

on July 9, 2019 by this Court. A damages hearing was held on October 22, 2019, with the Honorable Letitia Verdin presiding. Notice of the hearing was sent to the Defendant by both the Plaintiff and the Clerk of the Court on September 24, 2019 to the same address where the Affidavit of Service states that the Defendant was served. The Defendants did not appear at the hearing and a judgment was entered against the Defendants in the amount of \$477,300.75. The Defendants filed nothing with the Court until December 30, 2019, in which they sought that execution of the judgment be stayed and that its order be vacated, alleging that no service had actually taken place. The Plaintiff moved for execution of the judgment.

Even though the scheduled hearing was set as a motion hearing, the Court allowed the parties to present live testimony from witnesses in addition to the other materials submitted given the unusual circumstances of the case. Anna D. McWhite testified (she also submitted an affidavit) that she was the office coordinator of the Defendant, with her job duties including maintaining schedules, communicating with the Defendant when he was out at various job sites and tracking employees during the day. She utilizes Google Maps and monitors the location of the company employees. She remembered May 22, 2019 because she had found a stray dog and had it with her at the office that day. She remembered Defendant Jimmy Davis arriving at the office sometime after 3 pm that day. McWhite gave the office address as 245 Welpine Road, Pendleton, South Carolina 29670. She stated that the company was doing work on a BP station at 2900 Highway 153, Piedmont at that time, but did not believe that Jimmy Davis went to that particular job site on that particular day. She ran a Google trace and did not see evidence of Davis being physically present at the address where McNamara said that he served him. McWhite testified that the company completed its work at the BP station by the end of June 2019, when the certificate of occupancy was issued. Davis filed an affidavit stating that he was not served with the pleadings of this case.

The Plaintiff called Michael McNamara as a witness. McNamara is a retired law enforcement officer now employed as a private investigator and process server. He testified that he had served Jimmy Davis multiple times, stating that Davis has "always been very nice." He acknowledged that 2900 Highway 153 Piedmont is a BP Station. He testified that he saw a white pickup truck at the site with the corporate name "Jimmy L. Davis, Inc." written on the outside. Seeing Davis, he walked up to him and gave him the paperwork, which Davis accepted. McNamara positively identified Davis in the courtroom as the individual that he served. The Plaintiff put in an Exhibit showing that McNamara served Davis with a different lawsuit from another attorney at the exact same location on May 23, 2019 (the very next day). McNamara testified that he was familiar with the location of the Defendants' business office in Pendleton, adding that he had talked to McWhite on occasion in trying to locate Davis for service of other papers. Several lawsuits have been filed against the Defendant, with McNamara being the process server on some.

The South Carolina Rules of Civil Procedure (SCRCP) require personal service of the Summons and Complaint on a Defendant. Once service is accomplished, an Affidavit of Service must be filed in accordance with Rule 4(g) SCRCP. Rule 55(b)(2) provides that in a default damages hearing " Pursuant to Rule 5(a), notice of any trial or hearing on unliquidated damages shall also be given to parties in default by first class mail to the last known *address* of such party whether or not such party has appeared in the action." Rule 55(c) provides that default can be set aside for "good cause shown."

I find McNamara's testimony credible and compelling. I do not find that the Defendants have produced sufficient evidence to warrant this Court vacating its previous Order holding the

Defendants in default. Accordingly, I find that proper service was accomplished, giving the Court jurisdiction and that the Defendants' Motion to Dismiss is DENIED.

Since the issue before the Court consisted solely of whether service was executed properly, with the Defendants denying service altogether, no evidence about excusable neglect or a good cause to set aside the default was presented. Accordingly the motion, in the alternative, to set aside the default is DENIED.

However, the evidence shows that that the notice sent to the Defendants regarding the damages hearing were sent to a former job site and not their last known address in accordance with Rule 5(a) SCRPC. The BP station job had long ended, with there being no reason for the Defendants to be operating at that site when the notice of the hearing was sent. Furthermore McNamara, who was the Plaintiff's process server in this case, knew that the Defendant's business office was in Pendleton. I find that improper notice was given to the Defendants prior to the October 22, 2019 hearing. Accordingly, the defense's Motion to Stay is GRANTED. This Court's judgment is vacated. The Clerk shall set a new hearing regarding damages, with proper notice being given to all parties.

AND IT IS SO ORDERED.

R. Scott Sprouse, Judge

Walhalla, South Carolina
September ____, 2020



Anderson Common Pleas

Case Caption: Joyce Porter , plaintiff, et al VS Jimmy L. Davis, Inc. , defendant, et al
Case Number: 2019CP0400927
Type: Order/Form 4

s/R. Scott Sprouse, Judge #2752

Tenth Judicial Circuit