's Motion or supporting affidavits renders the service effectuated by Plaintiff insufficient.

The Defendant is a corporation. Therefore, the applicable rules of service of process can be found in Rule 4(d)(3) and (8), SCRPC. Those rules provide that service of the Summons and Complaint shall be made upon a corporation by delivering a copy of the summons and complaint to the agent authorized by appointment or by law to receive service of process and to do so by registered or certified mail, return receipt requested with delivery restricted to the addressee. *Rule 4(d)(3) and (8), SCRPC.*

In addition, S.C. Code § 15-9-210 provides the following specifics regarding service of process on a corporation:

- (a) A domestic business or nonprofit corporation's registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served, and the service is binding upon the corporation.

(b) The business or nonprofit corporation may be served under Rule 4(d)(8) of the South Carolina Rules of Civil Procedure by registered or certified mail, return receipt requested, addressed to the office of the registered agent, or the office of the secretary of the corporation at its principal office. *Service is effective upon the date of delivery as shown on the return receipt. Entry of default and default judgments shall be subject to the conditions of Rule 4(d)(8).*

S.C. Code § 15-9-210 (emphasis added).

As noted above and described more fully below, it is undisputed that CT Corp was listed as the Defendant's registered agent on the date of October 15, 2015 when the Summons and Complaint were served upon CT Corp, as registered agent for Defendant. As evidenced by the Plaintiff's filing of the return receipt, Plaintiff properly served the Summons and Complaint on the registered agent at the address designated by the Defendant with the Secretary of State. Therefore, the Plaintiff's service of process of its Summons and Complaint on Defendant was proper.

2. Acceptable Service of Process of Subsequent Papers

In regards to the service of the Subsequent Papers, nothing stated in the Defendants Motion or supporting affidavits renders the service effectuated by Plaintiff of the Subsequent Papers insufficient.

S.C. Code § 15-9-210 provides a corporation's registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served, and the service is binding upon the corporation. Further, Rule 5(a), SCRCPP provides, in pertinent part:

all ... (3) written motions, other than ones which may be heard ex parte; ...and (4) written notices; shall be served upon each of the parties of record. No service need be made on parties in default for failure to appear, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of

summons in Rule 4, and notice of any trial or hearing on unliquidated damages shall also be given to parties in default.

Rule 5(a), SCRCP.

Furthermore, Rule 5(b), SCRCP explains how such service of Subsequent Papers such as the ones at issue must occur:

(b)(1) **Same: How Made.** Service upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, *if no address is known, by leaving it with the clerk of court.*

Rule 5(b), SCRCP (emphasis added).

Motion for Entry of Default

Because the Defendant failed to file an answer for one hundred and four (104) days after service, the Plaintiff properly moved for entry of default on January 27, 2016. On the same date, Plaintiff provided notice of the motion to CT Corp. On January 29, 2016, the court properly signed the Order of Entry of Default, which was received on February 3, 2016 by the Clerk of Court and then filed.

Thereafter, on February 8, 2016, Plaintiff received a copy of the aforementioned letter from CT Corp that was addressed to the Court. The letter notified the Court that CT Corp had received the Motion for Entry of Default, that it had no known address for the Defendant, and that CT Corp was leaving the Motion with the Court. CT Corp concluded the letter by stating: "we take no position as to the validity of the service. We are merely stating that after reasonable efforts, we do not have any address to which to forward the papers."

By the Plaintiff's service of its Motion for Entry of Default on CT Corp, the Plaintiff satisfied its obligations pursuant to S.C. Code § 15-9-210. To the extent the Defendant claims otherwise by virtue of the subsequent letter from CT Corp to the Court, that argument is without merit. That same letter evidences a satisfaction of Rule 5, SCRCP in that it confirms the

unknown last (forwarding) address of the Defendant. Importantly, the letter to the Court also included the actual Motion with it, satisfying the very spirit and plain language of Rule 5(b), SCRCF.

Therefore, the Plaintiff properly served its Motion for Entry of Default upon CT Corp, which resulted in an Entry of Default being properly entered against the Defendant.

Motion for Default Judgment

Plaintiff filed its Motion for Default Judgment and served same on CT Corp on February 25, 2016, at which time CT Corp remained the registered agent for Defendant, with no other known address for Defendant. Plaintiff subsequently served a Notice of Hearing on CT Corp. In response, CT Corp sent another letter to the Court notifying the Court of its receipt of the papers, that CT Corp had no last known address for Defendant, and that CT Corp was leaving a copy of the papers with the Court.

For the same reasons stated above, the Defendant was properly served with Plaintiff's Motion for Default Judgment and the Notice of Hearing in accordance with S.C. Code § 15-9-210 and Rule 5, SCRCF.

3. Insufficient Showing of Particularized Mistake, Surprise, Excusable Neglect, Newly Discovered Evidence, Fraud, Misrepresentation, or Other Misconduct of an Adverse Party

Defendant has not provided any explanation that could rise to the level of the required "particularized showing" of mistake, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party" necessary to set aside the default judgment. *Rule 60(b) SCRCF.*

An Order of Default Judgment was entered in this case on May 12, 2016. Once a default judgment has been entered, a party seeking to be relieved of it must request such relief under

S.C. R. Civ. P. 60(b). The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the good cause standard established in S.C. R. Civ. P. 55(c). Rule 60(b) requires a particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. *S.C. R. Civ. P. 60(b)*.

Unless the Court finds Defendant has established it is entitled to relief under Rule 60(b), the Court is not required to make specific findings raised in Defendant's Motion with respect to the: (1) the timing of the motion for relief; (2) whether the Defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989); *see also Sundown Operating Co. v. Intedge Indus.*, 681 S.E.2d 885, 887 (2009) (declining to address the *Wham* factors because defendant had not shown it was entitled to relief under any of the grounds specified in Rule 60(b)). The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006).

The basis of Defendant's Motion is that it exhibited excusable neglect. In support of this position, the Defendant claims that it was unaware that CT Corp was still its Registered Agent. The Defendant put forth affidavit testimony from its President, James B. Anthony. Anthony expressed the Defendant's belief that CT Corp was no longer its registered agent because "CT Corp has not been paid by the Cliffs in seven (7) years." Defendant asserts this reasoning as though it is otherwise unaware of the processes which are necessary to determine who its registered agent is and how to change its registered agent.

South Carolina law is clear on a corporation's obligations regarding designating, maintaining, and changing a registered agent. S.C. Code § 33-5-101 makes it clear that each corporation in this State must continuously maintain both a registered office and a registered agent. The official comment to this statute states:

The requirements that a corporation continuously maintain a registered office and a registered agent at that office are based on the premises that at all times a corporation should have an office where it may be found and a person at that office on whom any notice or process required or permitted by law may be served. This covers not only service of process in connection with litigation but also tax notices and communications from the secretary of state and other governmental offices.

The official comment even recognizes that corporation service companies like the one here "often provide, as a commercial service, registered offices and registered agents at the office of the corporation service company." Official Comment, S.C. Code § 33-5-101.

Further, S.C. Code § 33-5-102 is the statute that outlines the fairly simple manner in which the registered agent or registered office can be changed. It speaks to the ease by which a registered agent can be changed, which notably here, includes the option of the corporation changing the registered agent without the consent of the prior registered agent.

Further still, S.C. Code § 33-5-103 is the statute that outlines the manner in which a registered agent may resign. Two things of note with respect to this statute are that: (1) the registered agent must serve a copy of such resignation on the corporation at its principal office; and (2) there is a 31-day grace period following the termination of the agent when service is still effective on the prior agent.

It appears no such resignation was ever filed and no new registered agent address was established by Defendant despite prior lawsuits during the time period Defendant now alleges CT Corp was no longer its registered agent, as described in more detail below. For the reasons

that follow, Defendant's argument that they were "under the impression that it had terminated CT Corp.'s services as registered agent" is simply without merit.

Involvement of James B. Anthony as Registered Agent for at Least 59 South Carolina Companies

This Defendant, together with the very representative of Defendant who has stepped forward to assert the Defendant's defense here (James B. Anthony), are not naïve to this State's procedures in regards to registered agent designation, change or resignation. According to the South Carolina Secretary of State records, which the Defendant has not disputed, the same James B. Anthony was the Registered Agent for the Defendant prior to changing it to CT Corp in 2003. In fact, the same James B. Anthony has been the Registered Agent for at least fifty-nine (59) different companies, in this State alone. It appears the vast majority of these companies, if not every one, have had some relation to the same Cliffs developments for which the Defendant is related.

Defendant's naivety-based assertion is also predicated on its purported inability to appreciate the need or purpose of its Registered Agent or changing its Registered Agent. However, this notion is greatly undermined when considering the records of the Secretary of State reflect that the same James B. Anthony (and current Registered Agent), has been involved personally with Registered Agent changes in forty (40) of the aforesaid 59 companies. Moreover, the State form which Mr. Anthony has personally signed on numerous occasions to effectuate such changes does not require the prior Registered Agent to sign. In other words, for a company like the Defendant to change its Registered Agent from CT Corp to James B. Anthony, CT Corp does not have to sign the form.

One of the aforementioned 40 companies, The Cliffs Golf & Country Club, Inc., recently changed its Registered Agent. Notably, this was done in July of 2012 – well within the past 7-

year period referenced and relied so heavily upon by Defendant and Mr. Anthony. Of further note, this change not only involved the same James B Anthony, it involved the same CT Corp at issue here. Indeed, the Registered Agent for The Cliffs Golf & Country Club, Inc. changed its registered agent from CT Corp to James B Anthony on July 2, 2012. This fact alone diminishes the notion that the Defendant and/or Mr. Anthony's neglect was excusable with respect to never changing CT Corp as its Registered Agent for Defendant. This is further highlighted by the fact that Mr. Anthony didn't just change the Registered Agent for The Cliffs Golf & Country Club, Inc. during that 2012 period of time. He was actually personally involved (as Registered Agent) in changing the Registered Agent for all of the 40 companies that were changing registered agents during that same period of time.

Defendant has Admitted Through Other, Recent Cases in this Same Court that CT Corp is its Registered Agent

The cases recently filed in *this same Court* involving *this same Defendant* shed further light on the issues at hand. Not only has the same Defendant been a named Defendant in a number of actions recently filed in this Court whereby service of process for each was effectuated on the Defendant through service on the same CT Corp (without any evidence of resistance from Defendant regarding sufficiency of service)³, the case of *Worthington Hyde Partners-II, L.P. v. The Cliffs at Glassy, Inc., et al.* (the "Worthington Hyde Case") is particularly enlightening with respect to the Defendant's (most recent) interpretation of CT Corp's role as their Registered Agent.

³ See: *Georgia Bridge & Dock, Inc. v. The Cliffs at Glassy, Inc.* (2011-CP-23-8041); *Golf Agronomics Sand & Hauling, Inc. v. The Cliffs at Glassy, Inc.* (2011-CP-23-8082); *Regions Bank v. The Cliffs at Glassy, Inc., et al.* (2010-CP-23-1515); *The Palmetto Bank v. The Cliffs at Glassy, Inc., et al.* (2010-CP-23-4996); *First Tennessee Bank v. The Cliffs at Glassy, Inc., et al.* (2010-CP-23-7161); *Wells Fargo Bank, N.A. v. The Cliffs at Glassy, Inc., et al.* (2011-CP-23-6837); *Countybank v. The Cliffs at Glassy, Inc., et al.* (2011-CP-23-7003); *Cornerstone National Bank v. The Cliffs at Glassy, Inc., et al.* (2012-CP-23-2463); *Bank of North Carolina v. The Cliffs at Glassy, Inc., et al.* (2012-CP-23-4059); *Bank of America v. The Cliffs at Glassy, Inc.* (2014-CP-23-533); *The Huntington National Bank v. The Cliffs at Glassy, Inc., et al.* (2015-CP-23-6437), et al.

In the Worthington Hyde Case, the plaintiff in that case (the "WH Plaintiff") filed a Complaint in this same Court on February 3, 2011 against the Defendant, among other parties. The WH Plaintiff alleged in its Complaint that "Cliffs at Glassy's registered agent for service of process in South Carolina is CT Corporation System, 2 Office Park Court, Suite 103, Columbia, South Carolina 29223." In its Answer dated March 23, 2011 (well within the 7-year period referenced by Anthony and Defendant here), the Defendant *admitted* the above allegation.

In that same case, the same Defendant, as here, filed, as here, a Motion to Set Aside Default. Notably, however, in that Worthington Hyde Case, the Defendant never disputed the fact that service was proper on its Registered Agent (CT Corp). The Defendant actually went to great lengths in its filings in support of that motion in the Worthington Hyde Case (when explaining the rules regarding timing) to confirm the application of the very rules laid out hereinabove regarding the Plaintiff's requirement to effectuate service upon Defendant pursuant to Rule 4(d)(8), SCRCF. Not only did the Defendant confirm the relevant rules of process in that case, the Defendant confirmed that the rule was actually satisfied by the WH Plaintiff via the manner in which the WH Plaintiff served the Defendant's Registered Agent. Strikingly, the way the WH Plaintiff served the Defendant's Registered Agent is the very same manner in which the Plaintiff in this case served the Defendant's same Registered Agent – via certified mail in accordance with Rule 4(d)(8), SCRCF.

So, the very issue of service of process was recently litigated by the same Defendant in another case in this *same* Court during the *same* 7-year period. Yet, the Defendant did not change its Registered Agent. Rather, the Defendant openly acknowledged CT Corp remained listed as the registered agent for service of process until August 2, 2016 when it changed the Registered Agent back to James B. Anthony, after the subject Motion was filed.

For these reasons, the Defendant's position that it was unaware that CT Corp remained its registered agent does not rise to a "particularized showing of mistake, surprise, excusable neglect, surprise or newly discovered evidence" pursuant to Rule 60(b), SCRCF.

Alleged Communication Between Former Employee of Defendant and Counsel for Plaintiff

In further effort to provide support for its alleged excusable neglect, the Defendant asserts that the person who received the forwarded Summons and Complaint from CT Corp, Mary Campbell, was not an employee or authorized agent of Defendant, was not located at an address that accepted service on behalf of Defendant, but had contacted counsel for Plaintiff and allegedly notified Plaintiff's counsel that her receipt of the Complaint "was not good service". However, as explained above, service was good. Notwithstanding that fact and the inconsistency presented by Ms. Campbell's testimony that, on one hand, she was *not* an authorized agent of Defendant, but, on the other hand, she was the authority upon which the Plaintiff should have relied for purposes of comprehending "good service" on Defendant, the Court finds that Plaintiff has sufficiently undermined Campbell's assertions regarding communications with Plaintiff's counsel and his staff.

In the affidavit of Ms. Campbell submitted by Defendant in support of its Motion, she claims that Plaintiff's counsel was previously made aware of the same service of process issues raised in Defendant's subject Motion. In her affidavit, Ms. Campbell insinuates that she had a discussion not only with the staff of Plaintiff's counsel, but also Plaintiff's counsel himself, regarding these service of process issues. However, affidavits from both Plaintiff's counsel and Plaintiff's staff explain that Ms. Campbell never expressed a concern with service of process. Rather, they claim that Ms. Campbell called their office, acknowledged receipt of the Summons and Complaint, and simply questioned whether the Plaintiff had named the correct Defendant.

Laurie Warren, paralegal for Plaintiff's counsel, provided an affidavit swearing that Ms. Campbell simply called the office of Plaintiff's counsel and requested to speak with Plaintiff's counsel. When Ms. Warren explained to Ms. Campbell that Plaintiff's counsel was not in the office, she requested that Plaintiff's counsel return her call about whether he had named the correct Cliffs entity.

Plaintiff's counsel, an officer of this Court and in good standing, submitted an affidavit swearing that he returned Ms. Campbell's call and, as evidenced by the voicemail left by Plaintiff's counsel to Ms. Campbell (a copy of which was curiously maintained by Ms. Campbell and produced in this matter by Defendant's counsel), Ms. Campbell did not answer his call. As clearly indicated in the voicemail left by Plaintiff's counsel for Ms. Campbell, Plaintiff's counsel understood that Ms. Campbell had called to merely question whether Plaintiff named the proper Defendant. Plaintiff's counsel testified that Ms. Campbell never returned his call. Ms. Campbell did not attest to returning his call. Plaintiff's counsel has also provided that he was certain of naming the proper party because of the clarity offered in the public records on the issue. So, the Plaintiff rightfully moved for Entry of Default after not receiving any response over the course of the following months via Motion, Answer or otherwise.

Defendant's Current Registered Agent's Address is the Same Address Where the Summons and Complaint in this Case was Delivered by CT Corp

The current Registered Agent's address for the Defendant is 3598 Highway 11, Travelers Rest, SC 29690. This same address is the registered agent address for the majority of those companies that have designated James B. Anthony as their registered agent. Notably, some of those same companies have had Anthony designated as their registered agent and at that same address since 2003 (when he changed the registered agent from himself to CT Corp for the

Defendant). Strikingly, this address is the same exact address where CT Corp forwarded the Summons and Complaint in this case.

CONCLUSION

Defendant, a sophisticated corporation, has failed to establish that it is entitled to relief under the grounds specified in Rule 60(b). Defendant has made no showing by affidavit or otherwise to support the required "particularized showing" of mistake, surprise, excusable neglect, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party" necessary to set aside the default judgment. Rule 60(b) SCRPC. Excusable neglect has been defined in these matters by resorting to the Black's Law Dictionary definition, that is: "A failure - which the law will excuse - to take some proper step at the proper time (esp. in neglecting to answer a lawsuit) not because of the party's own carelessness, inattention, or willful disregard of the court's process, but because of some unexpected or unavoidable hindrance or accident". The acts here of Defendant, and particularly its inaction, confirm that this was all entirely avoidable had they acted with just the slightest amount of diligence.

In the 2010 case of *Rouvet v Rouvet*, 388 S.C. 301, 696 S.E.2d 204 (Ct. App 2010), the South Carolina Court of Appeals made clear that "lack of familiarity with legal proceedings is not an acceptable excuse for purposes of a motion for relief from a judgment, and the Court will hold a layman to the same standard as an attorney." *Id.* In the 2009 case of *Gainey v. Gainey*, 382 S.C. 414, 675 S.E.2d 792, 798 (Ct.App. 2009), the Court of Appeals addressed the same issue of excusable neglect and made clear that even lack of fairness is also not a ground for relief from judgment.

What has been established in the case at hand is the Defendant's *inexcusable* and otherwise avoidable neglect, to-wit: that CT Corp has been the Registered Agent for Defendant

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for well over a decade; that the Defendant is sophisticated and keenly knowledgeable of the requirements associated with, and the purposes served by, Registered Agents in this State; that the Defendant has known and admitted via a variety of different lawsuits filed in this *same* Court that CT Corp is its Registered Agent – whereby the Defendant also acknowledged the rules of service of process applicable to Defendant; that the Plaintiff, here, satisfied those same rules of service of process; and that the Defendant’s attempts to excuse its neglect have only served to undermine its credibility and underscore the *inexcusable* neglect it has exhibited in this case.

The Defendant has not put forth a satisfactory explanation for the default⁴. As in the recent South Carolina Supreme Court case of *Sundown Operating Co. v. Intedg Indus.*, 383 S.C. 601, 681 S.E.2d 885, 887 (2009), the service on Defendant was proper. The Defendant here, similar to the Defendant in *Sundown*, attempts to shift the blame to its agent (CT Corp). However, even assuming *arguendo* that the actions of CT Corp raise to the level of negligence, it has been well established in this State under such circumstances that even the misconduct of the Defendant’s agent is not a defense since that negligence is imputed to the Defendant. *Id.*; See *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (observing that an attorney's negligence in failing to answer is imputable to the defendant); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987) (recognizing that negligence of an attorney or insurance company is imputable to a defaulting litigant).

In this case, the Defendant is responsible for the default. S.C. Code § 33-5-101 makes it clear that a corporation in this State such as Defendant must continuously maintain both a registered office and a registered agent. The Defendant’s failure to change its registered agent or

⁴ There is insufficient evidentiary support on the record for the finding of even the lesser standard of good cause, which is not applicable here since this is a Rule 60(b) Motion and, therefore, subject to the more rigorous standard.

change its forwarding address with CT Corp is not the fault of CT Corp, and is certainly not the fault of Plaintiff.

The Defendant cannot establish good cause or that it is entitled to relief under Rule 60(b) on the basis of mistake, surprise, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. Therefore, the Court is not required to make specific findings raised in Defendant's Motion with respect to the: (1) the timing of the motion for relief; (2) whether the Defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989); *see also Sundown Operating Co. v. Intedge Indus.*, 681 S.E.2d 885, 887 (2009) (declining to address the *Wham* factors because defendant had not shown it was entitled to relief under any of the grounds specified in Rule 60(b)).

The Defendant argues that under *Gadsden v. Home Fertilizer & Chemical Co.*, 89 S.C. 483, 72 S.E.15 (1911) and *Mut. Sav. & Loan Ass'n v. McKenzie*, 274 S.C. 630, 632, 266 S.E.2d 423, 424 (1980) the Court should determine that there are not sufficiently pled facts to form a legal basis for the judgment taken by default. It appears to the Court that the Complaint at issue includes sufficiently pled facts to form a legal basis for the claims, and thus the judgment.

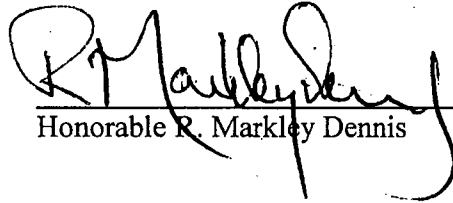
The Complaint is comprised of twenty-nine (29) pages, one hundred and seventy-nine (179) paragraphs including sub-paragraphs, a detailed factual summary comprising forty-one (41) of those paragraphs, another eleven (11) paragraphs that describe the parties, and fifty-eight (58) paragraphs including sub-paragraphs that address allegations of facts and/or claims regarding the Cliffs. In regards to those facts alleged by the Plaintiff, viewed in the light most favorable to the Plaintiff and with every doubt resolved in the Plaintiff's behalf, the Complaint includes sufficient facts to constitute valid claims for relief, as all elements of the five (5) claims

against the Defendant are reasonably inferable from the numerous, detailed factual pleadings. *Plyler v. Burns*, 373 S.C. 637, 647 S.E.2d 245 (2007); see also *Gadsden, supra* and *McKenzie, supra*.

The evidence before the Court shows that service was proper and accepted by Defendant's Registered Agent for Service of Process for the Summons and Complaint and the Subsequent Papers. The evidence further shows that the Defendant did not exhibit excusable neglect.

THEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED that the Defendant's Motion to Set Aside the Order of Default Judgment in this case is DENIED.

IT IS SO ORDERED.


Honorable R. Markley Dennis

Charleston, South Carolina

Dated December 12, 2016