STATE OF SOUTH CAROLINA COUNTY OF SUMTER Mae McGruder, Plaintiff, vs. Dollar General Corporation, d/b/a Dollar General Store #1677 and Janie Davis, Defendants.	IN THE COURT OF COMMON PLEAS THIRD JUDICIAL CIRCUIT CIVIL ACTION NO: 2022-CP-43-00508 **ORDER DENYING MOTION FOR RELIEF FROM ENTRY OF DEFAULT AND DENYING MOTION FOR LIMITED DISCOVERY**

This matter came before the Special Referee on September 22, 2022 for hearing on Dolgencorp's motion to set aside Default and motion for limited discovery. For the reasons set forth herein these motions are denied.

PROCEDURAL HISTORY.

This is a premises liability case wherein Plaintiff alleges that she was injured in a slip and fall accident on October 29, 2019 caused by Defendants' negligence. A Summons and Complaint was filed on March 20, 2022. In the Complaint, Plaintiff alleges that Defendant Dollar General is liable for her injuries as owner of the premises and business and Defendant Janie Davis is liable as manager of the store on the date of accident.

The named defendant is Dollar General Corporation, d/b/a Dollar General Store #1677 Defendant was served with the Summons and Complaint on April 4, 2022 when Plaintiff's process server served Dollar General's Manager Algerina Pringle via hand delivery at Dollar General Store #16677 on Peach Orchard Road, Dalzell, South Carolina, where Plaintiff alleges she was injured. Defendant Janie Davis was personally served at her home on April 6, 2022.

Neither of the Defendants responded to Plaintiff's Complaint within 30 days of being served. Default was entered against Defendants on August 4, 2022.

Defendants were notified of the damages hearing on August 17, 2022. On August 19, 2022 Defendants filed a Motion to Set Aside Default and/or for Extension of Time to File Answer. On August 23, 2022, Dolgencorp, LLC filed a Motion to Continue Damages Hearing and to Conduct Limited Discovery.

ISSUES PRESENTED

1. WHETHER DEFENDANTS ARE ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE PLAINTIFF NAMED DOLLAR GENERAL CORPORATION, THE TRADE NAME OF DOLGENCORP, LLC, AND DID NOT SPECIFICALLY NAME DOLGENCORP, LLC AS A DEFENDANT?

2. WHETHER DEFENDANT JANIE DAVIS IS ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE DEFENDANT DOLLAR GENERAL CORPORATION CONTENDS THAT SHE WAS NOT THE MANAGER ON THE DATE OF THE ACCIDENT?

3. WHETHER DEFENDANT DOLLAR GENERAL CORPORATION IS ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE PLAINTIFF SERVED ITS MANAGER INSTEAD OF DOLENGENCORP, LLC'S REGISTERED AGENT?

4. WHETHER DEFENDANTS ARE ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BASED ON GOOD CAUSE UNDER RULE 55(c) SCRCP?

5. WHETHER DEFENDANTS ARE ENTITLED TO CONDUCT LIMITED DISCOVERY?

STANDARD OF REVIEW

Rule 55(a) SCRCP provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the

entry of default. The standard for granting relief from an entry of default under Rule 55(c) is "good cause". This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. Wham v. Shearson Lehman Bros., Inc., 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. Dixon v. Besco Engineering, Inc., 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. Williams v. Stalnaker, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607–08, 681 S.E.2d 885, 888 (2009).

RULING.

1. DEFENDANTS ARE NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE DOLGENCORP KNEW THEY WERE BEING SUED, WERE NOT MISLED AND DEFENDANTS DID NOT SUFFER PREJUDICE.

The law in South Carolina is clear that a corporation conducting business in a trade name may sue or be sued in the trade name. In Tri-County. Ice & Fuel Co. v. Palmetto Ice Co., 303 S.C. 237, 241, 399 S.E.2d 779 (1990) the Supreme Court of South Carolina, citing Tunstall v. The Lerner Shops, Inc., 160 S.C. 557, 159 S.E. 386 (1931) stated "We agree with the holding in Tunstall that where a corporation has acquired a name by usage an adjudication against it by the name so

acquired is valid and binding." Tri-County, 303 S.C. at 241, 399 S.E. 2d at 782, citing Tunstall, 160 S.C. at 566, 159 S.E. at 389 (internal quotations omitted)., further citing Carroll v. Equico Lessors, 141 Ga. App. 279, 233 S.E.2d 255 (1977) (a corporation conducting business in a trade name may sue or be sued in the trade name). "Thus, we conclude that a default judgment entered against a defendant in the name under which a business is being operated may be amended by changing the name of the defendant to the name of the corporation which operates the business." Tri-County, 303 S.C. at 241, 399 S.E. 2d at 782. In reaching its conclusion, the Court in Tri-County stated that Defendants "have not been misled to their prejudice as to the nature of the lawsuit." citing Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939) (judgment would not be invalidated against corporation who is incorrectly named where corporate defendant has suffered no prejudice); Rollins v. Junior Miller Roofing Co., 55 N.C. App. 158, 284 S.E.2d 697 (1981) (if real party receives notice, no prejudice results in permitting him to be sued in trade or fictitious name). In this case, there is no dispute that Dollar General is the trade name of Dolgencorp, LLC and Defendants have presented no evidence that it was misled or suffered prejudice as a result of being sued in its trade name. In Griffin v. Cap. Cash, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992), the Court reasoned that a corporation may be known by several names in the transaction of its business. Long v. Carolina Baking Co., 193 S.C. 225, 8 S.E.2d 326 (1939). If it is sued in a name under which it transacts business, the process will ordinarily be sufficient to bring it before the court. United States v. A.H. Fischer Lumber Company, 162 F.2d 872 (4th Cir.1947). The misnomer of a corporation has the same effect as the misnomer of an individual. Long v. Carolina Baking Co., supra. If it later appears that the true name of the corporation is different from the name under

RWB

which it was sued, the misnomer is properly a subject of amendment. Id. However, failure to correct the corporate name does not invalidate the process or the judgment where the misnomer causes the corporation no prejudice. Id; United States v. A.H. Fischer Lumber Company, supra. In McCall v. IKON, 363 S.C. 646, 654, 611 S.E.2d 315, 318 (Ct. App. 2005), the South Carolina Court of Appeals addressed a scenario where a Defendant was sued in its trade name, stating "[b]ecause IKON prominently held itself out as IKON Education Services, it would be wholly inequitable to find McCall's attempts to serve the company under that name ineffective." Based on South Carolina case law, Defendants are not entitled to relief from entry of default because they were sued under their trade name. While the good cause standard is to be liberally applied, simply bringing this action against Dollar General Corporation d/b/a Dollar General Stoe #16677 is sufficient notice of suit as to Dolgencorp, LLC. Any misnomer is not sufficient to establish grounds for relief from entry of default.

2. DEFENDANT JANIE DAVIS IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE SHE HAS NOT SHOWN GOOD CAUSE.

Defendants do not contend that they failed to answer Plaintiff's Complaint within 30 days of service. Therefore, they are in default and it is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability. Howard v. Holiday Inns Inc., 271 S.C. 238, 246 S.E.2d 880 (1978); Schenk v. National Health Care, Inc., 322 S.C. 316, 471 S.E.2d 736 (Ct.App.1996); State ex rel. Medlock v. Love Shop, Ltd., 286 S.C. 486, 334 S.E.2d 528 (Ct.App.1985) Roche v. Young Bros., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). See also Rule 8(d) SCRCP. As such, Defendants cannot contest factual allegations while in default. Also, contesting factual allegations in the

Complaint does not constitute a basis for good cause for failing to timely answer Plaintiff's Complaint. It is noteworthy that although Counsel represents Janie Davis, Ms. Davis does not submit any evidence touching on the issues of service upon her, failing to timely answer the Complaint or her role or position with Dollar General. Without good cause shown, Defendant Janie Davis is not entitled to relief from entry of default.

3. DEFENDANT DOLLAR GENERAL CORPORATION IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE SERVICE UPON ITS MANAGER IS PROPER SERVICE UNDER SOUTH CAROLINA LAW.

S.C. Code Ann. § 15-9-240 provides the means by which service of process on an authorized foreign corporation can be accomplished via registered agent or mail. However, subsection (e) provides that "This section does not prescribe the only means, or necessarily the required means, of serving a foreign business or nonprofit corporation." Rule (4)(d)(3) SCRCP provides an alternate means to serve corporations providing that: Corporations and Partnerships. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process... In this case, Defendant admits that Algerina Pringle was the manager of Store #16677 on the date of service based on paragraph #9 of the affidavit of David Bengston, and Plaintiff's affidavit of service reflects that she was served and identified as manager. Despite the clear language of the rule, Defendants erroneously argue that service was improper because Plaintiff did not serve Dolgencorp's registered agent under the case Kreke v. Ohio Gear-Wallace Murray Corp., 287 S.C. 388, 389, 339 S.E.2d 115, 115

(1986). However, as pointed out during the hearing in this matter, Kreke has been reversed. In 1988, the South Carolina legislature repealed the 1981 South Carolina Business Corporation Act and enacted the South Carolina Business Corporation Act of 1988. S.C. Code Ann. § 33-1-101 (Rev.1990). The South Carolina Reporters' Comments to S.C. Code Ann. § 33-15-110 (Rev.1990) elucidate with clarity that service of process on a foreign corporation is permitted in a bifurcated fashion. In addition, the Model Act and Section 15-9-240 provide that either the procedure in South Carolina Civil Procedure Rule 4(d)(3) (serving an officer) or that contained in Section 15-9-240 (serving the agent) is proper. The Court in Schenk v. Nat'l Health Care, Inc., 322 S.C. 316, 320, 471 S.E.2d 736, 738 (Ct. App. 1996) stated that "the new language of subsection (d) clearly states that the service method in Kreke (or under Rule 4(d)(3)) is now valid." This is in keeping with the court's earlier opinion, Renney v. Doobs House, Inc., 275 S.C. 562, 274 S.E.2d 290 (1981). In Renny, the Court held that service on an assistant manager was proper service. It is important to note that in neither Schenk nor Renney does the Court mention anything about a manager being required to have explicit authority from the corporation. Therefore, service on the manager was proper and binding on Defendant Dollar General. Defendants also erroneously rely on Richardson v. P.V., Inc., 383 S.C. 610, 613, 682 S.E.2d 263, 264 (2009); however, this case actually supports Plaintiff's position. In Richardson, the manager was unavailable to receive service of process so the process server left the process with a front desk clerk, not a manager. Based on the circumstances of the case, the Court stated that "even if Cruel did not have actual authority, we find that she had apparent authority to accept service of process." Id. Therefore, Richardson does not stand for the proposition that a manager must be authorized to accept process, because the Rules of Civil Procedure clearly

authorize service on a manager. Richardson only addressed service on non-manager employees and their authority to accept service. The Court has found that exacting compliance with the rules is not required to effect service of process. Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). Perhaps the most instructive case on this issue is Burris Chem., Inc. v. Daniel Const. Co., 251 S.C. 483, 487, 163 S.E.2d 618, 620 (1968). In Burris the court stated: The principal object of service of process is to give notice to the defendant corporation of the proceedings against it. Service upon a common laborer would normally be insufficient because such would not likely give notice to the corporation. It cannot be logically argued that the superintendent in charge of all of the remaining employees at a project of this magnitude is not such a representative of the corporation as contemplated by the legislature to apprise the corporation that an action had been commenced. The lower court was justified in finding that the person served was such an agent of the construction company. The service could reasonably be expected to result in prompt notice to the corporation with adequate opportunity to defend. This court will not reverse that finding unless unsupported by evidence or obviously influenced by error of law. Id., citing, Bass v. American Products Export and Import Corporation, 124 S.C. 346, 117 S.E. 594, 30 A.L.R. 168 (1923). In the case at bar, like Burris, it cannot be logically argued that Algerina Pringle, as manager of Dollar General Store #16677, in charge of the store, its inventory, sales, operation, and all of its employees, is not such a representative of the corporation as contemplated by the legislature to apprise the corporation that an action had been commenced. It is also noteworthy that Defendants have not presented evidence from Algerina Pringle as to whether she actually received the process and passed it on to the Corporation or why the Complaint was not timely answered. Defendants also argue that

even if the manager was served with the process, she was not authorized by company policy to accept service even though Defendants have not presented any written company policy on this issue. It is the Plaintiff's position that the manager is designated by law as being a person that can be served on behalf of a corporation and the company's authorization is not required. In other words, the company's policy does not trump state law. See Schenk and Renney, supra. While the language of Rule (4)(d)(3) SCRCP is clear, Defendants present no authority for their position. A close inspection of the interpretation of the rule shows that their reasoning is illogical. For instance, the rule says an officer of the corporation can be served on behalf of the corporation. It does not say that the officer must be authorized. It would not make sense for the legislature to intend for an officer to be required to have authorization to accept service since service if the officer should reasonably be expected provide notice to the corporation in that the officer occupies a position of authority comparable to that of a manager. In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes. Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 443 S.E.2d 906 (1994). If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced. See Knotts v. S.C. Dept. of Natural Resources, 348 S.C. 1, 558 S.E.2d 511 (2002); Maxwell v. Genez, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). The language of Rule (4)(d)(3) SCRCP is plain, unambiguous, and conveys a clear meaning. Therefore, interpretation is unnecessary and the stated meaning should be enforced. It is clear that a manager of a corporation can be served, just like an officer of the corporation. If the legislature intended that a manager have authorization before accepting service, it could have easily said as much. The legislature did not do so because it

would lead to uncertainty among litigants in commencing litigation. After finding the manager, process servers would then have to determine if the manager was authorized to accept service. Then, the corporation could defeat service by simply saying the manager was not authorized. To require the manager to be authorized was clearly not the intent of the legislature and the rule is clear and unambiguous. If the purpose of service is to give notice, Defendants were clearly put on notice and present no evidence that they were not provided sufficient notice of the lawsuit.

4. DEFENDANT DOLLAR GENERAL CORPORATION IS NOT ENTITLED TO RELIEF FROM ENTRY OF DEFAULT BECAUSE THEY HAVE NOT SHOWN GOOD CAUSE.

Defendants have failed to identify good cause for relief from default as required by Rule 55(c) SCRCP. No explanation was presented for why they did not timely answer the Complaint, despite Ms. Pringle's, the manager having received service of the pleadings. Defendants don't deny that service was effected as claimed by Plaintiff, and do not deny that they received the pleadings. No affidavits of the manager Algerian Pringle or Janie Davis were submitted. And although Defendants submit the affidavit of David Bengston, he sets forth no explanation either of why Defendant did not answer the complaint. The answer or motion was not timely made as it was filed four months after service was made. Moreover, Defendants have not demonstrated that they have a meritorious defense.

5. DEFENDANT DOLLAR GENERAL CORPORATION IS NOT ENTITLED TO CONDUCT LIMITED DISCOVERY BECAUSE THEY ARE IN DEFAULT?

South Carolina courts first addressed the issue of how a Defendant in default might contest damages in the case of Howard v. Holiday Inns, Inc., 271 S.C. 238, 241, 246 S.E.2d 880,

882 (1978). In Howard, the court considered "three possible approaches. We could (1) allow damages to be determined in an Ex parte proceeding, denying the defendant any right to participate; (2) allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or in mitigation; or (3) allow damages to be ascertained with defense counsel's participation limited to cross-examination and objection to plaintiff's evidence. We hold that this third approach is the proper one and approve it for use in the courts of this state." This approach was revisited more recently in the case of Limehouse v. Hulsey, 404 S.C. 93, 96, 744 S.E.2d 566, 568 (2013), but declined to expand Defendant's participation any further, stating: For the past thirty-five years, our appellate courts have consistently adhered to the decision in Howard. See, e.g., 115 Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998); Solley v. Navy Fed. Credit Union, 397 S.C. 192, 723 S.E.2d 597 (Ct.App.2012). Although our courts have scrutinized default judgments involving punitive damages in order to prevent harsh results, we have declined to expand a defendant's participation in these hearings beyond what was approved of in Howard. See Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc., 275 S.C. 556, 274 S.E.2d 287 (1981). Although the South Carolina Rules of Civil Procedure do not prohibit discovery by a party in default, case law is crystal clear that defaulting Defendant's participation is limited to cross examination and objections.

CONCLUSION

THEREFORE, Defendants' motions are DENIED. The case will proceed with a damages hearing in accordance with this order as soon as it can be reasonably heard.

[signature on following page]

October 19, 2022
Myrtle Beach, SC

s/Robert W. Buffington

By: Special Referee
Robert W. Buffington (SC Bar # 7825)
2411 North Oak Street, Suite 305-F
Myrtle Beach, South Carolina 29577
Tel: (843) 443-4019
Email: bobby@bufflawfirm.com