THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

The Honorable Letitia H. Verdin, Circuit Court Judge

Opinion No. 2022-UP-429 (Filed December 7, 2022)
Appellate Case No.: 2021-000269
C.A. No. 2020CP1100632

Bobby E. Leopard, Luther Harris, and Donna Harris,

Appellants,

v.

Perry W. Respondent,

Respondent.

PETITION FOR REHEARING
AND SUGGESTION FOR REHEARING EN BANC

Pursuant to SCACR Rule 22 (a) and SCACR Rule 240(i), Appellants respectfully petition this Court for a Rehearing of Opinion No. 2022-UP-429, filed December 7, 2022. Appellants filed a Motion to File Out of Time on December 19, 2022. The extension was requested until December 26, 2022. However, the Court was closed until December 27, 2022; and Petitioners filed their brief accordingly. They respectfully submit the Court overlooked or misapprehended their arguments and evidence. (Kennedy v. S.C. Retirement System, 349 S.C. 531, 564 S.E.2d 322 (2001). Rehearing is warranted when the Court has overlooked or misapprehended an argument.). In support of this Petition for Rehearing, the attention of this

Honorable Court is directed to material points of fact and law that were seemingly overlooked in the Appeal.

SUMMARY OF THE PANEL'S AFFIRMATION

The Lower Court's granting Respondent relief from default.

This Honorable Court affirmed the trial court's order granting Perry W. Barbour's (Respondent) motions for relief from the entry of default and to dismiss. This Court concluded the circuit court did not abuse its discretion in setting aside the entry of default as Respondent provided an explanation for the default and reasons why vacation of the entry of default would serve the ends of justice. Unpublished Opinion No. 2022-UP-429, December 7, 2022, p.2).

Appellants aver this Honorable Court misappreciated the fact Respondent did not provide an explanation for the default and reasons why the entry of default would serve the ends of justice. This situation is like the other appeal stemming from the facts and these parties in Opinion No. 2022-UP-397 (Spartanburg action). In both cases, Respondent failed to respond to any attempt at making contact with him; or serving him. Appellants made the argument there was no proof of his involvement in the prior action and they will provide greater analysis of this statement in the argument.

Contrary to this Court's opinion, the rules relied upon in dismissing Appellants' claims are not absolute. If they were, there would be no need for the defenses found in 12(b)(2), (4), (5) and (8). Respondent did not offer an explanation of the failure to timely file his answer/motion to dismiss. Sentry Insurance offered its version of an explanation. Respondent had been served pursuant to SC Code Ann. §15-9-350, which stands for the fact any foreign driver submits to their service being accepted by the South Carolina Department of Motor Vehicles (DMV) if they are involved in a wreck. Respondent accepted service in the Spartanburg action on October 25,

2019, by way of the DMV. Defendant filed his Motion to Dismiss on December 23, 2019. Clearly, if defense counsel was representing Respondent, they would have filed a joint answer with Southland on November 7, 2019. They did not. He was not represented in October, nor was he represented in December when Sentry Insurance had defense counsel imply he had been retained by Respondent. Seemingly, this would be an example of a conflict of interests. Regardless, there was no communication between Respondent and defense counsel.

Appellants also submit this Court erred in affirming the Lower Court's relieving Respondent of default. In its decision, the Lower Court erroneously used Rule 55(c) to justify setting aside default yet did not mention the term Good Cause. (R., p. 6). The Court reiterated reasoning absent good cause in its denial of Appellants' Motion for Reconsideration. (R., p. 2). This represents an error of law.

Respondent has maintained an address for tax purposes which has not changed for the last twenty (20) years. (Exhibit 1-Tax Records). His license stated his address was 130 Valentine Court at the time of the wreck. Appellants provided this Court with a lengthy list of offenses in which Respondent was tried in his absence. (R., p.77.78). It appears this may have been the intent of using two addresses (or more)-to avoid prosecution. Respondent had a duty to keep his residence up to date on his license whether he was in South Carolina or Virginia (R., p. 107). He did not.

Defense counsel said the Spartanburg case was never commenced because it was not served within 120 days of the filing of the action. Despite this contention, counsel made a point to state the Appellants had some duty to alert him of the filing of this action. He was also troubled that Appellants did not notify the insurance company. Counsel argued the previous case was a nullity but has argued in this case the Spartanburg case provided the impetus for the

Appellants to notify them of the filing.

Defense counsel and this Court relied on the time which elapsed between the insurance company receiving notice of the action/order of default until counsel filed something in response. Meanwhile, the true measure of the Respondent's "swift action" is the 135 days from the date of service to notice to the insurance company. The insurance company's notice and his subsequent "swift" filing of a dispositive motion along with an answer to Appellants' filings were allegedly on behalf of Respondent. Respondent had nothing to do with defense counsel's filing. Defense counsel's efforts were for Sentry Insurance-period.

The Lower Court approving Respondent's use of affirmative defenses.

In this matter, Appellants filed a new action against Respondent due to the Court dismissing their case due to the failure to properly serve him. The Court dismissed the case without prejudice. Defense counsel maintained the Spartanburg case had never commenced and, therefore, it was a nullity. Based on this fact, Appellants filed a new action against Respondent (Co-defendant Southland had properly been dismissed due to its timely motion.). Respondent was again served in this action through the DMV on September 18, 2020. Ironically, "he" did not file any responsive pleadings until February 11, 2021-just days after the insurance company was notified of the damages hearing for default. Respondent had nothing to do with the response. Additionally, defense counsel did not file a Motion to Intervene.

Defendant admitted to whom he was representing in his Brief in Support of Motion to Set Aside Entry of Default. "Defendant has acted swiftly through ***its*** insurance company once notice was received by the insurance company…" (R., p. 37, 1.2). Service was performed on Respondent through the DMV, pursuant to statute, at 130 Valentine Court, Martinsville, VA 24112. (Exhibit 2, Accident Report). That was his address on his license on June 10, 2016. His

property tax records indicated his address was continuously 272 Mary Hunter Dr., Bassett VA 24055 from at least 2002 to the present. (Exhibit 1). His address was 130 Valentine Court at the time of the wreck, yet his address for tax purposes was 272 Mary Hunter Dr. at the very same time. He offered the address 130 Valentine on his license. Appellants had no reason to believe he lived anywhere else given his lengthy time at the address utilized for his taxes.

This panel also ruled on the Spartanburg case and made a similar finding in both. The lower court did not abuse its discretion in considering Respondent's affirmative defenses. This holding essentially means affirmative defenses are no longer affirmative. Respondent had no duty to respond within thirty (30) days. He did not have to file an answer. He did not have to file a motion or motions. However, Appellants were responsible for ensuring he was served within 120 days, regardless of his using a questionable address on his driver's license. Like his many trials in *abstentia*, he abstained from taking any responsibility for the injuries sustained by Appellants. (R., p. 111).

The Lower Court denying the application of equitable tolling in this instance.

The Court has the opportunity to equitably toll the statute of limitations and the related service of the pleadings. In this particular case, there are several aspects of the facts which lend the case to tolling. First and foremost, the carrier delayed their response nine (9) weeks to simply extend an offer. With that in mind, it would seem equitable to allow Appellants two days in excess of the statute of limitations. Equitable tolling relates to the pursuit of justice. Justice in this case would be allowing the parties to conduct a trial involving the facts.

Litigation would have begun in a timely manner had the U.S. Post Office served the mailings that had been deposited in the U.S. Mail on Friday, October 4, 2019. Unfortunately, they were actually forwarded on Monday, October 7, 2019. As a result, the pleadings were

served on Wednesday, October 9, 2019. Appellants had no control over the Post Office. If Appellants were aware there would be such a delay, the documentation would have been served by hand. The inability to control the USPS is certainly one of the instances which allow the court to toll the statute.

The Lower Court did not assess Appellants' unclean hands argument.

Unclean hands are those factors which prevent litigants from using equitable principles to their advantage. Appellants suffered significant losses as a result of the co-defendants' reckless behavior. Respondent had been the definition of the habitual driving offender prior to the wreck. He still managed to retain a position driving a tractor trailer. Either Respondent's inaccurate address prevented the state from properly tracking his violations; or the co-defendant simply disregarded the many violations to further their access to profits. Equity is something Respondent should not realize due to his illegal, habitual driving offenses.

ARGUMENTS

I. THIS COURT ERRED IN AFFIRMING THE LOWER COURT'S ORDER RELIEVING RESPONDENT FROM DEFAULT.

The Court affirmed the Lower Court's finding Respondent should be relieved from an entry of default. The Court erroneously based its decision on Rule 55(c), rather than Rule 60(b) which should have been done since an Order of Default had been entered. Not only was the relief granted based on the wrong rule, the rule utilized was not followed. The Court's explanation of Rule 55(c) omitted the necessary finding of good cause. In the Court's denial of Appellants' Motion for Reconsideration, it also failed to address good cause.

Appellants submit the Circuit Court had mistakenly applied the wrong standard in vacating the entry of default against Respondent. In the instant case, default order has been entered against Respondent on December 16, 2020. (R., p. 10-12). Respondent sought relief

from judgment by moving to vacate the default order under Rule 55 (c) of the SCRCP. (R., p. 31- 38). But since an Order of Default has already been entered, Respondent should have applied Rule 60(b) instead. Unfortunately, the Court followed Respondent's lead and attempted to utilize Rule 55(c). Attempted based on the fact the Court did not find good cause prior to expressing the Wham factors had been met.

In the case of *Sundown v. Intedge Industries,* the Court differentiated the standard for granting relief from judgment under Rule 55(c) and Rule 60(b) of the SCRCP. Sundown v. Intedge Industries, 383 S.C. 601 (S.C. 2009). To quote:

> The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the Circuit court must also consider: (1) the timing of the motion for relief; (2) whether the Respondent 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). The Circuit 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. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995). A motion under Rule 55(c) is addressed to the sound discretion of the Circuit court. *Williams v. Stalnaker*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).
>
> Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535,536 (Ct. App. 1987). 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." Rule 60(b), SCRCP. **The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.**

Sundown, supra.

Respondent is not entitled to relief from the default order under Rule 60(b) since the Rule requires a more stringent standard. In this case, Respondent has not alleged any mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation or misconduct on the part of Appellants to warrant a relief from the order in his favor. In fact, if there is any misconduct involved in this case, it is that of Respondent's deliberate and knowing disregard of traffic laws.

Respondent failed to file an answer, any responsive pleading or a motion to dismiss within thirty (30) days of the service of summons and complaint upon him, through the SCDMV. By law, Respondent was in default. Appellants were exercising their right under the law, to move for (and obtain) an entry of default. Respondent has not presented a satisfactory explanation for not filing a responsive pleading, and for the default. Neither did he offer a notarized affidavit explaining his failure to respond within 30 days.

THIS COURT ERRED BY AFFIRMING THE LOWER COURT'S FAILURE TO FIND RESPONDENT WAIVED HIS AFFIRMATIVE DEFENSES.

Respondent contends the right to raise affirmative defense should only be entertained when the action has been commenced. (i.e., when Complaint has been filed and properly served within the statute of limitations, or within 120 days after the filing of the Complaint, when the same is not served within the statute of limitations). In other words, what Respondents assert is

Rule 3 SCRCP should have been established first before Rule 12 SCRCP may be invoked. Appellants believe there is no hierarchy of importance in the provisions of the Rules of Court.

It has long been held "in order to establish that service has been properly effected, the plaintiff need only show compliance with the civil rules on service of process." McCall v. IKON, 363 S.C. 646, 652, 611 S.E.2d 315, 317 (Ct. App. 2005); Moore v. Simpson, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct. App. 1996). When these rules 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). Appellants showed compliance with the rules (by serving Respondent through the DMV), and therefore service was presumptively proper.

Secondly, Appellants have shown that Courts of various jurisdictions have entertained and acted upon Complaints that have been filed but not properly served. Two such cases are Pusey v. Dallas Corp., 938 F.2d 498, 500 (4th Cir.1990) and Unisun Insurance v. Hawkins, 342 S.C. 537 (2000).

In Pusey v. Dallas Corp., 938 F.2d 498, 500 (4th Cir.1990), William Pusey filed a complaint for negligence, strict liability, breach of warranty and loss of consortium against Dallas Corporation. Due to a mistake in the identity of the registered agent for Dallas Corporation, the process was returned unexecuted on October 3, 1998. On January 26, 1989, Pusey requested for the re-issuance of the summons for service upon foreign corporation Dallas Corporation. The clerk has received this request on February 3, 1989, over 120-days after the filing of the Complaint. A new process was served on Dallas on March 1, 1989, which included the complaint stamped filed on September 3, 1988, and February 3, 1989. Dallas Corporation filed no pre-answer motion under Rule 12 but served an answer that raised the statute of limitations defense. Dallas Corporation made no objection to the service of process. Ten

months after filing its Answer, Dallas moved for summary judgment on the grounds of statute of limitations. Pusey contended that the action was timely filed on September 30, 1988, and that Dallas Corporation has waived any objections to the untimeliness of the service of process by not raising the defense either in a pre-answer motion or its answer. The District Court dismissed Pusey's case finding service was not made within the 120-days. On appeal, the Fourth Circuit Court of Appeals ruled:

> The action as commenced when the Puseys filed their original complaint on September 30, 1998. Fed. R. Civ. P.3. Upon the expiration of 120 days from that date without service of process having been effected, the action was subject to dismissal without prejudice, either on motion of the defendant or on the court's own "initiative," Fed. R. Civ. P. 4(j), unless by its conduct Dallas could, and had, waived any right on its part or power on the court's part to have the action dismissed.

Pusey, supra.

In reversing the District Court's ruling, the Fourth Circuit Court of Appeals found Dallas waived its right to the affirmative defense of insufficiency of service of process when it failed to raise the same in its Answer. In so doing, the Dallas submitted itself to the personal jurisdiction of the Court. *Ibid.* Respondent submitted itself to the personal jurisdiction of the Court by failing to answer or file dispositive motion to dismiss **within thirty (30) days.**

In the case of Unisun Insurance v. Hawkins, 342 S.C. 537 (2000), therein respondent Bruce Hawkins collided with a vehicle insured by Appellant Unisun Insurance. The accident occurred on October 8, 1994. Unisun was forced to pay the insured's losses under the uninsured motorist provision. Thereafter, Unisun filed a claim against Bruce Hawkins and his parents on October 3, 1997, for violation of the South Carolina Motor Vehicle Financial Responsibility Act. Unisun served the Hawkinses on October 4, 1997, four (4) days before the statute of limitations expired.

At the time of service, Bruce was no longer residing with his parents. In their Answer, the Hawkinses raised Unisun's failure to serve Bruce with the Complaint within the three (3)-year statute of limitations. The Hawkinses moved for summary judgment which the trial court granted. On appeal, Unisun asserted the trial court erred in finding that Bruce was not served within the statute of limitations period because he waived the right to contest the sufficiency of service of process by failing to properly challenge service under Rule 12(b)(5). In this case, unlike the Bruces, Respondent failed to file an answer or dispositive motion within thirty (30) days of being served.

The Court of Appeals in *Unisun* ruled that the Hawkinses waived their right to assert affirmative defenses when they failed to properly object to the insufficiency of service of process. *Unisun*, supra., citing O'Brien v. R.J. O'Brien & Assocs., 998 F.2d 1394 (7th Cir. 1993). Furthermore, the Court deemed that Hawkinses' statute of limitations claim was inextricably tied to the attempt to serve the process, the doctrine laid down in the case of Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993), applies.

> In Garner v. Houck, 312 S.C. 481, 435 S.E.2d 847 (1993), our supreme court held that **a party who fails to properly raise the defense of insufficient service of process under Rule 12 waives any issues or defenses regarding service, including a statute of limitations defense.** *See also* James F. Flanagan, *South Carolina Civil Procedure* 100 (2d ed. 1996) ("The ... waiver provision affects not only the motion itself but any argument based on the alleged defect.").

Cited in *Unisun, supra.* **Respondent waived his right to properly object to the insufficiency of service of process by failing to file an answer or dispositive motion within thirty (30) days of being served.**

In *Unisun* and *Pusey,* as well as the case at bar, Appellants filed their respective complaints within the statute of limitations. In all three cases, Appellants attempted to serve

Respondents with Summons and Complaint but failed, either due to Respondents' change of address (as in *Unisun* and the instant case), or due to a mistake (as in *Pusey*). While the service of process was accomplished in both *Unisun* and *Pusey,* the processes were not received by the intended Respondents. In both cases, the Court held that due to Respondents' failure to object to the insufficiency of process in a timely manner, then Respondents could not successfully dismiss the case as they have waived such defense.

The ruling in Pusey sums up the principle in this matter: that **the failure to serve process within the 120-day period does not automatically cause the dismissal of an action**. The defendant must object and raise the affirmative defense of insufficiency of process in a responsive pleading or a motion, in a timely and proper manner. Respondent did not file an Answer nor his Motion to Dismiss within the 30-day period allowed to file a responsive pleading. Thus, he is deemed to have waived the right to dismiss the action based on the affirmative defense of insufficiency of service of process.

> … a defendant's unexcused failure to raise the untimeliness of a service defense by motion or answer must be held to deprive the court of that power, since a waiver of this defense constitutes a submission to personal jurisdiction of the court." (citing Pardazi, 896 F.3e at 1316-17 & n.2)); see also id. At 501 n.4 **("[A] party's waiver operates not only to cut off his right to raise the defense, but the court's power to invoke it."** Citing Pardazi, 896 F.2d at 1316 n.2)).

Tate v. Smith, 1:14cv125 (M.D.N.C. Aug. 23, 2016).

In the case of Leach v. BB & T Corp., 232 F.R.D. 545 (N.D.W. Va. 2005), the Court laid down the following principle:

> Effectuation of service is a precondition to a lawsuit, while waiver of insufficient service is the forfeiture of defense to that service. Jenkins v. City of Topeka, 136 F.3d 1274, 1275-76 (10th Cir. 1998). By failing to raise the defense of insufficient of service of process either in a pre-answer motion, or if no such motion is made, then in an answer, a defendant waives that defense and submits to the personal jurisdiction of the court, unless at the time of the service of the answer, the

defendant did not know the defense was available. Pusey v. Dallas Corporation, 938 F.2d 498, 501 (4th Cir. 1991).

II. THIS COURT ERRED IN AFFIRMING THE LOWER COURT'S DISREGARD FOR THE ISSUE OF EQUITABLE TOLLING IN THIS CASE.

Appellant maintains the statute of limitations should be tolled based on equitable tolling. In South Carolina, a statute of limitations may be tolled pursuant to statute or pursuant to the doctrine of equitable tolling. "[I]n order to serve the ends of justice where technical forfeitures would unjustifiably prevent a trial on the merits, the doctrine of equitable tolling may be applied to toll the running of the statute of limitations." Hooper v. Ebenezer Sr. Services & Rehab. Ctr., 386 S.C. 108, 115, 687 S.E.2d 29 (2009).

Hooper court concluded "[t]he equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other." Hooper quoting Hausman v. Hausman, 199 S.W.3d 38, 42 (Tex. App. 2006). Therefore, "equitable tolling may be applied where it is justified under all the circumstances … when the interests of justice compel its use." Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 386 S.C. 108, 687 S.E.2d 29 (S.C. 2009). (Emphasis added).

Appellants have shown Respondent had a propensity not only in driving recklessly but also in intentionally providing incorrect mailing address and/or contact detail in his driver's license to avoid prosecution. Appellants discovered Respondent has had a significant number of traffic incidents, a majority of which have been tried in his absence.

date	city/county	state	charge	case #	outcome
6/12/15	Danville City	Virginia	Speeding 53/40	590GT15006703-00	Guilty in absentia
1/21/95		Virginia	Illegal sun-shading	089GT9500043700	Guilty in absentia

9/20/08		Virginia	Failure to obey highway sign	071GT0800453100	Guilty in absentia
10/19/07	Henry	Virginia	Speeding 48/35	089GT0700797900	Guilty in absentia
10/19/07	Henry	Virginia	Seat belt violation	089GT0700798000	Guilty in absentia
8/28/07	Mecklenburg	Virginia	Brakes-inoperative or missing	117GT0701512200	Guilty in absentia
9/17/07	Montgomery	Virginia	Defective equipment generally	121GT0701637400	Guilty
9/30/03	Patrick	Virginia	Oper w/radar detect/jam device	141GT0300129200	Prepaid-Fine
5/28/04	Patrick	Virginia	Speeding 74/55	141GT0400068000	Guilty in absentia
5/2/06	Southampton	Virginia	Failure to obey highway sign sleep	175GT0600711000	Guilty in absentia
1/16/08	Danville City	Virginia	Speeding 55/40	590GT0800067700	Guilty
		Kentucky	Driving on suspended	10-T-00307	
6/16/16	Spartanburg	South Carolina	Driving vehicle at greater speed than is re	5102P0362799	Guilty in absentia
6/23/11		Virginia	No county or city tag	GT11004149-00	Guilty in absentia
5/2/06	Southampton	Virginia	Failure to obey high-sign sleep	175GT0600711000	Guilty in absentia
9/10/07	Mecklenburg	Virginia	Brakes-inoperative or missing	117GT0701512200	Guilty in absentia

Clearly, Respondent is a habitual traffic violator, which his employer knew or should have known. They hired him to drive a semi for them. They disregarded his driving record and allowed him to drive a deadly weapon.

III. THIS COURT ERRED IN AFFIRMING THE LOWER COURT'S FAILURE TO APPLY THE DOCTRINE OF UNCLEAN HANDS.

Appellants posit Respondent has continuously violated the laws and evaded responsibility as evidenced by the number of traffic infractions in which he was found guilty in absentia. He is being provided with a get out of jail free card by this Panel, as well as the lower court.

Respondent, who has done absolutely nothing to participate in this case other than drive recklessly, has been able to: avoid filing an answer, avoid filing a dispositive motion, avoid expressly announcing his affirmative defenses, avoid a damages hearing, avoid the necessity of interacting with a lawyer, etc. The idea he is benefitting from some equity angle leaves the reader pining for a logical explanation as to why his conduct is more deserving of disregarding rules of civil procedure than the Appellants. It appears that Respondent is insulated from his transgressions as he has been for nearly a quarter century.

Defense Counsel in his Motion to Vacate and Brief in Support of Motion to Vacate Entry of Default, offered the following.

1. DMV served this action at 130 Valentine Court, Martinsville, VA 24112-not Appellants
2. Plaintiffs have not learned any address for Respondent is incorrect.
3. Based on the Order of Default being issued, the proper mechanism of attempting to set aside default is Rule 60 (b).
4. Defense counsel failed to illustrate good cause as the lower court has done since that time.
5. The Good cause factors are:
   a. timing of defendant's motion for relief
      116 days in default
   b. whether Respondent has meritorious defenses
      He does not being in default for 116 days.
   c. Appellants would suffer the greatest prejudice with the dismissal of the case if the Respondent was let out of default.
6. Defendant has not acted in any way. Counsel equates his swift action on behalf of an insurance carrier as being a timely response by Respondent.
7. Defense counsel states Respondent would have meritorious defense despite being 116 days in default, with no affirmative defenses.
8. Defense counsel raises the issue of a competing appeal yet does not have that defense available to him due to being 116 days in default.
9. Defense counsel says Appellants would suffer no prejudice-a patently absurd statement given the dismissal associated with being relieved of default.
10. Defense counsel regurgitates the strong defenses he had prior to being default for 116 days.
11. Claims the Respondent made a timely motion for relief-116 days into default.
12. Claims defenses waived by a failure file an answer or motion 116 days prior, are still to be considered available.
13. "Absence of any prejudice to Plaintiffs."

14. Defense counsel asks the Court to allow litigation on the merits.

CONCLUSION

Based on the foregoing, Appellants pray this Honorable Court reviews its previous filing, and issues a new opinion which forces Respondent to address the fact he is required to adhere to the South Carolina Rules of Civil Procedure, just as the Appellants are.

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