EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF ORANGEBURG	)	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2021-CP-38-254
REBECCA ARMSTRONG, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES HYATT, Plaintiff, v. CEDAR COMMUNITIES AT SANTEE, LLC D/B/A MAGNOLIAS OF SANTEE AND CEDAR COMMUNITIES REALTY HOLDING AT SANTEE, LLC, Defendants.	)	**ORDER REGARDIND DEFEDANTS' MOTION TO SET ASIDE DEFAULT**

This matter came to be heard by me on October 13, 2021, by way of the Court's April 27, 2021 Order of Default and Reference and pursuant to Defendants Cedar Communities at Santee, LLC d/b/a Magnolias of Santee and Cedar Communities Realty Holding at Santee, LLC's Motion to Set Aside Default. Appearing and arguing on behalf of Defendants was S. Chase Parker of Lewis, Brisbois, Bisgaard & Smith LLP. Appearing and arguing on behalf of Plaintiff Rebecca Armstrong as Personal Representative of the Estate of James Hyatt was Lee D. Cope of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.

Defendants moved to set aside default on the grounds that they have good cause due to the actions, through Defendants' owner Scott Lockwood, in responding to the lawsuit and attempting to assist their insurer in preparation of litigation. Defendants also maintain that they have made an adequate showing of the factors outlined in *Wham v. Shearson Lehman Bros, Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989), such that relief from the default is proper. Plaintiff, on the other hand, contends that the evidence produced by Defendants indicates quite the opposite; that despite the aforementioned communications, neither Mr. Lockwood nor Defendants' insurance carrier

made any efforts to insure that counsel would be or had been retained to answer the filed Summons and Complaint, that their insurer has no satisfactory explanation for its failure to timely retain counsel, answer the pleadings, or otherwise respond, and that Defendants have not made a sufficient showing under the *Wham* factors to justify the lifting of default. After considering the relevant case law, supporting memoranda, exhibits, and arguments of counsel, I find that it is not necessary to reach the merits of the parties' arguments as to the *Wham* factors, as Defendants have ultimately failed meet the threshold requirement of providing a satisfactory explanation for the default. For the following reasons, the Defendants' Motion to Set Aside Default is denied.

Defendants should not be allowed to set aside the entry of default because they cannot meet the standard for relief required by Rule 55(c), SCRCP. Rule 55(c) states that "[f]or good cause shown the court may set aside an entry of default . . . ." Thus, the standard for granting relief from an entry of default is "good cause." The standard requires a court to engage in a two-step analysis. First, the party seeking relief must provide a satisfactory explanation for the default and give reasons why setting aside the default "would serve the interests of justice." *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Second, the court must consider three factors: (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 the relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 502 (Ct. App. 1989). "The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause." *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888 (citing *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995).

Failing to answer a complaint merely because a defendant relies on someone else to answer for him does not constitute good cause. *See Sundown*, 383 S.C. at 609, 681 S.E.2d at 889 (finding that the failure of an insurance agent to answer a complaint for defendant was not good cause); *Regions Bank v. Owens*, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013) (finding that an elderly defendant with a limited education who mistakenly believed that counsel would be retained for him to answer the complaint did not constitute good cause); *Stark Truss Co., Inc. v. Superior Const. Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004) (finding failure of an insurance company to answer when it gave its defense to another defendant intending to have it answer on both parties' behalf did not constitute good cause); *Pilgrim v. Miller*, 350 S.C. 637, 641-42, 567 S.E.2d 527, 529 (Ct. App. 2002) (finding that the neglect of an attorney and insurance company to answer the complaint on behalf of defendant was not good cause) *opinion vacated on other grounds*; *see also Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001) ("[A] party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.").

Defendants have argued that the good cause standard for vacating default depends upon whether the defendant has acted reasonably in assuming its insurer would respond for it. This is clearly not the standard, as our courts have routinely denied motions to set aside default where the defendant has failed to specifically provide a satisfactory explanation for why a complaint has not been timely answered by counsel retained by an insurer. *See Pilgrim*, 350 S.C. at 642, 567 S.E.2d at 529 ("Accordingly, because no explanation was offered for Allstate's failure to respond to the complaint, we find no abuse of discretion here and affirm the trial court's refusal to set aside the default."). While Defendants have provided documentation showing that Mr. Lockwood was in

regular contact with their insurer, no specific reason has been offered for the lack of response to the Summons and Complaint. Accordingly, the Defendants' Motion must be denied.

The facts of *Pilgrim* are precisely on point in this instance. In *Pilgrim*, the defendant took the summons and complaint to her attorney the day after she was served, who then instructed her to give them to her insurance company. *Id.* at 639, 567 S.E.2d at 528. The defendant then promptly passed the suit papers to her insurance agent, who told her the insurer would "handle it from there." *Id.* at 639-41, 567 S.E.2d at 528. Since no specific explanation was offered for the insurer's subsequent failure to respond to the complaint, the Court of Appeals found that the trial court did not abuse its discretion in refusing to set aside the default. *Id.* at 642, 567 S.E.2d at 529.

In *Sundown*, 383 S.C. at 605, 681 S.E.2d at 887, the defendant forwarded the summons and complaint to its insurance agent, who then failed to retain counsel to answer the complaint before the 30-day period for filing a responsive pleading had expired. The plaintiff then moved for and was granted an entry of default. *Id.* The defendant sought to have the default lifted, arguing that it should not be held responsible for its insurance agent's failure to answer the complaint. *Id.* at 605-06, 681 S.E.2d at 887. The trial court found that this excuse did not meet the Rule 55(c) standard. *Id.* at 606, 681 S.E.2d at 887.

The Supreme Court of South Carolina agreed that the defendant's argument was without merit, stating that "the law is clear that an attorney or insurance company's misconduct is imputable to the client." *Id.* at 609, 681 S.E.2d at 889 (citing *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994); *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987)). The court noted that a defendant may not be relieved from the entry of default solely because it relied to its detriment on a negligent insurance agent. *Id.* (citation omitted).

Here, the failure to answer the complaint is even more inexcusable, as it was Defendants' insurance carrier itself who failed to timely respond to the pleadings.

It is clear from the materials submitted by Defendants that Mr. Lockwood was cooperating with Defendants' insurer in preparation for this lawsuit. Mr. Lockwood notified Defendants' insurance agent of the lawsuit, then proceeded to exchange several emails over the next month providing information to the insurance agent and the insurance carrier's third-party administrator, Sedgwick. Notably, on March 31, 2021, nineteen days after service, Mr. Lockwood wrote to Plaintiff's counsel and informed him that he had received the Summons and Complaint, but he did not explicitly inform Plaintiff's counsel that an attorney had been or would be retained to defend the lawsuit, nor did he request an extension to answer the Complaint.

According to the Defendant's own affidavit, on April 9, 2021, with only three days left to answer, Mr. Lockwood was informed by Andrew Cattell, a claims specialist for Sedgwick, that an attorney had not yet been retained to defend the lawsuit. Mr. Lockwood did not respond to this email to ask when an attorney would be retained, nor did he inquire to determine if a response to the lawsuit would be filed on his behalf within the time constraints provided by the South Carolina Rules of Civil Procedure, or if an extension would be necessary. In fact, Mr. Lockwood did not respond to this email at all. Two days later, on April 11, 2021, the day before Defendants' Answer was due, Mr. Cattell sent another email to Mr. Lockwood. This email did not mention whether an attorney had been retained or a response filed on Defendants' behalf.

On April 13, 2021, the day after Defendants' Answer was due, Mr. Lockwood finally responded, but again did not inquire as to the retention of an attorney or the necessity of responding to Plaintiff's Complaint or requesting an extension. While the correspondence shows that Mr. Lockwood was in regular contact with his insurance agent and Sedgwick, it also demonstrates that

neither Mr. Lockwood nor his insurer made any effort to confirm that counsel was timely retained, confirm that a response would be filed as required by Rule 12, SCRCP, or request an extension to the deadline set by Rule 12. No explanation has been offered as to why these efforts were not undertaken by Defendants, their insurer, or Sedgwick.

Defendants cite to *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987), and its approval of *Sears, Roebuck & Company v. Ramey*, 170 Ga. App. 873, 318 S.E.2d 740 (Ga. Ct. App. 1984), for the proposition that good cause exists to set aside entry of default when a defendant reasonably believes that a suit is being defended by an insurance carrier. However, in *Ricks*, the defendant hand delivered a copy of the summons and complaint to her insurance agent with a request for them to be forwarded to her insurance carrier, then left for vacation. *Ricks*, 293 S.C. at 373, 360 S.E.2d at 536. Upon returning, with approximately three days left to answer, the defendant learned that her insurance agent had gone bankrupt and closed without forwarding the suit papers, and she did not have access to the summons and complaint. *Id.* The thirty-day limitation to answer ran before she was able to get the suit papers to her attorney. The court found that this constituted a satisfactory explanation for why the summons and complaint were not answered in a timely fashion, as the bankruptcy and closure of the insurance agent and failure to transmit the suit documents occurred through no fault of the defendant or its insurer, and the defendant acted as promptly as possible once she learned of the error.

In this case, no such extenuating circumstances occurred which would have frustrated Defendants' efforts to have an attorney retained to defend the lawsuit within the time constraints imposed by Rule 12. In *Ricks*, the insurer did not receive the summons and complaint until after the time to answer had expired, through no fault of the insurer or defendant; here, Defendants' insurer was aware of the lawsuit and received the suit documents well before the deadline to

respond, yet neither Defendants nor the insurer took any affirmative steps to insure that the Complaint would be answered. Defendants remained apprised during the entire pendency of the thirty-day period that counsel had not been retained, and not once did they inquire, attempt to confirm, or undertake any efforts to insure that an attorney would be retained and an answer timely filed on their behalf. Additionally, Defendants in this action are not individuals, but are sophisticated corporate entities, presumably with frequent litigation experience. Although *Ricks* contained dicta considering whether the defendant acted reasonably under the totality of the circumstances leading to the default, the law of South Carolina is clear that an insurance company's neglect in answering a complaint is imputable to the client, and that the defaulting defendant must put forward a satisfactory explanation for why its insurer failed to retain counsel to answer the complaint in order to set aside the default. *See Owens*, 402 S.C. at 648-50, 741 S.E.2d at 54-55.

It is clear from the evidence presented by the parties that Defendants' insurance carrier simply failed to address the deadline to answer the Complaint, precluding me from setting aside the default. *See Pilgrim*, 350 S.C. at 641, 567 S.E.2d at 529 (emphasizing that defendant's insurer had an obligation to act diligently, and no specific reason was offered for the lack of response to the complaint).

Based on the foregoing, it is ORDERED that Defendants' Motion to Set Aside Default is denied.

IT IS SO ORDERED

_____
James B. Jackson, Jr., Master-In-Equity

November_____, 2021
Orangeburg, South Carolina

Orangeburg Common Pleas

Case Caption: Rebecca Armstrong , plaintiff, et al VS Cedar Communities At Santee, Llc , defendant, et al

Case Number: 2021CP3800254

Type: Master/Order/Other

So Ordered

James B. Jackson, Jr. 3077 Master in Equity