

Supreme Court of South Carolina.
 Johnny ROBERSON and Phyllis Fredrick,
 Respondents,
 v.
 SOUTHERN FINANCE OF SOUTH
 CAROLINA, INC., Appellant.

No. 26001.
 Heard May 3, 2005.
 Decided June 20, 2005.

Background: Plaintiffs sued finance company alleging negligence, intentional infliction of emotional distress, false imprisonment, and malicious prosecution. When finance company failed to answer, plaintiffs obtained default judgment. Finance company moved to set aside or amend default judgment or for new trial on grounds of improper service. The Circuit Court, Hampton County, R. Alexander Murdaugh, Special Referee, denied the motion. Finance company appealed.

Holding: The Supreme Court, Waller, J., held that service on clerical employee of finance company's registered agent was improper.

Reversed.

West Headnotes

[1] Banks and Banking 52 🔑223

52 Banks and Banking
 52III Functions and Dealings
 52III(H) Actions
 52k223 k. Process and Appearance. **Most Cited Cases**

Plaintiffs' service of process by registered mail on clerical employee of finance company's registered agent was improper, even though employee had accep-

ted service on behalf of finance company on previous occasions; there was no evidence that finance company manifested that registered agent's employee was its apparent agent, employee testified that she had never been authorized to accept service, and there was no evidence that finance company held out employee as its agent or was even aware that employee had accepted service in the past. [Rules Civ.Proc., Rule 4.](#)

[2] Judgment 228 🔑139

228 Judgment
 228IV By Default
 228IV(B) Opening or Setting Aside Default

228k139 k. Discretion of Court. **Most Cited Cases**

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.

[3] Appeal and Error 30 🔑957(1)

30 Appeal and Error
 30XVI Review
 30XVI(H) Discretion of Lower Court

30k957 Opening Default
 30k957(1) k. In General. **Most Cited Cases**

The trial court's decision to grant or deny a motion to set aside a default judgment will not be disturbed on appeal absent a clear showing of an abuse of discretion.

[4] Appeal and Error 30 🔑957(1)

30 Appeal and Error
 30XVI Review
 30XVI(H) Discretion of Lower Court

[30k957](#) Opening Default
[30k957\(1\)](#) k. In General. **Most Cited Cases**

An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.

[5] Judgment 228 [↪135](#)

228 Judgment

[228IV](#) By Default

[228IV\(B\)](#) Opening or Setting Aside Default

[228k135](#) k. Nature and Scope of Remedy. **Most Cited Cases**

The standard for granting relief from an entry of default is good cause under rule governing default judgments, while the standard is more rigorous for granting relief from a default judgment under rule governing relief from judgment. [Rules Civ.Proc., Rules 55\(c\), 60\(b\)](#).

[6] Process 313 [↪145](#)

313 Process

[313II](#) Service

[313II\(E\)](#) Return and Proof of Service

[313k144](#) Evidence as to Service

[313k145](#) k. Presumptions and Burden of Proof. **Most Cited Cases**

A plaintiff need only show compliance with the rules to raise a presumption that service of process was proper. [Rules Civ.Proc., Rule 4](#).

[7] Principal and Agent 308 [↪96](#)

308 Principal and Agent

[308III](#) Rights and Liabilities as to Third Persons

[308III\(A\)](#) Powers of Agent

[308k95](#) Express Authority

[308k96](#) k. In General. **Most Cited Cases**

Principal and Agent 308 [↪99](#)

308 Principal and Agent

[308III](#) Rights and Liabilities as to Third Persons

[308III\(A\)](#) Powers of Agent

[308k98](#) Implied and Apparent Authority

[308k99](#) k. In General. **Most Cited Cases**

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.

[8] Principal and Agent 308 [↪96](#)

308 Principal and Agent

[308III](#) Rights and Liabilities as to Third Persons

[308III\(A\)](#) Powers of Agent

[308k95](#) Express Authority

[308k96](#) k. In General. **Most Cited Cases**

Principal and Agent 308 [↪99](#)

308 Principal and Agent

[308III](#) Rights and Liabilities as to Third Persons

[308III\(A\)](#) Powers of Agent

[308k98](#) Implied and Apparent Authority

[308k99](#) k. In General. **Most Cited Cases**

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 agent out as possessing such authority.

[9] Process 313 [↪58](#)

313 Process

313II Service

313II(A) Personal Service in General

313k56 Persons to Be Served

313k58 k. Attorney or Agent

of Party. [Most Cited Cases](#)

Even if apparent authority suffices for an agent to accept service of process on behalf of the principal, it is established based upon manifestations by the principal, not the agent. [Rules Civ.Proc., Rule 4.](#)

[10] Principal and Agent 308  **22(1)**

308 Principal and Agent

308I The Relation

308I(A) Creation and Existence

308k18 Evidence of Agency

308k22 Declarations and Acts

of Agent

308k22(1) k. In General.

[Most Cited Cases](#)

An apparent agency may not be established solely by the declarations and conduct of an alleged agent.

****113 C. Mitchell Brown**, and Elizabeth Herlong Campbell, both of Nelson, Mullins Riley & Scarborough, of Columbia, for Appellant.

[Robert N. Hill](#), of Law Offices of Robert Hill, of Newberry; and Woodrow H. Gooding and [Mark B. Tinsley](#), both of Gooding & Gooding, P.A., of Allendale, for Respondents.

Justice [WALLER](#):

***8** The special referee denied appellant's motion to set aside a default judgment on the ground of improper service. We reverse.

****114 FACTS**

The respondents Johnny Roberson and Phyliss Frederick filed an action against

Southern Finance Company (Southern Finance) alleging negligence, intentional infliction of emotional distress, false imprisonment, and malicious prosecution. The respondents mailed the summons and complaint to Southern Finance's registered agent, Charles Brooks, by certified mail with return receipt requested. A clerical employee, Amy Jones Bair, signed the return receipt. Brooks testified he never received the summons and complaint. Accordingly, Southern Finance never answered the complaint and the respondents filed a motion for default judgment. Subsequently, the circuit court granted an entry of default against Southern Finance and referred the matter to a special referee for default judgment to be entered and a damages hearing.

***9** After holding a damages hearing, the special referee entered a default judgment and awarded each respondent \$25,000 in actual damages and \$150,000 in punitive damages, for a total default judgment of \$350,000. Southern Finance moved to set aside or amend the judgment or for a new trial nisi remittitur on the ground that service was improper because Bair was not authorized to receive service for Southern Finance. The special referee denied the motion and Southern Finance now appeals.

ISSUE

Did the special referee err in denying Southern Finance's [Rule 60](#) motion to set aside the default judgment on the ground the summons and complaint were not properly served?

DISCUSSION

[1] The special referee denied Southern Finance's motion to set aside the default judgment due to the lack of proper service of the summons and complaint. The special

referee found Bair was an implied agent with the authority to accept service of process. Southern Finance contends the special referee erred. We agree.

[2][3][4] The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Thompson v. Hammond*, 299 S.C. 116, 119, 382 S.E.2d 900, 902-903 (1989). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct.App.1988). “An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.” *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997).

[5] Southern Finance moved to set aside the default judgment pursuant to Rules 55(c) and 60(b), SCRCF. “The standard for granting relief from an entry of default is good cause *10 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). Southern Finance did not make any motion until after the default judgment had been entered. Therefore, Rule 55(c) is inapplicable. Under Rule 60(b), a party may seek relief from a default judgment where the judgment is void.

[6] Southern Finance contends the default judgment is void because of improper service. Rule 4(d)(3), SCRCF, provides that service upon a corporation may be made “by delivering a copy of the sum-

mons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process ...” Further, Rule 4(d)(8) provides, in part:

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.

***115** “[A] plaintiff need only show compliance with the rules.” *Roche v. Young Bros., Inc.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995). When the rules are followed, it is presumed that service was proper. *Id.* It is undisputed that the respondents sent the summons and complaint via certified mail with return receipt requested to Southern Finance's registered agent, Brooks, at the address on file with the Secretary of State for Brooks. Further, it is undisputed that Bair signed the return receipt. Thus, pursuant to Rule 4(d)(8), the burden shifts to Southern Finance to demonstrate Bair was not authorized to accept service.

[7][8] Southern Finance contends Bair was not its agent and thus did not have the authority to accept service on its behalf. 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. ***112A 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 agent out as possessing such authority. *Moore v. North Am. Van Lines*, 310 S.C. 236, 239, 423 S.E.2d 116, 118 (1992).

Whether apparent authority can suffice to show authorization to accept service under Rule 4 is an unsettled question. See *Schultz v. Schultz*, 436 F.2d 635, 637 (7th Cir.1971) (describing as “dubious” the “assumption that such authority may be implied in some situations”); see also *Chatman v. Condell Med. Ctr.*, 2002 WL 737051, at *3 (N.D.Ill. Apr.22, 2002) (collecting cases).

[9][10] Even if apparent authority suffices, however, it is established based upon manifestations by the principal, not the agent. See *Shropshire v. Prahalis*, 309 S.C. 70, 419 S.E.2d 829 (Ct.App.1992). An apparent agency may not be established solely by the declarations and conduct of an alleged agent. *Frasier v. Palmetto Homes*, 323 S.C. 240, 473 S.E.2d 865 (Ct.App.1996). There is no evidence in the record that Southern Finance manifested Bair was its apparent agent in any way.

Neither do the circumstances support the conclusion that Bair had implied authority to accept service for Southern Finance. Again, there is no evidence Southern Finance authorized Bair to act as its registered agent. Furthermore, an agent has no implied authority unless she herself believed she had such authority. 2A CJS Agency § 136 (2004). Bair testified she has never been authorized to accept service.

The respondents also argue past behavior by Bair creates an agency relationship in this case. Bair has accepted service for Brooks on behalf of Southern Finance in

several other cases in the past as outlined in the special referee's order. Southern Finance contends that these instances are irrelevant in determining whether Bair was the apparent or implied agent to accept service in this case. Certainly, past behavior could be relevant to show agency. However, it is Southern Finance's past behavior which would be relevant and not Bair's. Here, there is no evidence in the record that Southern Finance held out Bair as its agent or was even aware that Bair *12 had ever signed for Brooks. Bair's behavior in the prior cases are not actions which a third party could rely upon to conclude that Southern Finance authorized her to accept service.

The findings of the special referee are binding on this Court unless wholly unsupported by the evidence or controlled by an error of law. Here, the special referee's determination that service was proper should be reversed as it is unsupported by the evidence. We are unable to find any evidence in the record to support a legal relationship between Bair and Southern Finance sufficient to have effectuated proper service. Because we find service was improper, we need not address the remaining issues as the default judgment is void.

REVERSED.

TOAL, C.J., MOORE, BURNETT and PLEICONES, JJ., concur.

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