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Aug 15 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas  
Benjamin H. Culbertson, Circuit Court Judge

Case No. 2022-CP-26-4440  
Appellate Case No. 2023-000567

Redfin Corporation, Christine LeFont, Rodolfo A. Pisigan Jr., Portio O. Pisigan, Jeremy  
Pisigan, and Cherry C. Pisigan, Defendants, Of Which Redfin Corporation is the  
Respondent. Respondent,

v.

Hope Dukes and Nicole Dukes, Appellant.

DESIGNATION OF MATTER TO BE INCLUDED IN  
THE RECORD ON APPEAL

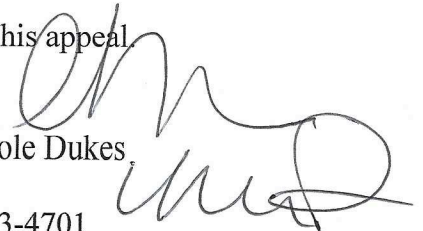
Appellant proposes the following be included in the Record on Appeal:

- A. Original Civil Action Complaint of July 13, 2022
- B. Appellant's affidavit of mail of the original Civil Action Complaint dated August 15, 2022
- C. Appellant's "clocked" certified mail return receipt signed by the respondent on July 16, 2022
- D. Motion for Entry of Default and a Judgment by Default of August 16, 2022
- E. Respondent's Answer to Appellant's Motion for Entry of Default and a Judgment by Default filed on August 19, 2022
- F. Respondent's Supplemental motion electronically filed on December 29, 2022
- G. Appellant's answer to respondent's supplemental motion dated January 19, 2023
- H. Order Denying Plaintiffs' Motion for Default Judgement electronically filed on March 22, 2023
- I. Transcript of Proceedings of March 7, 2023 pp. 10-11; 20-23
- J. Rule 6 (Summons; Service), SCRCF
- K. Rule 12, SCRCF
- L. Rule 55, SCRCF, FRCP
- M. *Lee v. Peek*, 240 S.C. 203, 125 S.E.2d 353 (1962)

We certify that this designation contains no matter which is irrelevant to this appeal.

August 15, 2023

s/ Hope Dukes et al  
Hope Dukes and Nicole Dukes  
11 Crown Street  
Bloomfield, NJ 07003-4701  
(201) 304 - 1149  
(201) 560 - 2946  
Prose



# **EXHIBIT**

**A**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Hope Dukes and Nicole Dukes

Plaintiff(s)

vs.

Redfin Corporation, Christine LeFont, Rodolfo A. Pisigan Jr.,  
Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan

Defendant(s)

Submitted By: Hope Dukes and Nicole Dukes

Address: 6253 Catalina Dr. Unit 812

North Myrtle Beach, SC 29582

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2022-CP-26-4440

SC Bar #:

Telephone #: (201) 304 - 1149

Fax #:

Other:

E-mail: dukeshope@gmail.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
- NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Certificate Attached)

NATURE OF ACTION (Check One Box Below)

- |  |  |  |  |
|--|--|--|--|
| <p><b>Contracts</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Constructions (100)</li> <li><input type="checkbox"/> Debt Collection (110)</li> <li><input type="checkbox"/> General (130)</li> <li><input type="checkbox"/> Breach of Contract (140)</li> <li><input checked="" type="checkbox"/> Fraud/Bad Faith (150)</li> <li><input type="checkbox"/> Failure to Deliver/Warranty (160)</li> <li><input type="checkbox"/> Employment Discrim (170)</li> <li><input type="checkbox"/> Employment (180)</li> <li><input type="checkbox"/> Other (199)</li> </ul> <p><b>Inmate Petitions</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> PCR (500)</li> <li><input type="checkbox"/> Mandamus (520)</li> <li><input type="checkbox"/> Habeas Corpus (530)</li> <li><input type="checkbox"/> Other (599)</li> </ul> <p><b>Special/Complex /Other</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Environmental (600)</li> <li><input type="checkbox"/> Automobile Arb. (610)</li> <li><input type="checkbox"/> Medical (620)</li> <li><input type="checkbox"/> Other (699)</li> <li><input type="checkbox"/> Sexual Predator (510)</li> <li><input type="checkbox"/> Permanent Restraining Order (680)</li> <li><input type="checkbox"/> Interpleader (690)</li> </ul> | <p><b>Torts - Professional Malpractice</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Dental Malpractice (200)</li> <li><input type="checkbox"/> Legal Malpractice (210)</li> <li><input type="checkbox"/> Medical Malpractice (220)</li> <li>Previous Notice of Intent Case # <u>20-NI-</u></li> <li><input type="checkbox"/> Notice/ File Med Mal (230)</li> <li><input type="checkbox"/> Other (299)</li> </ul> <p><b>Administrative Law/Relief</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Reinstate Drv. License (800)</li> <li><input type="checkbox"/> Judicial Review (810)</li> <li><input type="checkbox"/> Relief (820)</li> <li><input type="checkbox"/> Permanent Injunction (830)</li> <li><input type="checkbox"/> Forfeiture-Petition (840)</li> <li><input type="checkbox"/> Forfeiture-Consent Order (850)</li> <li><input type="checkbox"/> Other (899)</li> </ul> | <p><b>Torts - Personal Injury</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Conversion (310)</li> <li><input type="checkbox"/> Motor Vehicle Accident (320)</li> <li><input type="checkbox"/> Premises Liability (330)</li> <li><input type="checkbox"/> Products Liability (340)</li> <li><input type="checkbox"/> Personal Injury (350)</li> <li><input type="checkbox"/> Wrongful Death (360)</li> <li><input type="checkbox"/> Assault/Battery (370)</li> <li><input type="checkbox"/> Slander/Libel (380)</li> <li><input type="checkbox"/> Other (399)</li> </ul> <p><b>Judgments/Settlements</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Death Settlement (700)</li> <li><input type="checkbox"/> Foreign Judgment (710)</li> <li><input type="checkbox"/> Magistrate's Judgment (720)</li> <li><input type="checkbox"/> Minor Settlement (730)</li> <li><input type="checkbox"/> Transcript Judgment (740)</li> <li><input type="checkbox"/> Lis Pendens (750)</li> <li><input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760)</li> <li><input type="checkbox"/> Confession of Judgment (770)</li> <li><input type="checkbox"/> Petition for Workers Compensation Settlement Approval (780)</li> <li><input type="checkbox"/> Incapacitated Adult Settlement (790)</li> <li><input type="checkbox"/> Other (799)</li> </ul> | <p><b>Real Property</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Claim &amp; Delivery (400)</li> <li><input type="checkbox"/> Condemnation (410)</li> <li><input type="checkbox"/> Foreclosure (420)</li> <li><input type="checkbox"/> Mechanic's Lien (430)</li> <li><input type="checkbox"/> Partition (440)</li> <li><input type="checkbox"/> Possession (450)</li> <li><input type="checkbox"/> Building Code Violation (460)</li> <li><input type="checkbox"/> Other (499)</li> </ul> <p><b>Appeals</b></p> <ul style="list-style-type: none"> <li><input type="checkbox"/> Arbitration (900)</li> <li><input type="checkbox"/> Magistrate-Civil (910)</li> <li><input type="checkbox"/> Magistrate-Criminal (920)</li> <li><input type="checkbox"/> Municipal (930)</li> <li><input type="checkbox"/> Probate Court (940)</li> <li><input type="checkbox"/> SCDOT (950)</li> <li><input type="checkbox"/> Worker's Comp (960)</li> <li><input type="checkbox"/> Zoning Board (970)</li> <li><input type="checkbox"/> Public Service Comm. (990)</li> <li><input type="checkbox"/> Employment Security Comm (991)</li> <li><input type="checkbox"/> Other (999)</li> </ul> |
|--|--|--|--|

Submitting Party Signature:

Hope Dukes Nicole Dukes.

Date:

7/13/2022

RENEE DAVIS  
CLERK OF COURT  
HORRY COUNTY, SC  
2022 JUL 13 P 4:58  
FILED  
HORRY COUNTY

PAID

**Note:** Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

Effective January 1, 2016, Alternative Dispute Resolution (ADR) is mandatory in all counties, pursuant to Supreme Court Order dated November 12, 2015.

**SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.**

**Pursuant to the ADR Rules, you are required to take the following action(s):**

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210<sup>th</sup> day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs.
4. Cases are exempt from ADR under ADR Rule 3(b) upon the following grounds:
  - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
  - b. Requests for temporary relief;
  - c. Appeals;
  - d. Post Conviction relief matters;
  - e. Contempt of Court proceedings;
  - f. Forfeiture proceedings brought by governmental entities;
  - g. Mortgage foreclosures; and
  - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. Cases may also be exempt from ADR under ADR Rule 3(c) upon motion to and approval by the court.
6. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
7. Application of a party to be exempt from payment of neutral fees due to indigency should be filed with the Clerk of Court prior to the scheduling of the ADR conference.

**Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

FILED  
HORRY COUNTY  
2022 JUL 13 P 4:56  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

STATE OF SOUTH CAROLINA,

COUNTY OF HORRY

Hope Dukes and Nicole Dukes  
Plaintiff,

vs.

Redfin Corporation, Christine LeFont, Rodolfo A. Pisigan Jr.,  
Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan  
Defendant.

IN THE COURT OF COMMON PLEAS

SUMMONS

FILE NO. 2022-CH-26  
CLERK OF COURT  
HORRY COUNTY, SC  
FILED  
HORRY COUNTY  
JUL 13 P 4:56

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

\_\_\_\_\_, South Carolina

Plaintiff/Attorney for Plaintiff  
Hope Dukes and Nicole Dukes

Dated: July 13, 2022

Address: 6253 Catalina Dr. Unit 812  
North Myrtle Beach, SC 29582

2022-CP-26-4440

July 13, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

CIVIL ACTION COMPLAINT

Hope Dukes & Nicole Dukes, Plaintiffs (Pro se)  
Property Address: 6253 Catalina Dr. Unit 812  
North Myrtle Beach, S.C. 29582  
(201) 304-1149  
dukeshope@gmail.com

vs.

Redfin Corporation (SELLER'S REAL ESTATE BROKER)  
1099 Stewart St.  
Suite 600  
Seattle, WA 98101  
Leighann.birkinshaw@redfin.com  
AND

Christine LeFont (SELLER'S AGENT-EMPLOYED BY REDFIN)  
1031 Chuck Dawley Blvd Suite 7 B-1  
Mt Pleasant, S.C. 29464  
(843) 516-2156  
Christine.lefont@redfin.com  
Agent License #: SC: 77126  
AND

Rodolfo A. Pisigan Jr., Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan (ALL OF THE SELLERS)  
13957 Winding Ridge Lane  
Centreville, VA 20121  
jeremypisigan@yahoo.com

ALL DEFENDANTS (TOTAL OF SIX DEFENDANTS)

Civil Lawsuit Amount:

Hope Dukes and Nicole Dukes are seeking the following relief:

1. A brand-new Lennox HVAC System purchased by the sellers. \$8,290.00
  2. A brand-new dryer A brand-new washing machine. Washing machine and dryer are an attach unit. \$1,782.92
  3. The entire laundry area completely cleaned from dust and debris at the sellers' expense. \$324.69
  4. A new front door purchased by the sellers. \$3,200.84
- TOTAL: \$13,598.45**

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CLERK OF COURT  
HORRY COUNTY, SC  
2022 JUL 13 P 4: 56

**PLUS:**

5. Court Cost: \$150.00
  6. Plumbing cost to unclog bathtubs: \$ 250.00
  7. Preparation of paperwork: \$461.97
  8. All Expenses of traveling to SC for this case: \$2,980.00
  9. Loss of income: \$4,710.00
  10. Temporary cleaning of the HVAC System: \$485.00
- TOTAL CIVIL LAWSUIT AMOUNT REQUESTED: \$22,635.42**

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2022 JUL 13 P 4: 56  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

**SUMMARY OF FACTS:**

1. Nicole and I, Hope Dukes, purchased our first home in our 20s. Being young and not being educated on buying a home, we made many mistakes. Now, at ages 33 and 39, much wiser and educated on purchasing a home, we knew exactly what we wanted and exactly what we were looking for.
2. Specifically, we were looking to purchase a 2-bedroom, 2-bathroom townhouse or condo, \$250,000.00 was our maximum purchase price, and we were not looking to purchase a home that had issues nor had any issues with the major appliances. Our agent, Jerome Bannister, knew all of this. 6253 Catalina Drive Unit 812 fit our criteria; we were told that the owners properly maintained the property since 2007. The home was originally listed for \$259,000.00; we put in an offer for \$239,000.00 plus \$10,000.00 seller's concession. (Exhibit A)
3. Jerome Bannister informed us that there was no way that the seller would accept an offer for \$239,000.00. He actually encouraged us to put in an offer that was higher than the asking price, but we refused. Once we received the disclosure statement (Exhibit B) and we saw that it stated that the HVAC system was only approximately 3 years old, which is fairly new, we visually saw that the dish washer was new, and we were told that the property was well maintained, we decided to put an offer in for \$250,000.00 and the offer was accepted. On page 3 of the disclosure statement, it states that the approximate age of the HVAC system was "3 years old." After we signed the contract, paid the earnest deposit in the amount of \$2,000.00, and paid for the inspection, the inspection report revealed that the HVAC system was near the end of its life expectancy and it was 15 plus years old; therefore, we were lied to from the beginning when there were multiple properties for sale in the same community, going for around the same asking price that we could have purchased instead. After we closed on the property, we realized that almost the entire disclosure statement was an absolute lie, which is prohibited by the South Carolina State Law to purposely lie on the disclosure statement, which is attached below in this packet. Page 2 of the disclosure statement asks if there are any problems, which "problem includes defects, malfunctions, damages, conditions, or characteristics. After the closing, we found out the following defects, malfunctions, damages, conditions, and/or characteristics and the disclosure statement clearly stated that there were no defects, malfunctions, damages, conditions, or characteristics:

- Plumbing system

- Appliances (washer & dryer)
- HVAC system's old age
- Door
- Drainage (On page 3 of disclosure statement)

From our understanding, as per Christine LeFont, the sellers never lived in the property and lived in Virginia. (Email from Christine LeFont (**Exhibit C**)) From our understanding, Christine LeFont, of Redfin Corporation, is the person who blatantly committed fraud by lying on the disclosure statement; after she filled it out, she sent it to all parties to eSign. Now that there are issues, Christine LeFont and Redfin Corporation are pointing the finger at the sellers; therefore, parties are named in this lawsuit.

4. **Exhibit D** is the contract.
5. **Exhibit E** is the addendum that we had to sign in order to include the names of the other sellers in the contract.
6. Carolina Inspections was hired to do an inspection on the property and they inspected the property on March 24, 2022. **Exhibit F** is a copy of the inspection report.
7. Once we received the inspection report, we emailed our closing attorney in order for her to negotiate with the sellers the list of things that we wanted done based on the inspection report. (**Exhibit F**) Being that the inspection report said that the HVAC system was at the end of its life, we originally wanted the HVAC system to be replaced. Our attorney emailed us back and informed us that in South Carolina, the buyer's agent negotiates with the seller's agent (also **Exhibit G**).
8. Jerome Bannister told us that the sellers agreed to do everything on the list except for replacing the HVAC system. Additionally, Jerome Bannister informed us that there was an active extended warranty on the HVAC system that would cover the HVAC system if it failed for any reason. He also told us that because there is an active extended warranty on the HVAC system, as new buyers for this property, we would be able to extend the extended warranty to cover the HVAC system even longer. **Exhibit H** are emails between Jerome Bannister and I (Hope Dukes) confirming this.

**Items Demanded on Original List (Before Closing):**

9. **Heat/AC:** The HVAC system is at the end of its life term as per the inspection report. The buyers originally wanted the sellers to purchase a new HVAC system, but the sellers' agent informed the buyers' agent that the sellers had an active extended warranty on the HVAC system that the buyers would be able to extend because it is already active on the HVAC system, therefore, the sellers agreed that they would give the buyers the information on the extended warranty for the HVAC System at the closing to ensure that the HVAC System was still covered under warranty and that the warranty could be extended. The sellers were not present at the closing. At the closing, the buyers were told that the extended warranty was left on the counter inside of the property. **THIS IS A LIE. ONCE THE BUYERS**

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 CLERK OF COURT  
 HENRY COUNTY, SC

RECEIVED THE KEYS TO THE PROPERTY AFTER THE CLOSING, THE EXTENDED WARRANTY INFORMATION FOR THE HVAC SYSTEM WAS NOT ON THE COUNTER AS THE BUYERS WERE TOLD. THE BUYERS ALSO CALLED LENNOX (800-953- 6669), THE MANUFACTURER OF THE HVAC SYSTEM, AND LENNOX INFORMED THE BUYER THAT THE HVAC SYSTEM NEVER HAD AN EXTENDED WARRANTY ON IT. LENNOX ALSO STATED THAT THE BUYERS COULD NOT PURCHASE AN EXTENDED WARRANTY ON THE HVAC SYSTEM BECAUSE OF THE SYSTEM'S AGE. THE EXTENDED WARRANTY FOR THE HVAC SYSTEM AND THE HOME WARRANTY THAT WAS INCLUDED IN THE CONTRACT ARE TWO DIFFERENT THINGS. THE HOME WARRANTY DOES NOT COVER THE HVAC SYSTEM AND IT DOES NOT COVER ANYTHING PRE-EXISTING. THE BUYERS WERE TOLD THAT THE SELLERS HAD AN EXTENDED WARRANTY ON THE HVAC SYSTEM AND THAT IS A LIE. EXHIBIT I IS A COPY OF AN EMAIL FROM THE SELLERS' AGENT TO THE BUYERS' AGENT, WHICH PROVES THAT THE SELLERS AGREED TO THIS AND THAT IT WAS NOT DONE. THE EMAIL ALSO STATES THAT IT WAS "OVERLOOKED." NOT ONLY IS IT UNETHICAL AND ILLEGAL FOR THE SELLERS AND THE SELLERS' AGENT TO LIE TO THE BUYERS AND THE BUYERS' AGENT, BUT THE SELLERS' AGENT ALSO LAUGHED "HAHA" IN THIS EMAIL, AS IF THIS IS FUNNY. EXHIBIT J ARE ADDITIONAL EMAILS FROM THE BUYERS' AGENT CONFIRMING THAT THE SELLERS' AGENT TOLD HIM THAT THE HVAC SYSTEM HAS AN EXTENDED WARRANTY AND WE WOULD RECEIVE IT AT CLOSING AND IT ALSO STATES THAT THE SELLERS' AGENT INFORMED HIM THAT THE MAINTAINENCE ON THE HVAC SYSTEM WAS DONE; THE SELLER'S AGENT LIED.

10. Heat/AC: Air Handler – As per the home inspection company, the coils are filled with dust debris, have system cleaned and serviced to provide increased efficiency and promote healthy living conditions. THE SELLERS AGREED TO CLEAN THE AIR HANDLER AND TO SERVICE THE HVAC SYSTEM. THIS WAS NOT DONE (EXHIBIT K). EXHIBIT I IS A COPY OF AN EMAIL FROM THE SELLERS' AGENT TO THE BUYERS' AGENT, WHICH PROVES THAT THE SELLERS AGREED TO THIS AND THAT IT WAS NOT DONE. THE EMAIL ALSO STATES THAT IT WAS "OVERLOOKED." NOT ONLY IS IT UNETHICAL AND ILLEGAL FOR THE SELLERS AND THE SELLERS' AGENT TO LIE TO THE BUYERS AND THE BUYERS' AGENT, BUT THE SELLERS' AGENT ALSO LAUGHED "HAHA" IN THIS EMAIL, AS IF THIS IS FUNNY. EXHIBIT J ARE EMAILS FROM THE BUYERS' AGENT CONFIRMING THAT THE SELLERS' AGENT TOLD HIM THAT THE HVAC SYSTEM HAS AN EXTENDED WARRANTY AND WE WOULD RECEIVE IT AT CLOSING AND IT ALSO STATES THAT THE SELLERS' AGENT INFORMED HIM THAT THE MAINTAINENCE ON THE HVAC SYSTEM WAS DONE; THE SELLER'S AGENT LIED.

11. Patio: Carpet is loose and wrinkled/lifting, recommend having the carpet stretched to prevent tripping hazard. DONE.

12. Kitchen: Exhaust – Front mounting bolts are loose, and the microwave is tilted forward, have the bolts tightened to allow microwave to be level as intended. DONE.
13. Laundry: Dryer Vent Type – Dryer vent has come loose from the rear of the dryer and is allowing lint to build up behind the washer/ dryer unit, have the hose secured and the area cleaned, which the sellers agreed to do. EXHIBIT L is an email from one of sellers, Jeremy Pisigan, stating that this was done. THIS IS A LIE. THE HOSE WAS NOT SECURED AND THE AREA WAS NOT CLEANED AS AGREED (EXHIBIT M), AND THE DRYER IS NOT WORKING PROPERLY.
14. The washing machine does not work. (EXHIBIT N) The washer and dryer attached unit was another thing that we were concerned about. We asked the inspection company to run it a full cycle while he was inspecting the property and he told us that he would. After the closing, when we got the keys to go into the property, we started the washing machine and dryer and neither of them work. We contacted the inspection company and the inspection company suggest that the sellers may have switched the washer/dryer unit after the inspection. Exhibit O is an email from the inspection company. We thought the 100-day inspection warranty would cover the cost of the washing machine being fixed, but they do not.
15. When we went to change the locks to the front door of the property after the closing, we found out that behind the silver metal plate that is on the front door, the front door is broken and has multiple holes. This is something that the sellers should have legally disclosed to the buyers. The metal plate was obviously put on the front door to hide the fact that the front door is broken. Due to the front door being broken, we haven't been able to successfully change the locks (EXHIBIT P).
16. The shower/bathtub in the main bathroom is backing up and does not drain the water out. (EXHIBIT Q).
17. Concerning the HVAC system:
  - I. Exhibit R are more emails between Jerome Bannister and us. In the email dated April 30, 2022, I specifically stated, "We are definitely not closing until we confirm that we are able to get an extended warranty on the heating and AC system." Jerome Bannister knew that we would not close on this property if the HVAC system did not have an extended warranty.
  - II. On May 3, 2022, Jerome Bannister informed via email (Exhibit S), "I spoke with the agent and they supplied me with the following info: This is the property management company, Southern Coast Vacations, and they have maintained the property for the last five years. They will take care of the HVAC maintenance. For extended warranty contact Southern Coast Vacations 800 978-4988."
  - III. I, Hope Dukes, contacted South Coast Vacations at the number listed above and I spoke to Kim (also Exhibit S). She told me the owner has the info on the extended warranty.

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 HORRY COUNTY  
 2022 JUL 13 P 4  
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She told me that she would try to get the info, but she called me back and told me I would need to get the information for the extended warranty on the HVAC system from the seller. (Exhibit T)

- IV. In an email from Jerome Bannister, also Exhibit T, he told me, Hope Dukes, that "You will have access to all the info at the closing. HVAC has had annual maintenance done Cleaning ect."
- V. On May 5, 2022, once we were cleared to close, I, Hope Dukes, texted Jerome Bannister about the extended warranty information to the HVAC system. (Exhibit U) He told us that he was working on it. During this process, Jerome Bannister told us that his daughter died, so, in empathy, we were trying to work with him and give him time to get the information, but, at this point, the closing date was approaching. We also sent Jerome Bannister and his wife flowers to show our condolences for his daughter's death. He address that he provided us. EXHIBIT V
- VI. On May 6, 2022, I, Hope Dukes, contacted Jerome Bannister via email, and asked him if he received the extended warranty information of the HVAC system, (Exhibit W) Jerome Bannister called us and told us that we would receive all of the extended warranty information at the closing and we believed him.
- VII. At the walk through on May 10, 2022, Jerome Bannister stopped us before we went into the property and specifically said "In South Carolina, you don't have access to the property or the information pertaining to the property until the deed has been recorded." He told us once we close, we would get the extended warranty information and everything else we need pertaining to the property. We believed him. We could visibly see that the property was fine, but we are not inspectors, we could not detect the specific things that we agreed upon that were not done.
- VIII. South Carolina laws states that the sellers and sellers' agent must fill out the disclosure form truthfully; they lied on it. Once we moved in, we found multiple things that were wrong with the property and we found out the sellers did not do what they agreed upon. We closed on May 10, 2022 at 2pm. Our first email to our agent and our attorney stating the issues that we had found at that point was sent on May 12, 2022. (EXHIBIT X) As we continued to detect more lies, we sent additional emails on May 14, 2022 and May 16, 2022 to our agent and our attorney. (EXHIBIT Y) Once our attorney called us and told us that we would need to take legal action against the sellers and sellers' agent, we sent a formal letter to all parties involved on May 18, 2022 via email, regular mail, and certified mail, return receipt. (EXHIBIT Z) Our attorney also emailed us after receiving the demand letter as well and gave us an attorney to use in order to take legal action. (EXHIBIT AA)
- IX. The sellers never responded. Redfin Corporation never responded. The sellers' agent, Christine LeFont, began to send me multiple emails directly, once she received the first demand letter. Exhibit BB are copies of Christine Lefont's emails to me, Hope Dukes,


directly. Christine LeFont acknowledges that the stuff was not done as agreed, but her nor the sellers are willing to do everything they agreed upon.

- X. Additionally, we were given a home warranty in our contract. (EXHIBIT CC) We were told that this home warranty would cover anything that went wrong inside of our property for one year. From our understanding, our agent is part owner of this home warranty company, which we did not know until after the closing. We should have known this upfront. However, when we filed a claim with the home warranty company as we were told to do by BOTH agents, as per the home warranty company, this home warranty does NOT cover anything inside of our property because of the age of everything inside of our property; it is too old.
18. Once problems continued to arise, we obtained legal advice, and we did research on our own, we sent a second demand letter on May 30, 2022 (with over 100 pages of attachments which are also included in this packet) via email, regular mail, and certified mail, return receipt. EXHIBIT DD We also filed complaints with National Realtors Associations, South Carolina Association of Realtors, State of South Carolina State Ethics Commission, and the South Carolina Department of Labor, Licensing and Regulation. (Complaint #: 137-3059224769)
19. The South Carolina Department of Labor, Licensing and Regulation received the complaint and is currently investigating the matter. (EXHIBIT EE) The investigator Michael Smith informed us that we need to file for legal action in order to receive monetary compensation.
20. Tammy Trenholm, a representation of Redfin Corporation and Christine LeFont, responded to our second demand letter and stated, "Redfin has reviewed the allegations in your letters, and on behalf of Christine and Redfin, Redfin respectfully declines your demand for payment and/or replacement of items in your home. If you wish to have further conversations with the sellers regarding your letters, you will need to do so with them directly." (EXHIBIT FF) South Carolina Real Estate companies also have Errors and Omissions Insurance, which Redfin Corporation is not willing to go through. Additionally, the South Carolina state laws and Code of Ethics state that the seller's agent is supposed to mediate to settle disputes. Christine LeFont nor Redfin Corporation have been willing to mediate this dispute to find a solution.
21. South Carolina Association of Realtors investigated the claims. On June 30, 2022, as per their protocol, the Grievance Committee had a meeting to review our complaints and all of the attachments submitted to them. After review of all the evidence, the Grievance Committee made a decision that the complaint will be referred to a hearing panel against Christine LeFont of Redfin Corporation for violation of Article 1 of the Code of Ethics and Standards of Practice. (EXHIBIT GG) Linda Pittman, Director of the South Carolina Association of Realtors, also informed us that we need to file for legal action in order to receive monetary compensation.


Due to the forgoing statements and all of the evidence submitting, Hoppe Dukes and Nicole Dukes are suing for the total amount of \$ \$22,635.42. Additional receipts will be provided upon request and/or at the hearing.

We, Hope Dukes and Nicole Dukes, certify that the foregoing statements are true to the best of our knowledge.

Thank you,



Hope Dukes



Nicole Dukes

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HORRY COUNTY  
2022 JUL 13 P 4: 57  
RENEE N. ELYS  
CLERK OF COURT  
HORRY COUNTY, SC

# **EXHIBIT**

**B**

STATE OF SOUTH CAROLINA )

COUNTY OF HORRY )

Hope Dukes and Nicole Dukes )  
Plaintiff, )

vs. )

Redfin Corporation, Christine LeFont, )  
Rodolfo A. Pisigan Jr., )  
Portia O. Pisigan, Jeremy Pisigan, and )  
Cherry C. Pisigan )  
Defendant. )

IN THE FAMILY COURT  
SC JUDICIAL CIRCUIT

AFFIDAVIT OF MAILING

Docket No. 2002-CP-26-4440

Personally appeared \_\_\_\_\_ who states that (s)he served the \_\_\_\_\_ with a copy of the \_\_\_\_\_ by mailing:

(Check one)

First class mail

Certified mail

restricted delivery

return receipt requested

in the United States Mail, with proper postage attached and receipt attached (if applicable);

by commercial delivery service pursuant to Rule 4(d)(9), SCRCP and delivery record attached;

on 07/14/2022 (date) addressed as follows:

Redfin Corporation 1099 Stewart Street Suite 600 Seattle, WA 98101

AND Christine LeFont 1031 Chuck Dawley Blvd. Suite 7B-1

Mt. Pleasant, SC 29464

Sworn to before me this

15 day of August, 2022

[Signature]  
Notary Public of South Carolina

My Commission expires: 06/08/2030

SCCA 406 (5/2013)

Matthew Elam Caldwell  
Notary Public, State of South Carolina  
My Commission Expires June 8, 2030

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HORRY COUNTY  
2022 AUG 15 A 10:33  
RENEE H. ELY  
CLERK OF COURT  
HORRY COUNTY, SC

[Signature]  
Affiant

# **EXHIBIT**


**C**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Redfin Corporation  
1099 Stewart St  
Suite 600  
Seattle, WA 98101



9590 9402 5834 0034 2300 93

2. Article Number (Transfer from service label)  
7020 2450 0000 5661 7663

PS Form 3811, July 2015 PSN 7530-02-000-8053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X MB  Agent  
 Addressee

B. Received by (Printed Name)  
MB

C. Date of Delivery  
8/16

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

RENEE N. ELVIS  
CLERK OF COURT  
HARRIS COUNTY  
2022 AUG 15 A 10:33

3. Service Type  
 Adult Signature  
 Adult Signature Restricted Delivery  
 Certified Mail  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery  
 Insured Mail  
 Insured Mail Restricted Delivery (over \$500)

Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted Delivery  
 Return Receipt for Merchandise  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery


Domestic Return Receipt

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Christine LeFont  
Redfin Corporation  
1031 Chuck Dowley Blvd.  
Suite 78-1  
Mt Pleasant, SC 29464



9590 9402 5843 0038 3941 71

2. Article Number (Transfer from service label)  
7020 2450 0000 5661 7731

PS Form 3811, July 2015 PSN 7530-02-000-8053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
X [Signature]  Agent  
 Addressee

B. Received by (Printed Name)  
[Signature]

C. Date of Delivery  
8/14

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

RENEE N. ELVIS  
CLERK OF COURT  
HARRIS COUNTY  
2022 AUG 15 A 10:33

3. Service Type  
 Adult Signature  
 Adult Signature Restricted Delivery  
 Certified Mail  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery  
 Insured Mail  
 Insured Mail Restricted Delivery (over \$500)

Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted Delivery  
 Return Receipt for Merchandise  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery

Domestic Return Receipt

# **EXHIBIT**

**D**

August 16, 2022

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

MOTION FOR ENTRY OF DEFAULT AND A JUDGMENT BY DEFAULT AS PER  
**FEDERAL RULE 55 AND SOUTH CAROLINA RULE 55**  
AGAINST

Redfin Corporation, DEFENDANT

Entry of Default and the Default Judgement Amount **\$22,635.42**

Hope Dukes & Nicole Dukes, Plaintiffs (Prose)  
Property Address: 6253 Catalina Dr. Unit 812  
North Myrtle Beach, S.C. 29582  
201-304-1149  
dukeshope@gmail.com

vs.

Redfin Corporation (SELLER'S REAL ESTATE BROKER)  
1099 Stewart St.  
Suite 600  
Seattle, WA 98101  
Leighann.birkinshaw@redfin.com  
AND

Christine LeFont (SELLER'S AGENT-EMPLOYED BY REDFIN)  
1031 Chuck Dawley Blvd Suite 7 B-1  
Mt Pleasant, S.C. 29464  
(843) 516-2156  
Christine.lefont@redfin.com  
Agent License #: SC: 77126  
AND

Rodolfo A. Pisigan Jr., Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan  
(ALL OF THE SELLERS)  
13957 Winding Ridge Lane  
Centreville, VA 20121  
jeremypisigan@yahoo.com

FILED  
HORRY COUNTY  
2022 AUG 16 A 9:00  
TERREN M. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

**AS PER FEDERAL RULE 55 AND SOUTH CAROLINA RULE 55 DEFAULT:**

This Rule 55(a) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) permits the Clerk to enter judgments by default for sums certain if the defendant does not answer the complaint within 30 days after the service hereof, exclusive of the

day of such service, and if fail to answer, judgement by default will be rendered against the defendant for the relief demanded in the complaint.

**REDFIN CORPORATION FAILED TO ANSWER THE COMPLAINT WITHIN 30 DAYS; THEREFORE, A JUDGEMENT BY DEFAULT SHOULD BE ENTERED AGAINST THEM.**

**TOTAL JUDGEMENT OF DEFAULT AMOUNT: \$22,635,442**

Summary of Facts:

1. On July 13, 2022, the plaintiffs filed a Civil Action complaint with the Horry County Court of Common Pleas, which included the complaint along with several attachments. Docket #: 2022-CP-26-4440. **Exhibit A** is copy of the complaint paperwork without all of the attachments.
2. On Page 3 of **Exhibit A**, it specifically states in writing: "... TO THE DEFENDANT ABOVE-NAMED: YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint." Therefore, Redfin Corporation knew that they specifically had 30 days to answer the complaint after the service hereof, exclusive of the day of such service, and if they failed to answer, judgement by default will be rendered against them for the relief demanded in the complaint.
3. On July 14, 2022, the plaintiffs mailed a copy of the entire complaint to all of the defendants via USPS Priority Mail, Certified Mail Return Receipt.
4. On July 16, 2022, Redfin Corporation signed for the package, which included the complaint and all of the attachments. (**Exhibit B**)
5. On August 15, 2022, the plaintiffs filed the Affidavit of Mailing (**Exhibit C**), which is mandatory according to the court rules.
6. Redfin Corporation was required by law to file an answer by August 15, 2022 and they did not. Nicole Dukes (one of the plaintiffs), has been in South Carolina since July 8, 2022 and she has stayed in South Carolina since we filed the complaint to make sure we would receive defendants' answers as soon as they filed and sent the answer to us, so we would have time to respond right away. Redfin did not file an answer at all.
7. The plaintiffs know that they sent the complaint to the correct address because the address that they sent the complaint to: Redfin Corporation, 1099 Stewart St. Suite 600 Seattle, WA 98101, is the address listed on Redfin's website as their Headquarters. (**Exhibit D**)
8. The plaintiffs also know that this is Redfin Corporation's address because they sent Redfin Corporation two demand letters to this same address prior to filing the complaint; One on May 18, 2022 and one on May 30, 2022. Redfin Corporation received both demand letters at this same address and they had a representative of Redfin Corporation, Tammy Trenholm, respond to the plaintiffs' demand letters on June 6, 2022. (**Exhibit E**)
9. Redfin Corporation is a full-service real estate brokerage. According to the South Carolina Code of Laws, Title 40 - Professions and Occupations

**CHAPTER 57:**

**Real Estate Brokers, Brokers-in-Charge, Salespersons, and Property Managers  
ARTICLE 1 SECTION 40-57-30. Definitions.**

For purposes of this chapter:

(1) "Agent" means one authorized and empowered by a written agency agreement to perform actions for a client. A real estate brokerage firm is the agent of a buyer, seller, landlord, or tenant, and the real estate brokerage firm's "associated licensees" are its subagents.

(2) "Associated licensee" means a licensee affiliated with and under the supervision of a broker-in-charge or property manager-in-charge.

Christine LeFont is an associated licensee under the supervision of Redfin Corporation. They had the legal duty under the South Carolina Laws not to tell lies during a real estate transaction and they did. Redfin Corporation also has Errors and Omissions insurance and general insurance that covers them in situations like this.

**REDFIN CORPORATION FAILED TO ANSWER THE COMPLAINT WITHIN 30 DAYS, WHICH IS FEDERAL AND SOUTH CAROLINA STATE LAW; THEREFORE, A JUDGEMENT BY DEFAULT SHOULD BE ENTERED AGAINST REDFIN CORPORATION IN THE AMOUNT OF \$22,635.42**

Summary of Actual Receipts/Quotes for Total Judgement Default Amount of: \$25,686.98  
(Previous numbers submitted in the complaint filed on July 13, 2022 were estimates).

1. A brand-new Lennox HVAC System purchased by the sellers: \$7,667.13 **(Exhibit F)**
2. A brand-new dryer A brand-new washing machine. Washing machine and dryer are an attach unit: \$1,888.37 **(Exhibit G)**
3. The entire laundry area completely cleaned from dust and debris at the sellers' expense: \$324.69 **(Exhibit H)**
4. A new front door purchased by the sellers: \$3,207.50 plus installation \$798.00 = **\$4,005.50 (Exhibit I)**
5. Court Cost: \$150.00 **(Exhibit J)**
6. Plumbing cost to unclog bathtubs: \$ 250.00 **(Exhibit K)**
7. Preparation of paperwork: \$520.21 **(Exhibit L)**
8. All Expenses of traveling to SC for this case: \$6,021.08 **(Exhibit M)**
9. Loss of income: \$4,710.00 – The point of families renting an Airbnb is for a home experience that includes a washer and a dryer. According to the Airbnb guidelines, we had to charge \$30 per night LESS than what our Airbnb rate would be per night because our Airbnb does not have a working washing machine and dryer. Our first guest was May 27, 2022. May 27, 2022 to August 16, 2022 is 81 days. So far we have lost \$2,430.00 in income for not having a working washer machine and dryer. We will continue to lose money daily until this judgement is paid for us to purchase a new washer and dryer. Despite the fact that we have it listed on our Airbnb page that we do not have a washer and a dryer in the unit, some guest still complained **(Exhibit N)** and some guests do not book with us at all. Additionally, the plaintiffs have lost a lot of income from

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JUDGE N. ELVIS  
CLERK OF COURT  
MURPHY COUNTY, SC

constantly taking off of work to travel back and forth to South Carolina due to issues with the Airbnb and this lawsuit.

10. Temporary cleaning of the HVAC System: \$150.00 (company gave us a big discount considering what we are going through with all of these issues). (Exhibit O)

**TOTAL CIVIL LAWSUIT AMOUNT REQUESTED: \$22,635.42**

TOTAL AMOUNT OF RECEIPTS SUBMITTED: \$25,686.98

Due to the forgoing statements and all of the evidence submitted, a judgement by default should be entered against Redfin Corporation in the amount of \$22,635.42.

We, Hope Dukes and Nicole Dukes, certify that the foregoing statements are true to the best of our knowledge.

Thank you,

X.   
Hope Dukes

X.   
Nicole Dukes

6253 Catalina Dr.  
Unit 812  
North Myrtle Beach, SC  
~~29582~~  
201-304-1149  
201-560-2946

The defendants did not serve the plaintiffs with their answer as it is required by federal and South Carolina state laws within 30 days of the receipt of the complaint. (10)nd

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CLERK OF COURT  
HENRY COUNTY, SC

2022 AUG 16 A 9:00

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HENRY COUNTY

# **EXHIBIT**

**E**

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE COURT OF CIRCUIT COURT

Hope Dukes and Nicole Dukes,  
Plaintiffs,

Case No. 2022-CP-26-4440

vs.

**RETURN TO PLAINTIFFS' MOTION FOR  
ENTRY OF DEFAULT AND A JUDGMENT  
BY DEFAULT ON BEHALF OF  
DEFENDANT REDFIN CORPORATION**

Redfin Corporation, Christine LeFont,  
Rodolfo A Pisigan Jr., Portio O. Pisigan,  
Jeremy Pisigan, and Cherry C. Pisigan,

Defendants.

Defendant Redfin Corporation ("**Redfin**"), by and through its undersigned attorneys, hereby submits this Return to Plaintiffs' Motion for Entry of Default and a Judgment by Default ("**Motion**"), filed on August 16, 2022. For the reasons set forth below, Plaintiff's Motion should be denied.

#### **FACTUAL BACKGROUND**

Plaintiffs filed their Complaint on July 13, 2022. The following day, on July 14, 2022, Plaintiffs allege they sent a copy of the Complaint to Redfin via certified mail. (Motion, p. 3). On July 16, 2022, Redfin signed the return receipt after accepting receipt of the mailed Complaint. (Motion, Ex. B). On August 19, 2022, Redfin, alongside Defendant Christine LeFont, filed a Motion to Strike and Motion to Dismiss.

#### **ARGUMENT AND INCORPORATED LEGAL STANDARD**

Plaintiffs' Motion must be dismissed, because Redfin is not and has never been in default in this case. Plaintiffs fail to consider all the applicable rules setting forth the deadline by which to file a responsive pleading. While a defendant "shall serve [its] answer

within 30 days after the service of the complaint upon [it].” Rule 12(a), SCRCP, Rule 6 of the South Carolina Rules of Civil Procedure, provides:

a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, ***five days shall be added to the prescribed period.***

Rule 6(e), SCRCP (emphasis added). In this case, Redfin was served via mail. Therefore, the five-day rule applies under Rule 6(e), and Redfin’s responsive pleading is due August 22, 2022.<sup>1</sup> Because Redfin filed its Motion to Strike and Motion to Dismiss on August 19, 2022, it complied with all applicable rules and did not default for failing to respond in time.

#### CONCLUSION

Based on the foregoing, Redfin is not in default, and, at minimum, Plaintiffs have not met their burden of establishing that Redfin is in default. Therefore, Plaintiffs’ Motion should be denied and Redfin respectfully requests any further relief the Court deems just and proper.

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<sup>1</sup> Because the thirty-fifth day falls on August 20, 2022, a Saturday, pursuant to Rule 6(a) of the South Carolina Rules of Civil Procedure, the period runs until the end of the next day which is not a Saturday, Sunday, or holiday, making Monday, August 22, 2022, the deadline by which Redfin must file a responsive pleading.

/s Cheryl D. Shoun

Cheryl D. Shoun SC Bar No. 5092

cshoun@nexsenpruet.com

Rhett D. Ricard SC Bar No. 102353

rricard@nexsenpruet.com

NEXSEN PRUET, LLC

205 King Street, Suite 400 (29401)

P.O. Box 486

Charleston, SC 29402

Phone: (843) 577-9440

Fax: (843) 720-1777

August 19, 2022  
Charleston, South Carolina

Attorneys for Defendants  
Redfin Corporation and Christine LeFont

# **EXHIBIT**

**F**

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

IN THE CIRCUIT COURT

Hope Dukes and Nicole Dukes,  
Plaintiffs,

Case No. 2022-CP-26-4440

vs.

**SUPPLEMENTAL MEMORANDUM IN  
OPPOSITION TO PLAINTIFFS' MOTION  
FOR DEFAULT JUDGMENT**

Redfin Corporation, Christine LeFont, Rodolfo  
A Pisigan Jr., Portio O. Pisigan, Jeremy  
Pisigan, and Cherry C. Pisigan,  
Defendants.

Defendants Redfin Corporation (“**Redfin**”), by and through its undersigned attorneys, hereby submit this Supplemental Memorandum in Opposition to Plaintiffs’ Motion for Default Judgment (“**Motion**”), filed on August 16, 2022. This Supplemental Memorandum (“**Supplemental Memorandum**”) is filed based upon a newly obtained Affidavit and supplements the original Memorandum in Opposition (“**Memorandum**”) filed on November 18, 2022. For the reasons set forth below, Plaintiffs’ Motion for Default Judgment should be denied.

**FACTUAL AND PROCEDURAL BACKGROUND**

Redfin is a nationwide residential real estate brokerage, licensed in South Carolina. Christine Lefont (“**Ms. Lefont**”) is a real estate agent who works with Redfin. Ms. Lefont acted as the sellers’ agent in the transfer of ownership of the property commonly known as 6253 Catalina Drive, Unit 812, North Myrtle Beach, South Carolina (the “**Property**”). Defendants Rodolfo A. Pisigan Jr., Portio O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan were the sellers (collectively, “**sellers**”). Plaintiffs entered into an agreement to buy the Property (the “**Agreement**”) on or about March 16, 2022.

Plaintiffs filed their Complaint on July 13, 2022, based on allegations originating from the Agreement and the Property. (Compl.) The following day, on July 14, 2022, Plaintiffs allege they sent a copy of the Complaint to Redfin via certified mail to 1099 Stewart Street, Seattle, Washington (“**Redfin Location**”). (Motion, ¶ 3.) Plaintiffs did not serve Ms. Lefont until August 4, 2022. (Memorandum, Exhibit C.)

According to Plaintiffs, Redfin purportedly signed the return receipt after accepting receipt of the mailed Complaint on July 16, 2022. (Enclosure 1, Affidavit of Emily Cisneros, Exhibits A & B.) However, as set forth in the Affidavit of Emily Cisneros, July 16, 2022 was a Saturday and Redfin is not open for business on Saturdays, in general, and was not open on the specific Saturday of the purported delivery. (Enclosure 1, Affidavit of Emily Cisneros ¶ 6.) Further, despite the return receipt being signed by someone with the initials “MB,” there is no employee or authorized agent or representative of Redfin at the Redfin Location with the initials of “MB.” (Enclosure 1, Affidavit of Emily Cisneros ¶ 7.) Inquiry was even made of the employees working at the Redfin Location and no one is aware of the identity of the individual associated with the initials “MB.” (Enclosure 1, Affidavit of Emily Cisneros ¶ 7.) Because Redfin is not the sole occupant of the facility located at the Redfin Location, it is believed Plaintiff’s Complaint was left with an individual not employed by or otherwise affiliated with Redfin, who just happened to be present in the lobby of the building at the Redfin Location. (Enclosure 1, Affidavit of Emily Cisneros ¶ 8.) Redfin did not become aware of Plaintiff’s Complaint until after Ms. LeFont was served on August 4, 2022. On August 19, 2022, Redfin, alongside Defendant Christine LeFont, filed a Motion to Strike and Motion to Dismiss.

## ARGUMENT

In light of the newly obtained Affidavit of Emily Cisneros, Plaintiff’s Motion for Default

Judgment can quickly be resolved in Redfin's favor. Because Redfin timely responded to Plaintiff's Complaint, Redfin has never been in default in this case nor subject to default judgment. Importantly, Redfin was never properly served, because no employee or authorized agent of Redfin ever received Plaintiffs' Complaint. Redfin did not become aware of Plaintiffs' Complaint until after Ms. LeFont was served on August 4, 2022. Therefore, Redfin timely filed a responsive pleading on August 19, 2022 within the thirty-day deadline set forth in Rule 12(a) of the South Carolina Rules of Civil Procedure. Therefore, Plaintiffs' Motion must be denied and consideration of the pending Motion to Dismiss the Complaint entertained by the Court.

Respectfully submitted,

/s Cheryl D. Shoun

Cheryl D. Shoun SC Bar No. 5092

cshoun@nexsenpruet.com

Rhett D. Ricard SC Bar No. 102353

rricard@nexsenpruet.com

NEXSEN PRUET, LLC

205 King Street, Suite 400 (29401)

P.O. Box 486

Charleston, SC 29402

Phone: (843) 577-9440

Fax: (843) 720-1777

December 29, 2022  
Charleston, South Carolina

Attorneys for Defendants  
Redfin Corporation and Christine LeFont

# **EXHIBIT**

**G**

January 19<sup>th</sup>, 2023

STATE OF SOUTH CAROLINA COUNTY OF HORRY

Case No. 2022-CP-26-4440

MOTION TO DENY AND STRIKE THE DEFENDANTS' (REDFIN CORPORATION AND CHRISTINE LEFONT) SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT (PLAINTIFFS' ANSWER)

Hope Dukes & Nicole Dukes, Plaintiffs (Pro se)

vs.

Redfin Corporation, Christine LeFont – Attorneys for both: Cheryl D. Shoun  
cshoun@nexsenpruet.com

Rhett D. Ricard  
rricard@nexsenpruet.com  
NEXSEN PRUET, LLC  
205 King Street, Suite 400 (29401)  
P.O. Box 486  
Charleston, SC 29402  
Phone: (843) 577-9440  
Fax: (843) 720-1777

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HORRY COUNTY  
2023 FEB 22 P 1:53  
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CLERK OF COURT  
HORRY COUNTY, SC

AND

Rodolfo A. Pisigan Jr., Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan

THE PLAINTIFFS REQUEST THAT THE COURT DENIES AND STRIKES DEFENDANTS' (REDFIN CORPORATION AND CHRISTINE LEFONT) SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT FOR FOLLOWING REASONS:

Rule 12(a), SCRCP, Rule 6 of South Carolina Rules of Civil Procedure:

“(6) Service by Certified Mail. Service of a summons, complaint, and any appropriate attachments upon a defendant of any class referred to in paragraph (d)(1) or (d)(3) of this rule may be made by certified mail, return receipt requested and delivery restricted to the addressee. Service is effective upon the date of delivery as shown on the return receipt. Service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a return receipt showing the acceptance by the defendant.

AS PER FEDERAL RULE 55 AND SOUTH CAROLINA RULE 55 DEFAULT:

This Rule 55(a) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) permits the Clerk to enter judgments by default for sums certain if the

defendant does not answer the complaint within 30 days after the service hereof, exclusive of the day of such service, and if fail to answer, judgement by default will be rendered against the defendant for the relief demanded in the complaint.”

1. The Plaintiffs’ Motion for Entry of Default and a Judgement by default was only against Redfin Corporation. By Law: “JUDGMENT ON MULTIPLE CLAIMS OR INVOLVING MULTIPLE PARTIES. When an action presents more than one claim for relief-whether as a claim, counterclaim, crossclaim, or third-party claim-or when multiple parties are involved, the court may direct entry of a final judgment as to one or more.” All the defendants in this case were sent the paperwork at the same time. Christina Lefont kept refusing the package; that is why she was not served until August 4, 2022. Nonetheless, this is irrelevant to the Motion for Entry of Default and a Judgement by Default because it was only against Redfin Corporation. By law, an Entry of Default and a Judgement by default should be entered against Redfin Corporation.
2. On August 19, 2022, Cheryl D. Shoun (Attorney for Redfin Corporation), filed a “Return to Plaintiffs’ Motion for Entry of Default and a Judgment by Default.” In that motion, in the paragraph titled “FACTUAL BACKGROUND,” Redfin acknowledged and confirmed “On July 16, 2022, Redfin signed the return receipt after accepting receipt of the mailed Complaint,” in their own motion (EXHIBIT A). Redfin and their attorney cannot turn around almost 6 months later and send in a motion and affidavit stating that Redfin did not sign the return receipt and Redfin did not receive the package. This continues to prove Redfin’s acts of bad faith. Furthermore, the law does not state anything about receiving the original complaint on a Saturday or even a weekend. The law is clear cut: “AS PER FEDERAL RULE 55 AND SOUTH CAROLINA RULE 55 DEFAULT: This Rule 55(a) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) permits the Clerk to enter judgments by default for sums certain if the defendant does not answer the complaint within 30 days after the service hereof, exclusive of the day of such service, and if fail to answer, judgement by default will be rendered against the defendant for the relief demanded in the complaint.”

**ADDITIONAL FACTS:**

1. Plaintiffs filed their Complaint on July 13, 2022. According to the South Carolina Clerk’s Office, the plaintiffs had to file their complaint and all of pages in the complaint had to be “clocked (stamped)” by the court, prior to the plaintiffs serving the defendants. Due to their being so many pages in the plaintiffs’ complaint, by the time the South Carolina Clerk’s Office finished “clocking” every single page in the complaint, the US Post Office was closed.
2. The following day, on July 14, 2022, Plaintiffs sent a copy of the complaint to all the defendants, including Redfin Corporation via certified mail return receipt.
3. On July 16, 2022, Redfin Corporation signed the return receipt after accepting receipt of the mailed complaint.
4. By law (which are stated above), service pursuant to this paragraph shall not be the basis for the entry of a default judgment unless the record contains a return receipt showing the acceptance by

the defendant. The plaintiffs filed a notarized Affidavit of Mailing, along with the original return receipt (green cards), to the South Carolina Clerk's Office showing that Redfin Corporation signed and accepted the complaint on July 16, 2022 (Motion, Exhibit B). Redfin Corporation's MOTION TO RETURN TO PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND A JUDGMENT BY DEFAULT also confirms that on July 16, 2022, Redfin signed the return receipt after accepting receipt of the mailed Complaint. (PLAINTIFFS' ANSWER TO defendants' (REDFIN CORPORATION AND CHRISTINE LEFONT) RETURN TO PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND A JUDGMENT BY DEFAULT EXHIBIT B).

5. On July 16, 2022, Redfin Corporation signed the return receipt after accepting receipt of the mailed complaint; therefore, by law (which are stated above), Redfin Corporation legally had to answer the complaint within 30 days after the service hereof, exclusive of the day of such service. There was also a pre-written form from the South Carolina Clerk's Office in the complaint stating that the defendants legally had to answer the complaint within 30 days after the service hereof, exclusive of the day of such service. LEGALLY, REDFIN CORPORATION HAD TO ANSWER THE COMPLAINT ON OR BEFORE MONDAY, AUGUST 15, 2022.

6. REDFIN CORPORATION DID NOT ANSWER THE COMPLAINT ON OR BEFORE MONDAY AUGUST 15, 2022 AS REQUIRED OF THEM BY LAW.

7. On August 27, 2022, the plaintiffs were served via regular mail the 3 motions that were filed Redfin Corporation and Christine Lefont filed 3 motions: RETURN TO PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND A JUDGMENT BY DEFAULT, Motion to Dismiss, and a Motion To Strike, ALL after Redfin Corporation and Christine Lefont received the plaintiffs' motion FOR ENTRY OF DEFAULT AND A JUDGMENT BY DEFAULT via certified mail return receipt.

8. South Carolina Rules of Civil Procedure Rule 12(a), SCRCP, Rule 6(e) does not apply to this case. Rule 6(e) only applies to other Complaints served via United States Regular Mail. "Service is perfected five days after its deposit in the United States mail, as evidenced by the postmark." This complaint was sent via Certified Mail Return Receipt and by law Redfin Corporation legally had to answer the complaint within 30 days after the service hereof, exclusive of the day of such service, which was August 15, 2022.

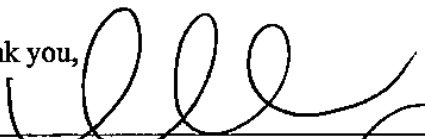
AS PER FEDERAL RULE 55 AND SOUTH CAROLINA RULE 55 DEFAULT: "This Rule 55(a) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) permits the Clerk to enter judgments by default for sums certain if the defendant does not answer the complaint within 30 days after the service hereof, exclusive of the day of such service, and if fail to answer, judgement by default will be rendered against the defendant for the relief demanded in the complaint."

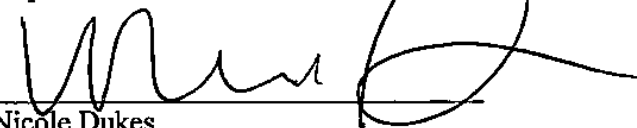
REDFIN CORPORATION FAILED TO ANSWER THE COMPLAINT WITHIN 30 DAYS; THEREFORE, A JUDGEMENT BY DEFAULT SHOULD BE ENTERED AGAINST THEM. Due to the foregoing statements, THE PLAINTIFFS REQUEST THAT THE COURT DENY DEFENDANTS' (REDFIN CORPORATION AND CHRISTINE LEFONT) MOTION TO RETURN TO PLAINTIFFS' MOTION FOR ENTRY OF DEFAULT AND A JUDGMENT BY

DEFAULT and requests that the court orders an ENTRY OF DEFAULT AND A JUDGMENT BY DEFAULT.

TOTAL JUDGEMENT OF DEFAULT AMOUNT: \$22,635.42

For all the reasons set forth, THE DEFENDANTS' (REDFIN CORPORATION AND CHRISTINE LEFONT) SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO PLAINTIFFS' MOTION FOR DEFAULT JUDGMENT SHOULD BE STRIKED AND DENIED.

Thank you,  
  
\_\_\_\_\_  
Hope Dukes

  
\_\_\_\_\_  
Nicole Dukes

FILED  
HORRY COUNTY  
2023 FEB 22 P 1:53  
RENEE N. ELVIS  
CLERK OF COURT  
HORRY COUNTY, SC

# **EXHIBIT**

**H**

STATE OF SOUTH CAROLINA  
COUNTY OF HORRY

Hope Dukes and Nicole Dukes,  
Plaintiffs,

vs.

Redfin Corporation, Christine LeFont,  
Rodolfo A Pisigan Jr., Portio O. Pisigan,  
Jeremy Pisigan, and Cherry C. Pisigan,  
Defendants.

IN THE CIRCUIT COURT

Case No. 2022-CP-26-4440

**ORDER DENYING PLAINTIFFS' MOTION  
FOR DEFAULT JUDGMENT**

THIS MATTER came before the Court on March 7, 2023, upon Plaintiffs' Motion for Entry of Default and a Judgment by Default filed on August 16, 2022 (the "Motion"), seeking an entry and judgment by default as to Redfin Corporation. Present for the hearing were Plaintiffs, Hope Dukes and Nicole Dukes, and Cheryl D. Shoun, counsel for Defendants Redfin Corporation and Christine Lefont ("Redfin Defendants"). Also present was Emily Brown, corporate counsel for Redfin. No appearance was made by or on behalf of Defendants Rodolfo A. Pisigan Jr., Portia O. Pisigan, Jeremy Pisigan, and Cherry C. Pisigan.

Upon due consideration by the Court of the Motion filed, the Return to Plaintiffs' Motion, Memorandum in Opposition to Plaintiffs' Motion for Default Judgment, filed on behalf of Redfin; Supplemental Memorandum in Opposition to Plaintiffs' Motion for Default Judgment, filed on behalf of Redfin; Plaintiffs' Motion to Deny and Strike the Defendants' (Redfin Corporation and Christine Lefont) Supplemental Memorandum in

Opposition to Plaintiffs' Motion for Default Judgment, filed February 22, 2023, and argument of Plaintiffs and counsel for the Redfin Defendants, this Court respectfully denies Plaintiffs' Motion.

### **BRIEF PROCEDURAL HISTORY**

Plaintiffs filed their Complaint on July 13, 2022. The following day, on July 14, 2022, Plaintiffs allege they sent a copy of the Complaint to Redfin via certified mail. On July 16, 2022, the return receipt for the certified mail was signed with the initials "MB." On August 19, 2022, after learning of the filing of Plaintiffs' Motion, Redfin filed its Return to Plaintiffs' Motion, along with Motions to Strike and to Dismiss filed on behalf of Redfin and Christine Lefont. The Motion to Strike and Motion to Dismiss will be addressed in separate orders.

The outstanding Motions were originally scheduled to be heard on January 30, 2023. At the time of the call of the Motions, Hope Dukes indicated to the Court she was unable to participate due to medical reasons. Thus, the outstanding Motions were rescheduled for March 7, 2023.

### **FINDINGS OF FACT**

According to Plaintiffs, Redfin purportedly signed the certified mail return receipt upon receipt of the Complaint on July 16, 2022. Having no record or knowledge of receipt of the Complaint, but learning of the filing of Plaintiffs' Motion, Redfin acted as expeditiously as possible in submitting its Return to the Motion. Upon further investigation into the purported service, however, Redfin confirmed July 16, 2022 was a Saturday. Redfin's office, located at 1099 Stewart Street, Seattle, Washington ("Redfin Location"), the address to which the certified mail was directed, is not open for business on

Saturdays, in general, and was not open on the specific Saturday of the purported delivery. This is evidenced by the Affidavit of Emily Cisneros, attached to and made an exhibit to Redfin's Supplemental Memorandum. Further, despite the return receipt being signed by someone with the initials "MB," Redfin determined there is no employee or authorized agent or representative of Redfin at the Redfin Location with the initials of "MB." Inquiry was even made of the employees working at the Redfin Location and no one is aware of the identity of the individual associated with the initials "MB," all as more fully set forth in the Affidavit of Emily Cisneros, referenced above. Because Redfin is not the sole occupant of the facility located at the Redfin Location, it is believed Plaintiffs' Complaint was left with an individual not employed by or otherwise affiliated with Redfin, who just happened to be present in the lobby of the building at the Redfin Location. Redfin did not become aware of Plaintiffs' Complaint until after Ms. LeFont was served on August 4, 2022.

### **CONCLUSIONS OF LAW**

Redfin argues the applicability of Rules 12(a) and 6 of the South Carolina Rules of Civil Procedure ("SCRCP") relative to the requirement that a defendant serve a response to a Complaint within 30 days after the service of the complaint. Rule 6 provides, in pertinent part:

a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, ***five days shall be added to the prescribed period.***

Rule 6(e), SCRCP (emphasis added). As a result, it is Redfin's position that, even if service by certified mail was proper, which Redfin denies, no response was due from

Redfin, to the Complaint, until August 22, 2022. Thus, it is Redfin's position that even if service was proper, which it denies, its response by way of Motion to Dismiss, filed on August 19, 2022, was timely. Plaintiffs argue the additional five days provided pursuant to Rule 6(e) is not applicable to service by certified mail, but only to service by regular mail. There is no authority supporting Plaintiffs' position.

In addition to the foregoing, Redfin has provided this Court with the Affidavit of Emily Cisneros, mentioned above, demonstrating that the Redfin Location was not open at the time of purported service, it had no employees or other agents at the Redfin Location at the time of purported service, and there is no individual with the initials "MB"<sup>1</sup> who is employed by Redfin at the Redfin Location. Thus, service could not have been made pursuant to the certified mail at issue.

The Court further finds that in addition to the applicability of Rule 6(e), and the absence of any Redfin employee or other agent on site at the Redfin Location at the time of purported service by certified mail as well as the absence of any employee or other agent with the initials "MB," the certified mail pursuant to which Plaintiffs forwarded the Summons and Complaint to the Redfin Location was not sent requiring restricted delivery. Thus, pursuant to Rule 4(d)(8) there can be no entry of default.

IT IS, THEREFORE, ORDERED that Plaintiffs' Motion for Entry of Default and a Judgment by Default filed on August 16, 2022, is DENIED.

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<sup>1</sup> Even assuming, *arguendo*, that it could be established that an individual with the initials "MB" was at the Redfin Location on July 16, 2022, and signed the return receipt, there is no evidence in the record to establish such individual had any authority, whether express or implied, to accept service of the Summons and Complaint.

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The Honorable Benjamin H. Culbertson  
Presiding Judge

March , 2023

# **EXHIBIT**

**I**

1           HOPE DUKES: I would just like to reiterate that  
2 there is no additional five days. The law clearly states  
3 that it's only five days after the prescribed period when a  
4 complaint is sent by regular mail. This mail was sent by  
5 returned receipt. It's federal law, it's South Carolina  
6 law, it's 30 days.

7           Once again in Redfin's own motion that they sent  
8 to the Court on August 19, it clearly states that they  
9 received it. It clearly states that on July 16, 2022,  
10 quote/unquote, Redfin signed the return receipt after  
11 accepting receipt of the mailed complaint. It specifically  
12 says that under factual background in their own motion.

13           So they received it on the 16th, it doesn't matter  
14 what day the 16th is, the law is the next day is when the  
15 clock starts ticking for the 30 days. August 15th was the  
16 30-day mark, once they did not file their complaint by  
17 August 15, follow the law which said immediately file this  
18 before a motion, the motion of entry of default, and that's  
19 what we did. Therefore, we're asking the Court to enter the  
20 judgment of default and the entry of default \$22,635.42.

21           THE COURT: I don't have the rule book in front of  
22 me. What does Rule 6 say? Do you have that, Ms. Shoun?

23           MS. SHOUN: Yes. Yes, Your Honor. Beg the  
24 Court's indulgence.

25           THE COURT: Yes.

1 MS. SHOUN: When a party has -- and I think this  
2 is 6(e), Your Honor. Whenever a party has the right or is  
3 required to do some act or to take some proceedings within a  
4 prescribed period or after the service of a notice or other  
5 paper upon him and a notice or paper served upon him by mail  
6 or upon a person designated by statute, five days shall be  
7 added to the prescribed period.

8 THE COURT: All right. Ms. Dukes, I'm going to  
9 deny your motion I think they did have the additional five  
10 days, so I'm going to deny that motion.

11 HOPE DUKES: Okay. We're asking to adjourn the  
12 other -- we're asking to adjourn the other motions so we can  
13 appeal that.

14 THE COURT: Okay. No, ma'am.

15 All right. Let's go ahead -- let me hear from Ms.  
16 Shoun on your motion to dismiss or motion to strike. Is any  
17 one dispositive of the other, Your Honor.

18 HOPE DUKES: We --

19 MS. SHOUN: Your Honor, if the Court will hear the  
20 motion to dismiss first that would, I think by its nature,  
21 be dispositive of the motion to strike.

22 HOPE DUKES: So we're not allowed to adjourn the  
23 other motions in order to appeal the default?

24 THE COURT: No, ma'am. You can appeal all of the  
25 decisions. That's not -- the denial of the default is not a

1 allowed to take that out. We're allowed to provide as much  
2 as we can to prove our case.

3 THE COURT: Well, you can present evidence in  
4 certain cases if it's admissible at trial, but this is at  
5 the pleading stage of the complaint.

6 HOPE DUKES: Your Honor, I'm asking that that it  
7 not be struck.

8 THE COURT: All right. I'm going to grant the  
9 motion to strike. I'm going to strike Paragraphs 18, 19,  
10 20, and 21 of the plaintiff responses.

11 HOPE DUKES: And I also have one question. For  
12 the motion for default you had Ms. Shoun read Rule 6. She  
13 did not read Rule 6 in its entirety because Rule 6 also  
14 talks about service by certified mail and it specifically  
15 says that they do not get an additional five days under Rule  
16 6 when it comes to service by certified mail. She did not  
17 read the whole 6 in its entirety.

18 THE COURT: Okay. What is Rule 6 in its -- read  
19 me Rule 6, Ms. Dukes.

20 HOPE DUKES: Rule 6 under D, Number 6, Service by  
21 Certified Mail, Service of a summons complaint and any  
22 appropriate attachments upon a defendant of any class  
23 referred to in Paragraph D1 or D3 of this rule may be made  
24 by certified mail return receipt requested and delivery  
25 restricted to the addressee. Service is effective upon the

1 date of delivery as shown on the return receipt. Service  
2 pursuant to this paragraph shall not be the basis for the  
3 entry of default unless the records contain a return receipt  
4 showing the acceptance by the defendant. Which the records  
5 show the return receipt because we sent it to -- we  
6 personally delivered it to the court on August 15, 2022.  
7 Any default judgment shall be set aside pursuant to Rule 12  
8 if the defendant demonstrates to the court that the return  
9 receipt was signed by an unauthorized person, which they did  
10 because in their motion under -- on August 19, 2022, under  
11 Factual Background, they confirmed that they received the  
12 complaint and signed for it on July 16, 2022.

13 THE COURT: Okay.

14 HOPE DUKES: And this is Rule 6d6, under Service  
15 by Certified Mail.

16 THE COURT: I'm looking for the return receipt  
17 card. When did you file that.

18 HOPE DUKES: We filed it in person on August 15,  
19 2022. We came to the court and filed it in person,  
20 August 15, 2022.

21 THE COURT: Okay. Hold on, I don't see it in  
22 here.

23 HOPE DUKES: We have a copy of it, we filed it  
24 with the Court, they took the original.

25 THE COURT: I'm looking for that. Ms. Shoun, do

1 you have that?

2 MS. SHOUN: I do think that I have a copy of that,  
3 Your Honor.

4 THE COURT: All right. But I don't see it, it  
5 certainly wasn't filed on August the 15th.

6 HOPE DUKES: Yeah, we came here personally.

7 THE COURT: Well, do you have a clocked copy?  
8 Because the only thing the E-filing system shows filed on  
9 August 15th are the answers of the pro se defendants. The  
10 motion of default judgment on August 16th.

11 MS. SHOUN: Actually, Your Honor.

12 THE COURT: Yes.

13 MS. SHOUN: If Your Honor will reference our  
14 supplemental memorandum that has the affidavit of  
15 Mrs. Narros (ph) attached to it.

16 THE COURT: Okay.

17 MS. SHOUN: It also has a copy of that green card  
18 attached as Exhibit A.

19 THE COURT: Okay. I got it. All right.

20 MS. SHOUN: And again, Your Honor, to the extent  
21 that the Court might even consider that, that is not that  
22 was not from Rule 6. The Court has -- our Court has  
23 examined that particular provision of Rule 5 has not entered  
24 any authority that the additional five days under 6e has not  
25 applicable there. The return receipt reflects that it is

1 not restricted delivery, so default would not be appropriate  
2 anyway.

3 THE COURT: All right. Thank you y'all.

4 MS. SHOUN: And, Your Honor, we appreciate it and  
5 as to any other allegations in the motion to strike, Your  
6 Honor, we'll -- with the striking of 18, 19, 20 and 21,  
7 we'll just respond to the remaining allegations and move to  
8 strike.

9 THE COURT: Okay. Ms. Shoun, if I can get you  
10 just -- since we do have some pro se parties here.

11 MS. SHOUN: Yes, sir.

12 THE COURT: To prepare an order that sets forth  
13 the ground why I'm denying the motion for default judgment,  
14 denying the motion to dismiss and granting the motion to  
15 strike, paragraphs, 18, 19, 20, and 21.

16 MS. SHOUN: Yes, sir, Your Honor.

17 THE COURT: I'm going to do a Form 4 order that  
18 just says what's granted and what's denied and that you're  
19 going to be preparing a Form 4 order as to my ruling, okay?

20 MS. SHOUN: Yes, sir. Yes, Sir, Your Honor.  
21 Appreciate your time. Thank you.

22 HOPE DUKES: Thank you.

23 END OF REQUESTED PROCEEDINGS  
24  
25

# **EXHIBIT**

**J**

**RULE 6  
TIME**

**(a) Computation.** In computing any period of time prescribed or allowed by these rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a State or Federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday.

**Note:**

This Rule 6(a) replaces and considerably clarifies Code § 15-1-20; particularly as to computing time when there are consecutive holidays.

**(b) Enlargement.** When by these rules or by notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the time may be extended by written agreement of counsel for an additional period not exceeding the original time provided in these rules, or the court for cause shown may at any time in its discretion (1) with or without written motion or notice order the period enlarged if request therefor is made before the expiration of the period as originally prescribed or extended or (2) upon motion made after the expiration of the specified period, for good cause shown, permit the act to be done. The time for taking any action under rules 50(b), 52(b), 59, and 60(b) may not be extended except to the extent and under the conditions stated in them. The time for filing notice of intent to appeal is jurisdictional and may not be extended by consent or order.

**Note:**

This Rule 6(b) is the same as the Federal Rule, which is in turn a more concise statement of Code §§ 15-13-90 and 15-27-120 and Circuit Rule 62, except that the Rule continues the present State practice of allowing one limited extension of time by agreement of counsel.

**Note to 1986 Amendment:**

This amendment authorizes the court to permit an act to be done after the expiration of time upon a showing of good cause. This is the standard applied by courts in practice and is found in Rule 55(c) for relief from entry of default. The change distinguishes the test under Rule 6(b) which is applicable when filings are untimely, from that used when a party has obtained a judgment. Post-judgment relief under Rule 60(b) remains governed by the stricter standard of excusable neglect which has a precise meaning under state precedents. See *also* Rule 55(c).

**(c) Unaffected by Expiration of Term.** The period of time provided for the doing of any act or the taking of any proceeding is not affected or limited by the continued existence or expiration of a term of court. The continued existence or expiration of a term of court in no way affects the power of a court to do any act or take any proceeding in any civil action which has been pending before it.

**Note:**

This Rule 6(c) was deleted from the Federal Rule in 1966, but was retained here as a much-needed clarification of State practice. The confusion as to the powers of the court with the modern advent of many "special terms" is eliminated. Time limits on such matters are now stated in the applicable rule; i.e., Rule 59 as to time for motions for new trial.

**(d) For Motions--Affidavits.** A written motion other than one which may be heard *ex parte*, and notice of the hearing thereof, shall be served not later than ten days before the time specified for the hearing, unless a different period is fixed by these rules or by an order of the court. Such an order may for cause shown be made on *ex parte* application. When a motion is to be supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 59(c), additional or opposing affidavits may be served not later than two days before the hearing, unless the court permits them to be served at some other time. The moving party may serve reply affidavits at any time before the hearing commences. In all cases where a motion shall be granted on payment of costs or on the performance of any condition, or where an order shall require such payment or performance, the party whose duty it shall be to comply therewith shall have 20 days for that purpose, unless otherwise directed in the order.

**Note:**

This Rule 6(d) is the same as the Federal Rule, except that the Rule has enlarged notice time from 5 to 10 days. The last sentence is added to preserve Circuit Rule 62.

**(e) Additional Time After Service by Mail or Upon Statutory Agent.** Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.

**Note:**

This Rule 6(e) is the same as the Federal Rule except that the additional time to take an act after service is by mail is increased from 3 to 5 days. This replaces the very unclear meaning of Code § 15-9-950.

# **EXHIBIT**

**K**

**RULE 12**  
**DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED -**  
**BY PLEADING OR MOTION - MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.** A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 30 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

**Note:**

This Rule 12(a) is identical to the Federal Rule except that it changes the time to answer from 20 to 30 days, and the time to plead after motion denied from 10 to 15 days. No other changes in State practice are affected by the Rule.

**Note to 1986 Amendment:**

The amendment to Rule 12(a)(2) sets the time for response after a motion to strike at 15 days, which is the same time set for pleading after a successful motion for a more definite statement.

**Note to 1995 Amendment:**

Rule 12(a) is amended to provide special time periods for the State to respond to applications for post-conviction relief because the thirty day time period for civil litigation is often extended so that the State may obtain a transcript of the proceeding before responding.

**(b) How Presented.** Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This important Rule 12(b) enables a party to: (1) raise by motion or answer all of the defenses now raised by demurrer, and (2) eliminates the necessity of the awkward "special appearance to object to jurisdiction" under present State practice. The motion should be made before answer for early disposition of cases; but the defenses enumerated may be made in the responsive pleading and are not waived by being stated in a pleading rather than by motion. The last sentence eliminates the so-called "speaking demurrer" at trial, by treating such late motion as a motion for Summary Judgment under Rule 56.

**Note to 1986 Amendment:**

The amendment to the fourth sentence of Rule 12(b) clarifies the litigant's right to assert at trial any defenses as well as any claims he could have raised in a permissive pleading but chose not to do so. Consequently, the election not to reply to an affirmative defense does not waive the right to contest that affirmative defense.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This Rule 12(c) preserves the present common law practice in this State; and it is more important than the Federal Rule, because of the requirement for fact pleading. It may also be treated as a motion for summary judgment in proper circumstances.

**(d) Preliminary Hearings.** The defenses specifically enumerated (1)-(8) in subdivision (b) of this rule, whether made in a pleading or by motion, motions for judgment on the pleadings under subdivision (c) of this rule, and motions for summary judgment under Rule 56, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

**Note:**

This Rule 12(d) is the same as the Federal Rule, and assures timely disposal of 12(b) and 12(c) motions to dismiss or for judgment prior to trial.

**(e) Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

**Note:**

This Rule 12(e) is the same as the Federal Rule and effects no change in present practice, except time for compliance is changed from 10 days to 15 days.

**(f) Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

**Note:**

This Rule 12(f) preserves present State practice under Code § 15-13-60 and > § 15-13-440 verbatim.

**Note to 1986 Amendment:**

The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e).

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

**Note:**

This Rule 12(g) is the same as the Federal Rule. It is new material to help prevent piecemeal presentation of defenses by separate motions.

**(h) Waiver or Preservation of Certain Defenses.**

**(1)** A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

**(2)** A defense of failure to state a cause of action upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

**(3)** Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

**Note:**

This Rule 12(h) should be read together with Rule 12(g) in defining those defenses which are waived if not presented by pleading or motion.

# **EXHIBIT**

**L**

**RULE 55  
DEFAULT**

**(a) Entry.** When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

**(b) Judgment.** Judgment by default may be entered as follows:

**(1) Cases Involving Liquidated Damages or Sum Certain Amounts.** When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seeking default, and upon affidavit of the amount due, shall enter judgment for that amount and costs against the party against whom judgment by default is sought, if that party has been defaulted for failure to appear and if such party is not a minor or incompetent person. A verified pleading may be used in lieu of an affidavit when the pleading contains information sufficient to determine or compute the sum certain.

**(2) All Other Cases.** In all other cases, the party entitled to a judgment by default shall apply to the court therefor; but no judgment by default shall be entered against a minor or incompetent person unless represented in the action by a guardian ad litem who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter judgment or to carry it into effect, it is necessary to take an account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute. 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.

**(3) Attorneys Fees.** If a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b)(2) of this rule shall be required unless: (i) the party seeking attorneys fees specifies in the motion for default judgment that such motion includes a request that the court award attorneys fees and also files an affidavit of attorneys fees; (ii) notice of such motion and affidavit is provided to the defaulted party by first class mail to the last known address of such party; and (iii) no objection is filed by the opposing party within 10 days of service of such motion and affidavit.

**(4) Judgments After Service by Publication; Affidavit; Undertaking.** In actions for the recovery of money only, when the summons has been served by publication and the defendant is a non-resident of the State, no default judgment shall be rendered unless the plaintiff or his agent at or before the time of making the application for judgment shall have been examined on oath respecting any payments that have been made to the plaintiff or any one for his use on account of the demand mentioned in the complaint, and shall show by affidavit that an attachment has been issued in the action and levied upon property belonging to the defendant, which affidavit shall contain a specific description of such property, and a statement of its value and shall be filed with proof of publication. Before judgment is rendered the plaintiff shall, unless the court in its discretion dispenses with the same, cause to be filed an undertaking in such amount as shall be ordered by the court with security to be approved by the court or the clerk thereof, that the plaintiff will abide the order of the court touching the restitution of any estate or effects which may be directed by such judgment to be transferred or delivered, or the restitution of any money that may be collected under, or by virtue of, such judgment, in event the defendant or his representative shall apply and be admitted to defend the action and shall succeed in such defense.

**(c) Setting Aside Default.** For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).

**(d) Plaintiffs, Counterclaimants, Cross-Claimants.** The provisions of this rule apply whether the party entitled to the judgment by default is a plaintiff, a third-party plaintiff, or a party who has pleaded a cross-claim or counterclaim. In all cases a judgment by default is subject to the limitations of Rule 54(c).

**(e) Judgment Against the State and Certain Other Parties.** No judgment by default shall be entered against the State of South Carolina or an officer or agency thereof, against minors, incompetents, or parties to a suit for divorce or annulment of marriage or against a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action, or in any in rem action, unless the claimant establishes his claim to relief by evidence satisfactory to the Court.

**Note:**

These Rules 55(a) and 55(b)(1) are drawn from Federal Rule 55 with two changes. This Rule 55(a) requires that the Court enter all judgments by default and preserves Circuit Rule 15. Federal Rule 55(b) permits the Clerk to enter judgments by default for sums certain, if there has been no appearance, and if the defendant is not a minor or incompetent person; and that provision was deleted. The language directing the Clerk to enter the default upon the calendar and a reference to Rule 38, Jury Trial of Right, is added. These changes clarify, but do not change, the operation of the Rule.

This Rule 55(b)(2) does not appear in the Federal Rule. It is added to preserve Circuit Court Rule 38, requiring attachment of property against which the money judgment may be collected, when defendant has not been personally served and does not appear in the action.

Rules 55(c) and 55(d) are identical to the Federal Rules. Rule 55(e) has been modified to make reference to State government, and add all minors, incompetents, and divorce and annulment actions, to the category of cases in which the claimant must establish the claim by evidence in the event of default.

**Note to 1986 Amendment:**

This amendment includes in rem actions in those which the court takes proof on the value of the claim, to insure that a default judgment in any in rem action is limited to the value of the claim rather than the value of the property seized.

**Note to the 1998 Amendment:**

The language of Rule 55(b)(1) is new and is based on the federal rule. The phrase "liquidated damages" contained in the first sentence was added since this is the terminology which has traditionally been used in South Carolina. The last sentence relating to verified pleadings is not contained in the federal rule.

The language of Rule 55(b)(2) is substantially the language of Rule 55(b)(1) prior to these amendments with the addition of the last sentence. The last sentence simply incorporates the notice requirements of Rule 5(a) into the text of this rule.

Rule 55(b)(3) is new and has no counterpart in the federal rules. It provides a procedure for requesting attorneys fees as part of a default judgment. Rule 55(b)(4) is the language of Rule 55(b)(2) prior to these amendments.

**Note to 1999 Amendment:**

The 1998 Amendments to Rule 55 gave a clerk of court authority to enter default judgments in cases where judgment is sought for a liquidated amount or for a sum certain. These amendments remove that authority and provide that default judgments, regardless of the nature of the damages being sought, may only be entered by a judge.

# **EXHIBIT**

**M**

## Lee v. Peek

240 S.C. 203 (S.C. 1962) · 125 S.E.2d 353  
Decided May 1, 1962

17904

204 May 1, 1962. \*204

*Davis Lee, pro se., of Anderson, Appellant, cites: As to it being error, and an abuse of discretion, for the trial Judge to grant the respondents an additional ten days in which to answer: 82 S.C. 483, 72 S.E. 15; 62 S.C. 506, 40 S.E. 961; 52 S.C. 305, 29 S.E. 726; 168 S.C. 174, 167 S.E. 227; 56 S.C. 28, 33 S.E. 787.*

*H.C. Miller, Esq., of Anderson, for Respondents, cites: As to power of trial Judge, in the exercise of his judicial discretion, to grant relief from default: 81 S.C. 265, 62 S.E. 259; 170 S.C. 121, 169 S.E. 871; 235 S.C. 37, 109 S.E.2d 713; 56 S.C. 28, 33 S.E. 787; 93 S.C. 487, 76 S.E. 1099; 75 S.C. 7, 54 S.E. 801; 56 S.C. 12, 33 S.E. 781; 27 S.C. 318, 3 S.E. 473; 52 S.C. 305, 29 S.E. 726; 77 S.C. 223, 57 S.E. 847; 15 S.C. 614; 62 S.C. 506, 40 S.E. 961; 155 S.C. 179, 152 S.E. 176; 38 S.C. 556, 17 S.E. 21; 229 S.C. 44, 91 S.E.2d 723. As to mistake of counsel being an excusable mistake: 182 S.C. 331, 189 S.E. 641; 170 S.C. 304, 170 S.E. 450.*

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May 1, 1962.

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BUSSEY, Justice.

This action for libel, wherein plaintiff seeks to recover damages in the amount of five million dollars, was commenced in the Court of Common Pleas for Abbeville County against the NAACP, the South Carolina Conference of NAACP Branches, the Anderson Branch of the NAACP, and six individuals who reside in Anderson

County, including the three respondents here, 205 process being served on May \*205 25, 1959. The respondents promptly retained the services of H.C. Miller, an attorney at Anderson, who on May 28 filed a motion for change of venue to Anderson County, the notice commencing as follows. "You will take notice, reserving the right to answer or demur." Before this motion could be heard, the NAACP had the cause removed to Federal Court and on July 2, 1959, attorney for respondents served and filed in the Federal District Court a motion to dismiss.

On October 19, 1959, the case was remanded to the State Court by the Federal District Court. On December 7, 1959, attorney for the respondents served and filed another motion for a change of venue to Anderson County. This motion, as well as motions of other defendants in the case for a change of venue, was heard by Judge Gregory on December 14, 1959, and at the hearing on the motions plaintiff presented Judge Gregory with an Affidavit of Default as to respondents. Judge Gregory took the motions under advisement and in an order dated October 28, 1960, granted a change of venue to Anderson County. Within twenty days after Judge Gregory's order, the attorney for the respondents filed and served a demurrer.

The appellant then served a notice of motion for default judgment against respondents, dated December 27, 1960, returnable before the Hon. J.B. Pruitt, on the 7th day of January 1961. In response to this notice, the respondents filed with the judge an answer and reply to the motion of plaintiff for a default judgment accompanied by an

affidavit of counsel. The answer and return set forth the history of the litigation. The affidavit of counsel is to the effect that he acted with due diligence and good faith to protect the rights and interests of his clients; that he believed the demurrer to be meritorious and that the defendants have a valid and meritorious defense.

Counsel's affidavit shows that he was under the erroneous impression that it was not necessary for him to answer or demur in the State Court until the motion for change of venue had been decided, and that he was under the impression \*206 that the rights of his clients were fully protected when he, in the notices of motion for change of venue, reserved their right to answer or otherwise plead. Judge Pruitt heard the matter and in a well considered order denied the motion of the plaintiff for a default judgment and granted the respondents until the 18th day of January 1961 in which to answer or demur to the complaint, as they might be advised. Within the extended time granted by Judge Pruitt, the respondents answered reserving their rights under their demurrer.

Judge Pruitt found as a matter of fact that counsel had misconceived the applicable procedural law and that the failure of the respondents to answer or demur in due time was a "consequence of their attorney's bona fide endeavors according to what he conceived to be the proper practice to serve the interest of his clients." Judge Pruitt further concluded that respondents' counsel's mistaken procedure was, under all of the circumstances, excusable and that it was in the furtherance of justice that the respondents be relieved of any default.

The appeal here is from the order of Judge Pruitt, there being only one exception before this court, which is as follows:

"Appellant takes exception to the order of Judge Pruitt and assigns his actions in giving an additional ten days to answer as an error and an abuse of discretion; that his action violated due process clause of The Federal Constitution in that

he deprived appellant of the equal protection of the law by a Judicial Proceedings in which he went contrary to state law, and settled rules of legal Federal and State Procedures, to deny the relief sought which is guaranteed to all citizens by both Federal and State Law."

The entire language of the exception is vague, general and definitely not in compliance with Rule 4, Section 6, Rules of the South Carolina Supreme Court. To say the least, it is doubtful that the exception properly raises any question \*207 to be determined by this court. *Hewitt v. Reserve Life Insurance Company*, 235 S.C. 201, 110 S.E.2d 852. However, since respondents in their brief concede that the one exception does raise the question of whether the circuit judge abused his discretion in granting relief to the respondents, we shall consider that question alone, it being clear that no other issue is properly before this court.

In considering this question it must be borne in mind that the motion before the circuit judge was not a motion pursuant to Section 10-1213 of the Code to be relieved from a judgment or order taken against the respondents as a result of mistake, inadvertence, surprise or excusable neglect, but was a motion pursuant to Section 10-609 of the Code, made prior to a judgment of any kind, the language of the applicable statute being as follows:

"The court may, in its discretion and upon such terms as may be just, allow an answer or reply to be made or other act to be done after the time limited by this Code or by an order enlarge such time."

Prior to the 1952 Code the contents of Code Sections 10-609 and 10-1213 were combined in one section of the Code (Section 495, Code of Laws 1942). In the former Code section what is now Section 10-609 was the first part thereof. Many cases have been before this court arising under the old Code section, as well as under the two sections as now codified. There are certain general principles that have been consistently

applied by this court to cases or questions arising under both of these sections as now codified and both parts of the former Code section. With respect to both provisions, this court has consistently held that the discretion expressly vested in the circuit court will not be disturbed except in a case of clear abuse.

However, there is a very definite distinction between an application for relief under Section 10-609 and one under Section 10-1213. By the terms of the statute, a showing of mistake, inadvertence, surprise or excusable neglect is necessary <sup>208</sup> for relief after judgment or order under the terms of Section 10-1213. Section 10-609 provides for relief before judgment or order and does not contain any language requiring such a showing as a prerequisite. In *Roberts et al. v. Drayton et al.*, [121 S.C. 124](#), [116 S.E. 744](#), it was held that the privilege extended by Section 10-609 was limited to procedure before judgment, and Mr. Justice Cothran recognized and pointed out the distinction between the first and second parts of the then Code section.

In the case of *White v. Coleman*, 38 S.C. 556, 17 S.E. 21, relief was sought under the portion of the Code section which is now Section 10-609, before judgment, and the circuit judge refused to allow the defendant to answer. This court held that the matter was entirely within the discretion of the circuit judge and that his order was not even appealable. This court said:

"'Discretion' is defined to be 'a man's own judgment as to what is best in a given case, as opposed to a rule governing all cases of a certain kind.' We are unable to see upon what principle we could proceed in considering that which from in its very nature is in the breast of the circuit judge. The effort to consider such charges might only make a new way of appeal from that which under the law is declared to be unappealable. We suppose it possible that there might be such a

gross abuse of discretion as to demand relief, but happily such cases never occur, or certainly very rarely, in the administration of our law."

In the case of *McDaniel v. Addison*, 53 S.C. 222, 31 S.E. 226, this court, with respect to the portion of the then Code section which is now Section 10-609, had the following to say:

"It is manifest, therefore, from the express terms of the statute, that a motion of this character is addressed to the discretion of the circuit court, and not, therefore, ordinarily appealable. For as was said by the late Chief Justice Simpson, in *Truett v. Rains*, 17 S.C. 451, and quoted with approval <sup>209</sup> in the very recent case of *Michalson v. Rountree* (51 S.C. 405), 29 S.E. 66, at page 67: 'As a general rule, where a court or judge is invested with power to be exercised at discretion, such power is absolute, and, when exercised, it is final. From the very meaning of the term and the nature of the power, discretion is unlimited. It is bounded by no rule except the good sense and integrity of the party empowered to exercise it, and, in the absence of an express right to appeal, it necessarily follows that its exercise is unappealable.' While this is, undoubtedly, the general rule, our cases, some of which have been cited in the argument of counsel, recognize, at least, one exception, and that is where there has been an abuse of discretion. Of course, this court would not assume that any Circuit Judge had been guilty of abuse of discretion confided to him by law; and hence, whenever an appeal has been taken upon this ground, the burden rests upon the appellant to show that there has been abuse of discretion."

The foregoing language is quoted with approval by this court in an opinion by Mr. Justice MOSS in the recent case of *Ward v. Miller*, [230 S.C. 288](#), [95 S.E.2d 482](#).

In the case of *Bishop v. Jacobs*, [108 S.C. 49](#), [93 S.E. 243](#), this court, with respect to the statutory provision which is now Section 10-609, had the following to say:

"It is true the exercise of discretion by a judge does not mean the same thing as the exercise of his desire in a given case. It is true one judge might exercise his discretion one way, and another judge might exercise it another way, on the same state of facts. In the nature of the case, then, there must be a latitude in which the judicial discretion may move; and that means a hard and fast rule for the exercise of discretion cannot be stated. The lawmakers did not intend that parties shall be held down to the strict duty to answer within 20 days; they recognized human frailty, and provided a way of escape in the event of an excusable default; so both statutes are operative, that which requires a party to answer \*210 in 20 days, and that which provides a way to excuse a failure to do so under proper circumstances."

In the recent case of *Simon v. Flowers*, 231 S.C. 545, 99 S.E.2d 391, speaking through Mr. Justice Legge, this court had the following to say, with respect to the provisions of Section 10-609:

"Discretionary power under this section is vested in the trial, not the appellate court. In an appeal from such an order of the circuit court it is not our function, nor is it within our power, to substitute our judgment for that of the circuit judge simply because we might have reached a different conclusion had we been in his place."

From the foregoing authorities it is clear that the discretion of the circuit judge under Section 10-1213 is definitely limited by the language thereof, while under Section 10-609, the discretion of the circuit judge is almost unlimited. This distinction between these two sections has not been mentioned or discussed in many opinions of this court simply because such distinction had no bearing on the decision of the particular cases.

While the discretion of the circuit judge under Section 10-609 is very broad, it is not totally unlimited, and the lower court has been held to have abused its discretion when its exercise thereof was controlled by an error of law. In *McSween v. Windham*, 77 S.C. 223, 57 S.E. 847,

the decision of the lower court, refusing to allow an answer after time, was reversed on the ground that the judge was controlled by an error of law in the exercise of his discretion, ( e.g. the erroneous construction of a written instrument extending the time for answering).

In *McGhee v. One Chevrolet Sedan, etc.*, 109 S.E.2d 713, 235 S.C. 37, the county judge refused to allow the defendant to answer after twenty days, but before judgment. This court reversed, holding that Section 10-609 should be liberally construed in the furtherance of justice and to the end that cases be tried on the merits. The facts therein \*211 showed that there was a clear case of excusable neglect on the part of the defendant and this court held that the county judge had clearly abused his discretion in not permitting the defendant to answer after time.

No case has been cited by the parties or has come to the attention of the writer which is directly in point with the facts of this case. There are, however, two cases, both referred to in the order of the lower court, which are very nearly in point, the principal distinction being that motions for relief in those cases were made after judgment.

In *Johnson v. Finger*, 102 S.C. 354, 86 S.E. 673, defendant's counsel had erroneously thought that the pendency of a motion to make the complaint more definite and certain had extended the time for answering. The circuit judge vacated a default judgment and this court affirmed. In *Savage v. Cannon*, 204 S.C. 473, 30 S.E.2d 70, this court affirmed an order of the lower court setting aside a default judgment resulting from the erroneous belief on the part of counsel for the defendant that time for answering had been extended by his demand for an itemized statement of the plaintiff's account. Since there was no abuse of discretion on the part of the lower court in granting relief in those cases, after judgment, where the burden was upon the defendants to show "mistake, inadvertence, surprise or excusable neglect", the mistake on the part of counsel being a

misconception as to the proper procedure, certainly, there was no abuse of discretion in this case where relief from the default was for the same, identical reason granted before judgment.

It may be well to point out that appellant was the one who set in motion the chain of events which gave rise to the procedural misconception on the part of respondents' counsel. A review of appellant's complaint shows that it is totally devoid of any allegation which would place the venue of this case properly in Abbeville County. He should not be heard to complain of the misconception of someone else as to the proper procedure herein. \*212

There is nothing in the record before us to indicate that the circuit judge was controlled by any error of law in granting respondents' motion, nor is there any factual finding in his order which is without evidentiary support.

The appellant, in support of his position, cited the following cases: *Odom v. Burch*, 52 S.C. 305, 29 S.E. 726; *Washington v. Hesse*, 56 S.C. 28, 33 S.E. 787; *McMahon v. Pugh*, 62 S.C. 506, 40 S.E. 961; *Gasden v. Home Fertilizer Chemical Co.*, 89 S.C. 483, 72 S.E. 15, and *O'Neal v. Atlas Assur. Co. of London, England*, 168 S.C. 174, 167 S.E. 227.

Only a casual reading of these cases will show that none of them is in point with the instant case of the facts. Such of the cited cases as are at all applicable hold that this court will not interfere with the holding of the lower court except in a clear case of abuse of discretion. Hence, the cases cited by the appellant actually support the position of respondents.

It is, therefore, the conclusion of this court that the appeal herein is without merit and the order of the lower court should be affirmed.

Affirmed.

TAYLOR, C.J., MOSS and LEWIS, JJ., and LEGGE, Acting J., concur in result.

LEWIS, Justice (concurring in result).

I concur in the result of the opinion of Mr. Justice Bussey because the record fails to show an abuse of the discretion vested in the Court under the provision of Section 10-609 of the 1952 Code of Laws, but I arrive at the conclusion on somewhat different grounds. Disagreement with the wide distinction apparently drawn between the basis for granting relief under Section 10-609 and Section 10-1213 necessitates a statement of the reason for my concurrence.

While some of the decisions cited in the opinion of Justice Bussey refer to the discretion of the court as unlimited, it is recognized that this is not entirely \*213 true, for the exercise of discretion under Section 10-609 may be reviewed by this Court upon a showing of a clear abuse thereof. Of course, no hard and fast rule for the exercise of discretion can be stated, but the prior decisions of this Court afford some guide for its exercise in cases, as here, where application is made for relief under the foregoing section because of the neglect of an attorney in handling litigation for his client.

The discretion vested in the lower Court must be exercised within the meaning and scope of Section 10-609 as interpreted by this Court. Under this section, as heretofore applied, relief may be granted where the default is due to the excusable fault of the attorney. *Bishop v. Jacobs*, 108 S.C. 49, 93 S.E. 243. As stated in the *Bishop case*, the foregoing section "provided a way of escape in the event of an excusable default." Every neglect, mistake or inadvertence of counsel is not excusable. The case of *Simon v. Flowers*, 231 S.C. 545, 99 S.E.2d 391, 394 involved a motion for relief before judgment from the neglect of the attorney. Relief was denied in that case and the following principle was quoted with approval:

"Although a wide discretion is vested in courts to set aside or vacate judgments because of the neglect, misconduct or inadvertence of counsel employed in the case, the general rule undoubtedly is that the neglect of the attorney is the neglect of

the client, and that no mistake, inadvertence or neglect attributable to an attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client. The acts and omissions of the attorney in such case are those of the client."

The granting of relief from default has been held proper where the litigant promptly employed counsel, who took prompt steps to protect the interests of his client and diligently pursued a course which he conceived to be proper practice, but allowed his client to get in default through a mistake as to the proper procedure. <sup>214</sup> Such is the case here. *McGhee v. One Chevrolet Sedan*, 235 S.C. 37, 109 S.E.2d 713; *Savage v. Cannon*, 204 S.C. 473, 30 S.E.2d 70; *Johnson v. Finger*, 102 S.C. 354, 86 S.E. 673; *McSween v. Windham*, 77 S.C. 223, 57 S.E. 847.

However, the mistake, inadvertence or neglect of counsel has been held insufficient grounds for relief where default results from inaction of counsel on behalf of the client or failure to exercise due diligence in the protection of the client's interest. *Strickland v. Rabon*, 234 S.C. 218, 107 S.E.2d 344; *Simon v. Flowers*, *supra*, 231 S.C. 545, 99 S.E.2d 391; *Poston v. State Highway Department*, 192 S.C. 137, 5 S.E.2d 729; *Hartford Fire Insurance Co. v. Sightler*, 131 S.C. 241, 127 S.E. 13; *Claussen v. Johnson*, 32 S.C. 86, 11 S.E. 209.

While it is true that in all of the foregoing decisions and those cited in the opinion of Justice Bussey the Court recognized the broad discretion vested in the trial court under Section 10-609, the principle was also recognized that the area in which the judicial discretion might move under Section 10-609 was limited by the necessity of a finding of *excusable* neglect or fault. In the cited case of *Simon v. Flowers*, it was stated that the same principles govern our review of Circuit Court orders under Section 10-609 as under Section 10-1213, citing *Morgan v. State Farm Mutual Insurance Co.*, 229 S.C. 44, 91 S.E.2d 723. See also: *Ward v. Miller, et al.*, 230 S.C. 288, 95 S.E.2d 482; *Holliday v. Holliday*, 235 S.C. 246, 111 S.E.2d 205. The showing of neglect without a proper excuse is insufficient under both Section 10-609 and 10-1213.

The record shows a meritorious defense to the action.

The order under appeal should be affirmed because the appellant has failed to show wherein the lower Court abused its discretion in holding that excusable fault had been shown.

TAYLOR, C.J., MOSS, J., and LEGGE, Acting J.,  
<sup>215</sup> concur. <sup>\*215</sup>