STATE OF SOUTH CAROLINA COUNTY OF JASPER Bullard & Son, Inc. d/b/a Lowcountry Medical Linens, Plaintiff, vs. Ridgeland Nursing Center, Inc., Ridgeland NC, LLC, and SC OPCO, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOURTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2023-CP-27-00005 **ORDER DENYING DEFENDANT SC OPCO, LLC'S MOTION TO SET ASIDE DEFAULT JUDGMENT AND MOTION FOR A NEW TRIAL**

This matter came before me on the Defendant SC OPCO, LLC's motions to set aside default judgment and for a new trial. The parties submitted memoranda on the motions. On July 20, 2023, I held a hearing on the motions. Present for Plaintiff Bullard & Son, Inc. d/b/a Lowcountry Medical Linens ("Lowcountry") was William F. Barnes, III. Present for Defendant SC OPCO, LLC, was Kyle A. Brannon. After carefully considering the parties' memoranda and exhibits, hearing argument of counsel, and reviewing the applicable law and pleadings, the Court denies SC OPCO's motions.

FINDINGS OF FACT

On March 3, 2020, Lowcountry entered into a contract with Ridgeland Nursing Center for Lowcountry to provide medical linens to the facility. The contract had a 60-month/5-year term and an April 1, 2020 start date, meaning it was effective from April 1, 2020 until March 31, 2025. The agreement specified penalties in the events of non-payment and early termination.

If the customer terminated the agreement before the five-year term ended, it agreed to pay Lowcountry "a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement." If the customer failed to pay any invoices, it agreed to pay "a 1.5% late charge (18% per annum)." The customer agreed to be "responsible for all legal fees to collect any unpaid balances."

Finally, the agreement states it "is in effect and shall enure to the benefit of any successors or assignees." The agreement was signed by Sheri Boyles, the Administrator for the facility.

In November 2021, SC OPCO bought Ridgeland Nursing Center. SC OPCO is a New Jersey LLC that operates nursing homes in multiple states. SC OPCO says that it purchased the assets of Ridgeland Nursing Center but not its liabilities or contracts. SC OPCO employs someone to "have primary responsibility for the business operations of Ridgeland Nursing & Rehab, including negotiating contracts with vendors, as well as approving invoices for services." (Aff. of Neuman p. 1). Despite this "primary responsibility," that person claims to "have no knowledge of the terms of any contracts that may have existed between" Lowcountry and Ridgeland Nursing Center. *Id.* at p. 2.

From April 1, 2020, through January 2022, Lowcountry provided linen services and received payment for its services. This includes payments for November and December 2021, and January 2022, all after SC OPCO bought Ridgeland Nursing Center. Sheri Boyles, who signed the agreement and had knowledge of its terms, remained employed by SC OPCO until May 2022.

From February 28, 2022, until June 22, 2022, Lowcountry sent 50 invoices to SC OPCO that it did not pay. The invoices total $20,311.36. SC OPCO continued to receive and use the medical linen services but refused to pay for them. SC OPCO also kept $1,248.83 of Lowcountry's linen products and did not return them.

On January 5, 2023, Lowcountry filed this action against SC OPCO, Ridgeland Nursing Center, Inc., and Ridgeland NC, LLC, for "Breach of Contract against All Defendants" and "Unjust Enrichment/Quantum Meruit as to All Defendants." (Cmplt.) (emphasis added). A copy of the agreement was attached to and filed with the Complaint.

On January 6, 2023, Lowcountry served SC OPCO through its registered agent. Service of process is not in dispute. SC OPCO did not answer the Complaint. The Circuit Court filed an entry of default as to SC OPCO and referred the case to me "for all purposes" including a damages hearing.[1]

On March 30, 2030, Lowcountry sent SC OPCO a notice of damages hearing through its registered agent. On April 25, 2023, the court held a damages hearing, and SC OPCO chose not to attend or otherwise respond. Lowcountry presented evidence at the hearing, and the court took testimony from Perry Bullard, the owner of Lowcountry. The court held that the agreement "is binding upon any successor or assign that operates Ridgeland Nursing Center during its duration." (Judgment p. 5). Further, "SC OPCO, LLC, breached the Contract by refusing to pay invoices for rental items Defendants received that were provided by Plaintiff." *Id.*

On May 12, 2023, the court entered judgment against SC OPCO for $154,178.33, which includes $20,311.36 in unpaid invoices, $1,243.83 in missing linens, a $3,349.30 late charge, a $90,353.85 early termination fee, and $38,419.45 in legal fees to collect the debt. *Id.* at pp. 5-6.

On May 17, 2023, SC OPCO filed a motion to set aside default, for a new trial, and for enlargement of the time to file an answer.

ARGUMENT

SC OPCO cites to four rules in its motions—Rules 55(c), 60(b), 59(a), and 6(b), SCRCP. None of those rules provide for relief in these circumstances.

I. Rule 55(c), SCRCP, does not apply.

"Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP." *Campbell v. City of N. Charleston*, 431 S.C. 454, 460, 848 S.E.2d 788, 792 (Ct. App. 2020). Because a default judgment for damages was already entered when SC OPCO filed its motions, Rule 55(c) does not apply. Instead, Rule 60(b), is SC OPCO's only avenue of relief.

[1] Defendant Ridgeland NC, LLC, is also in default.

SC OPCO states that it "can meet both standards based on" the same arguments. (Mot. p. 6). I disagree, and find that it cannot meet either standard.

II. SC OPCO Does not Satisfy Rule 60(b), SCRCP.

A "court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect . . . ." Rule 60(b)(1), SCRCP. SC OPCO asks the court to set aside the default judgment under Rule 60(b)(1) due to its "mistake" in believing that it did not need to answer the Summons and Complaint. (Mot. p. 8).

"Rule 60(b) requires a more particularized showing of mistake" than the Rule 55(c) standard. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). "The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." *Id.* at 608, 681 S.E.2d at 888-89. "In determining whether a default judgment should be set aside under Rule 60(b)(1), the promptness with which relief is sought, the reasons for the failure to act promptly, the existence of a meritorious defense, and the prejudice to the other parties are relevant." *Tobias v. Rice*, 379 S.C. 357, 366, 665 S.E.2d 216, 221 (Ct. App. 2008) (internal quotation and alteration marks omitted). I find that SC OPCO fails to make the threshold showing of a mistake to warrant relief but, even if it could make this showing, the other relevant factors do not support relief in this case.

Mistake. SC OPCO argues that it made an "honest mistake of fact" by believing that it did not need to answer the complaint because it did not enter into a contract with Lowcountry, did not assume the liabilities or contracts of Ridgeland Nursing Center, and it was not the "primary defendant in the lawsuit." (Mot. p. 7). None of these amount to a "mistake" warranting relief under Rule 60(b)(1).

For four months Lowcountry sent SC OPCO 50 invoices that it ignored and chose not to pay. (Cmplt. pp. 3-4). Not surprisingly, about five months later, Lowcountry filed suit against SC OPCO.

The Summons and Complaint list SC OPCO as a defendant. (Summons & Cmplt. ¶ 4). SC OPCO received personal service of process. The documents plainly state that "**YOU ARE HEREBY SUMMONED** and required to answer the complaint . . . and, if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded." (Summons) (underline emphasis added). Lowcountry specifically asserted that the "Contract inured to the benefit of the [sic] any successor or assigns." (Cmplt. ¶ 13). The Complaint also specifically seeks damages for invoices of linen services during SC OPCO's ownership of the facility. (Cmplt. ¶¶ 16-18). Both causes of action are stated "as to All Defendants." (Cmplt. pp. 2, 5). Even a cursory reading of these documents shows that a response is required from SC OPCO. Its alleged belief that it did not need to answer is neither reasonable nor credible.

SC OPCO is a sophisticated party that operates a federally-regulated health care facility. Yet, when it received repeated invoices for services rendered, it chose not to pay for those services. This further supports my decision to find that SC OPCO's conscious choice to ignore the Summons and Complaint after ignoring invoices is not a mistake.

Even if I could find a mistake, it is a mistake of law and not of fact. The requirement to answer a complaint is not a fact—it is the law. Rule 12(a), SCRCP ("A defendant shall serve his answer within 30 days after the service of the complaint upon him" (emphasis added)). If a defendant believes that a complaint incorrectly names it as a party, the proper remedy is to file an answer and assert that as a defense. It is remarkable that SC OPCO believed it could get away with ignoring fifty invoices and valid legal process under these circumstances.

A mistake of law does not warrant relief under Rule 60(b). "[F]ailure to understand the legal process is not excusable neglect under Rule 60(b)." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001); *see also Hillman v. Pinion*, 347 S.C. 253, 257, 554 S.E.2d 427, 429 (Ct. App. 2001) ("[B]ecause this is a mistake of law, not fact, we find this is not the type of mistake, surprise, inadvertence, and excusable neglect generally contemplated by Rule 60(b)(1)."). "It is always a

matter of regret that a party should not have his day in court. However, . . . [where] the appellant was duly served with the summons and complaint, [i]t was his duty to answer the complaint. . . ." *Hill*, 345 S.C. at 310, 547 S.E.2d at 897 (internal quotation marks omitted). SC OPCO is a sophisticated entity familiar with the legal system that knew before it received the Summons and Complaint that it owed Lowcountry money for unpaid invoices and even kept Lowcountry's product. SC OPCO's own conscious choice to ignore valid legal process does not warrant relief under Rule 60(b).

SC OPCO argues its belief that it did not have to answer is supported by correspondence that Lowcountry sent to the Facility that was not directed to SC OPCO. (Mot. pp. 4-5). The court disagrees. That Lowcountry **separately** served the registered agents for SC OPCO and Ridgeland Nursing Center actually shows that it intended to sue them both as separate entities. SC OPCO's registered agent is not at the facility. Regardless, SC OPCO is not allowed to substitute its own judgments or assumptions for the express language of a legal document that says it is required to answer within thirty days.

SC OPCO asserts that it did not know "what events would cause a breach" of the contract. (Mot. p. 5). I reject this assertion. It received 50 invoices over four months and should have expected a lawsuit for its failure to pay.

SC OPCO relies upon *Mitronics v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001), for its mistake-of-fact argument under Rule 60(b). (Mot. p. 8). That case is distinguishable. Mitronics filed a request for a contested case hearing in the ALC. *Id.* at 508, 548 S.E.2d at 224. The original hearing date was rescheduled, and Mitronics' counsel mis-calendared the date. *Id.* When it did not appear at the hearing, the ALJ dismissed the request and treated the failure to appear as a default. *Id.* The Court of Appeals granted Mitronics relief under Rule 60(b) because it found "no evidence in the record that the mistake was anything but a good faith error" and Mitronics quickly asked for relief. *Id.* at 511, 548 S.E.2d at 226.

In stark contrast to that case, SC OPCO did not commit a "good faith error" such as a calendaring mistake but, instead, purposefully chose not to respond at all. It did not even contact legal counsel but simply ignored the complaint. I cannot get beyond the fact that SC OPCO made a conscious decision to repeatedly ignore a validly served Summons and Complaint and, to compound their self-made dilemma, it failed to contact me or appear at the April 25, 2023 damages hearing after receiving proper notice of the hearing. That is not a mistake at all—it is intention.

SC OPCO fails to prove a mistake to warrant relief under Rule 60(b). It actually chose to go into default by ignoring the complaint.[2]

Because there is no mistake, I do not need to address the additional factors. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013). However, even if SC OPCO could prove a mistake of fact, I would still deny the motion for failure to satisfy those factors.

Promptness in seeking relief. SC OPCO argues it "did not discover that [the] lawsuit progressed to the point" of entry of default until May 10, 2023, when its counsel "happened upon this case" in the public index. (Mot. p. 8) (emphasis added). Knowing about entry of judgment is entirely different from knowing the lawsuit exists. SC OPCO clearly knew about the lawsuit and the damages hearing. Regardless, a "party has a duty to monitor the progress of his case." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). SC OPCO received service of and knew about the lawsuit, and the Summons plainly states that default will be entered against it for not answering.

SC OPCO received fifty invoices from Lowcountry that it ignored. SC OPCO received valid service of the Summons and Complaint on January 6, 2023, and a notice of damages hearing on March 30, 2023, but it did not file a motion for relief until May 25, 2023. The procedure rules that govern the time periods to respond to a lawsuit are intended "to secure the just, speedy, and inexpensive

[2] In *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 12, 753 S.E.2d 537, 543 (2014), the Supreme Court held "[t]he circuit court acted within its discretion in concluding that losing a complaint was not a satisfactory explanation for failing to timely respond." *Id.* at 12, 753 S.E.2d at 543. SC OPCO has even less of an explanation. It did not lose the complaint—it ignored it.

determination of every action." Rule 1, SCRCP. They do not allow a party to ignore the legal process and then ask for relief when it does not like what happened in its intentional absence. I find that SC OPCO did not timely seek relief.

Meritorious defense. SC OPCO asserts two "meritorious" defenses—(1) there is no contract between it and Lowcountry, and (2) the amount of attorney's fees and costs awarded is unreasonable. A meritorious defenses "raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 918 (Ct. App. 2009) (internal quotation marks omitted).

Contract or no contract, SC OPCO has no meritorious defense to payment of the invoices for services received and for the unreturned linens. It received those services and must pay for them. There is no meritorious defense to those damages.

What SC OPCO is really complaining about are the contract terms about the early termination fee and attorney's fees. I find it also has no meritorious defense to those specific terms for two independent reasons. First, SC OPCO accepted services under the contract after purchasing Ridgeland Nursing Center. I find that it did so for a prolonged period of time—at least six months—and with knowledge of the contract and its terms. It even initially paid some of the invoices. SC OPCO is a sophisticated entity with an employee whose job is to negotiate contracts and approve invoices. (Aff. of Neuman). Nowhere does he explain why SC OPCO does not owe money for services it received or why it did not pay Lowcountry's invoices. I reject SC OPCO's assertion that it did not have any knowledge of the contract or its terms. It received services from a business and must (or should) have known they were provided under a contract. SC OPCO employed Sheri Boyles, who had firsthand knowledge of the contract because she signed it, and she continued to work for SC OPCO after it purchased the facility. *See Equitable Tr. Co. v. Columbia Nat'l Bank*, 145 S.C. 91, 114, 142 S.E. 811, 818 (1928) ("[I]f knowledge is acquired by an agent while not acting for the corporation,

but afterwards he acts for the corporation in a matter in which it becomes his duty to communicate the fact his knowledge is imputed to the corporation.").

Second, the Contract specifically states that it "shall enure to the benefit of any successors or assignees." SC OPCO argues that it is not bound by this provision because it did not agree to accept Ridgeland Nursing Center's liabilities. (Mot. p. 10). It misses the point. This is not about a pre-existing liability. It is about services rendered to SC OPCO after it purchased the facility. SC OPCO accepted Lowcountry's services with knowledge of the contract and, thus, accepted the contract. I do not believe that a multi-state, federally regulated corporation bought a skilled nursing home facility without reviewing its contracts or assumed operations of the facility without knowing the source of its daily linen service. SC OPCO knew about Lowcountry's services at least by November 2021 when it paid Lowcountry's invoices. It then continued to accept the services. SC OPCO is bound to the terms of the Contract.

As to the second defense of the reasonableness of the $38,919.99 attorney's fees and costs, I find this is not a meritorious defense. The contract states the "Customer will be responsible for all legal fees to collect any unpaid balances." After SC OPCO ignored its invoices for months, Lowcountry was left with no choice but to hire legal counsel. It hired counsel on a 33 1/3% contingency fee. SC OPCO argues that a contingency fee award is not appropriate under *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). In *Glasscock*, the Court "expressly disapprove[d] any percentage fee agreement in a domestic case." *Id.* at 161, 403 S.E.2d at 315 (emphasis added). It said nothing about a contingency fee for a breach of contract case based on an express contractual provision. There is no legal prohibition on a contingency fee in this case, and therefore, SC OPCO has no meritorious defense to that part of the default judgment.

Even if the court evaluated the case under the *Glasscock* factors without regard to the contingency fee arrangement, I still find the award reasonable.[3] This is a breach of contract and quantum meruit case that has been pending for over a year-and-a-half. Counsel devoted time to preparing the Complaint, service, entry of default, a damages hearing with witnesses and documentary evidence, and now response to a motion for relief from entry of default. Counsel has almost fourteen years of legal experience, is in good professional standing, and has represented Lowcountry very well in this matter. Lowcountry hired counsel on a standard contingency agreement, and counsel timely obtained beneficial results of a judgment. The contingency agreement is customary for similar services. *See Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 161, 503 S.E.2d 483, 489 (Ct. App. 1998).

Prejudice to Lowcountry. SC OPCO argues there is no prejudice to Lowcountry because, if the default judgment is vacated, "the only consequence" is that Lowcountry will have "to prove it is entitled to relief." (Mot. p. 12). I cannot accept this argument. Lowcountry did everything that it was required to do in this case. It sent invoices for months before resorting to the legal system. It filed and properly served a Summons and Complaint. It obtained an entry of default and then provided proper notice of a damages hearing. SC OPCO cannot ignore all of that and then argue that Lowcountry will not be prejudiced by starting over.

The timing of Lowcountry's judgment is particularly important in this case. There is already another judgment against SC OPCO and other known creditors. Lowcountry will be prejudiced if it loses its priority date for collection of its judgment.

While it is desirable to decide a controversy on the merits, I find it just in this case to give effect to Lowcountry's conduct in following all of the proper legal procedures to initiate this lawsuit

[3] Notably, SC OPCO does not make an argument under any of the particular factors that the amount of the fee is unreasonable.

against SC OPCO. Its rights to have the default judgment upheld outweigh the right of SC OPCO, who ignored the legal process, to have its day in court.

III. Alternatively, if Rule 55(c), SCRCP, applied, SC OPCO fails to satisfy it.

If Rule 55(c), SCRCP, applied, I would still deny the motions because SC OPCO does not satisfy even the more lenient Rule 55(c) standard for relief from entry of default.

"The standard for granting relief from an entry of default under Rule 55(c) is mere "'good cause.'" *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 11, 753 S.E.2d 537, 542 (2014) (quoting Rule 55(c), SCRCP). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "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." *Id.* at 607-08, 681 S.E.2d at 888.

Explanation for the default. SC OPCO's explanation for its default is the same as its "mistake" argument under Rule 60(b)—that it mistakenly believed it did not need to answer the Complaint. (Mot. p. 7). For the reasons explained above, this is not a sufficient explanation.

SC OPCO relies upon *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986), for its mistake-of-fact argument under Rule 55(c). That case is distinguishable. Galvin received service of process on March 3 but "mistakenly" told his attorney he received it on March 4. *Id.* at 60, 339 S.E.2d at 524. The attorney used that date to calculate the time for serving an answer but actually served it a day late. *Id.* If March 4 had been correct, the answer would have been timely. *Id.* The date a defendant received service is a fact, and the defendant in *Columbia Pools* actually filed an answer and believed its answer was timely. In stark contrast to that case, SC OPCO purposefully

chose not to respond at all. It did not even contact legal counsel but simply ignored the complaint. Even if mistaken, it is a mistake of law.

SC OPCO fails to provide a reasonable explanation for its default. This would end the Rule 55(c) analysis. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013). However, even if Rule 55(c) applied, and even if SC OPCO could provide an explanation for default, I would still deny the motion for failure to satisfy the other factors as explained above.

IV. There is no basis for a new trial.

SC OPCO asks for a new trial under Rule 59(a), SCRCP. It includes a statement of the legal standard under Rule 59(a) but then makes no actual argument as to why it should receive a new trial. "The new trial motion assumes that the evidence is enough to go to the jury but asks whether, in light of all the evidence, the jury reached the appropriate result, the amount of the verdict is inadequate, excessive or shocks the conscience, or whether there was an error law affecting the verdict." South Carolina Civil Procedure § 59.A (2014). No trial actually occurred in this case. Assuming that the damages hearing is "an action tried without a jury", SC OPCO does not ask for a new trial as to damages. Rule 59(a).

On the merits, I deny the motion for the same reasons explained above to deny the Rules 60(b) and 55(c) motions. The judgment amount is adequate given the services provided and the contract terms, and the law supports maintaining the default judgment.

V. There is no "good cause" to extend the time to answer under Rule 6(b), SCRCP.

SC OPCO moves under Rule 6(b), SCRCP, to extend its time to answer. "[T]he court for cause shown may at any time in its discretion . . . upon motion made after the expiration of a specified period, for good cause shown, permit the act to be done." Rule 6(b), SCRCP. I do not believe that an extension of time to file an answer may be granted after entry of default and default judgment. However, even if I could grant an extension, I deny the motion. For the reasons explained above, SC

OPCO has not shown "good cause" for an extension of time to file an answer. It chose not to file one, and ignoring legal process is not "good cause" for relief under these circumstances.

For these reasons, SC OPCO's motions are **DENIED**.

September 13, 2023
Ridgeland, SC

C. Stephen Bennett
Special Referee