

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 ALTER OR
AMEND ORDER DENYING MOTION
TO SET ASIDE DEFAULT JUDGMENT
AND MOTION FOR NEW TRIAL**

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SC Court of Appeals

JASPER COUNTY
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This matter came before me on the Defendant SC OPCO, LLC's motion to alter or amend order denying motion to set aside default judgment and motion for new trial. On May 12, 2023, the Court entered judgment against SC OPCO. On May 17, 2023 SC OPCO filed a motion to set aside default judgment, for a new trial, and to enlarge the time to file an answer. On September 13, 2023, the Court entered an order denying SC OPCO's motion. On September 25, 2023, SC OPCO filed a motion to reconsider. The parties submitted memoranda on the motion. After carefully considering the parties' memoranda and reviewing the applicable law, the Court denies SC OPCO's motion.

ANALYSIS

At the core of the judgment in this case is that SC OPCO received service of process and chose not to respond. As a result, it is in default and admitted liability for breach of contract and unjust enrichment/quantum meruit, meaning there is a valid contract and SC OPCO is bound to its terms.

The law SC OPCO cites in this motion and its prior motions does not change or excuse the fact that it blatantly disregarded the Summons and Complaint and notice of the damages hearing. Had SC OPCO simply availed itself of a timely answer, it would not have been facing a damages hearing. Had it timely notified me after receiving notice of the hearing, then it could have appeared to contest damages. However, the time for SC OPCO to raise these issues is simply "too little and

too late.” I am particularly unpersuaded by the argument that SC OPCO is an uneducated or unsophisticated defendant who would make a mistake of fact about having to answer a complaint, or needing to respond to a hearing notice. For the reasons stated in this order and those in the Order Denying Defendant SC OPCO’s Motion to Set Aside Default Judgment and Motion for New Trial (which is incorporated herein), I deny SC OPCO’s motion.

I. SC OPCO’s motion for a new trial is denied.

SC OPCO asks the Court to hold a new damages hearing in which it remains in default but the Court considers anew the amount of damages awarded. (Mot. p. 5). For four independent reasons, the Court denies the motion on this basis.

First, SC OPCO had an opportunity to contest damages in default but chose not to attend the damages hearing. *Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived).

Second, its arguments on the amount of damages address liability by asserting different ways that it is not bound to the contract. (Mot. pp. 5-11). The Court cannot consider liability when SC OPCO is in default, which established that it is bound to the contract and its terms. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”).

Third, the Court correctly stated that, where the grounds for relief from default judgment and a new trial are the same, Rule 59(a) is not meant to provide relief separate from Rule 55 or 60. Contrary to SC OPCO’s assertion, I did not refuse to address the motion but, instead, considered the merits and still denied it. (Order p. 12). SC OPCO cites to no law that endorses separate motions under Rules 55, 60, and 59 all arguing the same grounds. To the contrary, the Court of Appeals held that a “Rule 59 motion pertaining to the default issue was more properly characterized as a Rule 60(b) motion, SCRCP.” *Yoko Kim Melton v. Chong Olenik*, 379 S.C. 45, 49 n.6, 664 S.E.2d 487, 489 (Ct. App. 2008) (separating the argument that the court should have granted the request for a court-

certified interpreter as proper under Rule 59 from the remainder of the arguments about excusable neglect and damages).

Fourth, I did not conduct a trial. I conducted a damages hearing, which SC OPCO chose not to attend and, thus, waived its right to contest damages. *Butler*, 316 S.C. at 467, 451 S.E.2d at 387-88 (stating a procedural right may be waived).

II. SC OPCO had knowledge of the contract and its terms.

SC OPCO argues that Joe Neumann's affidavit establishes it did not know about the contract or its terms. This is a liability argument that a defendant in default cannot make. (Mot. pp. 5-7); *Solley*, 397 S.C. at 203, 723 S.E.2d at 603. The motion is denied as to this issue on this basis alone.

As another independent basis for denial, the argument is wrong on the merits. There is evidence that SC OPCO knew about the contract. Six months after SC OPCO purchased the facility, its employee sent an email to Lowcountry to terminate its services. (Exh. A to Pl.'s Memo. in Opp.). The contract was the only basis for Lowcountry to provide services. SC OPCO operated a business that received weekly linen services from Lowcountry for months **after** it bought the facility. Between February 14, 2022, and April 29, 2022, SC OPCO wrote four separate checks to Lowcountry for outstanding invoices. (Exh. E to Pl.'s Memo. in Opp.). Lowcountry sent over 50 invoices to SC OPCO that it ignored. It knew about the contract and Lowcountry.

SC OPCO accuses me of not explaining the rejection of Neumann's assertions. (Mot. p. 6). I explained that I rejected them because the facts show otherwise, as described above. (Order p. 8).

SC OPCO complains about the finding that Sheri Boyles's knowledge is imputed to it. (Mot. Pp. 6-7). First, Boyles's knowledge is not dispositive of SC OPCO's knowledge because, as explained above, it independently knew about and accepted Lowcountry's services. Regardless, SC OPCO does not cite law to refute my holding but only incorrectly criticizes a decision I cited—*Equitable Tr. Co. v. Columbia Nat'l Bank*, 145 S.C. 91, 114, 142 S.E. 811, 818 (1928). SC OPCO says the case does not discuss knowledge of an employee who then works for a “successor

corporation” (Mot. p. 7), but the case is not about successor corporations. It is about employee knowledge and when that knowledge is imputed to an employer. Boyles had actual knowledge of the contract’s terms and existence, and she continued to work for SC OPCO. Under *Equitable Trust Co.*, her knowledge acquired prior to working for SC OPCO was imputable to it.¹

III. Successor liability is not at issue.

The Court did not make a ruling based on successor liability. Instead, it ruled based on SC OPCO’s own conduct in accepting the services with knowledge of the contract and its terms. I deny the motion on this basis for this reason alone.

Second, this argument goes to liability for breach of contract, which is established as a matter of law due to SC OPCO’s default. Therefore, SC OPCO is barred from making this argument.

Third, SC OPCO does not say that it gave Lowcountry notice of its purchase of the facility. SC OPCO’s acceptance of the services while not giving notice of the purchase and then arguing it is not bound to the contract under which Lowcountry believed it was providing services amounts to equitable estoppel. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001).

IV. The early termination fee is a proper damage.

I deny SC OPCO’s motion as to the early termination fee for four independent reasons.

First, the argument is barred as a matter of law because the default means that SC OPCO is bound to the contract terms. *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”). It cannot attack the enforceability of contract terms and masquerade that as a damages argument.

Second, the argument is waived. SC OPCO waived the right to challenge the amount of damages by admittedly choosing not to appear at the damages hearing. *See Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived).

¹ As of October 12, 2023, medicare.gov and SC DHEC records still show Boyles as the administrator.

Third, even addressing the merits, SC OPCO is wrong because there is evidence of termination. It terminated Lowcountry’s services and, despite asking for a final invoice so it could pay, SC OPCO refused to pay Lowcountry’s invoices. (Exh. A to Pl.’s Memo. in Opp.). Nonpayment is a basis to consider a contract terminated. *See Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008) (holding the failure to pay an installment is a “substantial breach” that gave the non-breaching party “the right to consider the contract at an end”).

I am unpersuaded by SC OPCO’s attack of the Complaint allegations. The Complaint alleges the existence of a contract, a breach, and the contract terms—including the early termination fee—and asks for damages for that fee. (Cmplt. pp. 2-4). SC OPCO knew that Lowcountry alleged it owed that fee but chose not to respond or challenge it at the damages hearing. It is too late.

Fourth, the early termination fee is not “grossly disproportionate to the actual damage” of the unpaid invoices amount. (Mot. p. 11). SC OPCO does not cite law that requires a termination fee to proportionately match another damages category. Regardless, it is not disproportionate in this case. The value of the contract to Lowcountry was approximately \$60,000.00 per year (using the \$20,000.00 owed for four months in 2022). SC OPCO terminated the contract in early 2022, with three years left in the term. That is approximately \$180,000.00 of revenue that Lowcountry expected and planned for but did not receive. An early termination fee for half of that is not grossly disproportionate. Further, the fee was contractually agreed upon.

V. The damages amount is equitable.

SC OPCO chose to go into default, making it liable for breach of contract and unjust enrichment. Because the damages awarded are fully supported by the breach of contract action, there is no reason to address equitable damages. I deny the motion on this basis for this reason alone.

Regardless, if the Court needed to address it, SC OPCO’s arguments are wrong.

“In an action in quasi-contract, the measure of recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been

unjustly enriched at the expense of the plaintiff.” *Stringer Oil Co. v. Bobo*, 320 S.C. 369, 373, 465 S.E.2d 366, 369 (Ct. App. 1995). Prejudgment interest is recoverable in an unjust enrichment claim. *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105, 110 (Ct. App. 2004). The Court of Appeals stated the standard for calculating quantum meruit damages.

If the value of what was received and what was lost were always equal, there would be no substantial problem as to the amount of recovery, since actions of restitution are not punitive. In fact, however, the plaintiff frequently has lost more than the defendant has gained, and sometimes the defendant has gained more than the plaintiff has lost. In such cases the measure of restitution is determined with reference to the tortiousness of the defendant’s conduct or the negligence or other fault of one or both of the parties in creating the situation giving rise to the right to restitution. If the defendant was tortious in his acquisition of the benefit he is required to pay for what the other has lost although that is more than the recipient benefited. If he was consciously tortious in acquiring the benefit he is also deprived of any profit derived from his subsequent dealing with it.

Stringer Oil Co. v. Bobo, 320 S.C. 369, 373-74, 465 S.E.2d 366, 369 (Ct. App. 1995) (internal quotation marks omitted) (emphasis in original).

This case falls squarely within *Stringer*’s standard. SC OPCO’s conduct resulted in it gaining more than the mere \$20,311.36 in Lowcountry’s loss for the linens. It gained the time value of the money it retained, the ability to operate its facility on a daily basis for months without payment, and the time value of money in refusing to respond to invoices and proper service of this lawsuit. *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 467, 684 S.E.2d 756, 764 (2009).

SC OPCO refused to pay for the linens after repeated invoices—keeping money and interest that could have been earned on it for its own benefit. See *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 426 n.1, 746 S.E.2d 35, 38 (2013) (“One of equity’s most important aspects is the principle of right and fair dealing, between parties to particular transaction.”). SC OPCO benefitted from operating its business with linens that are necessary to its everyday operations and to fulfill obligations to residents. SC OPCO floated its operations without paying for them in full.

SC OPCO did not respond to Lowcountry’s payment demands and forced it to hire an attorney and file a lawsuit to try to get money it is rightfully owed. All the while, SC OPCO benefitted from

not hiring a lawyer to challenge payment. *Taff v. Smith*, 114 S.C. 306, 312, 103 S.E. 551, 553 (1920) (“No person shall be allowed to reap the benefits arising from his own wrongful acts.”).

SC OPCO operated its business with goods and services from Lowcountry without paying for them. This is the hallmark of inequitable conduct. The retention of goods, services, and money owed unjustly enriched SC OPCO, and the damages awarded are a remedy for that wrong. *Taff*, 114 S.C. at 312, 103 S.E. at 553 (“Equity will not suffer a wrong without a remedy.”).

SC OPCO’s citation to *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990), is unavailing. (Mot. pp. 12-13). In *Chan*, the court *sua sponte* used permissive joinder to add parties to a breach of contract action because it believed they were used by an existing party to deprive the opposing party of sales commissions. 302 S.C. at 291, 395 S.E.2d at 735. On rehearing, the Court explained that adding “these companies as parties provided the opportunity to the Thompsons to prove their claim” but, because “they were not parties to the contracts a judgment for breach of contract cannot be rendered against them.” *Id.* at 292, 395 S.E.2d at 735-36. Those facts are distinguishable from this case. Here, Lowcountry named SC OPCO as a defendant and directly asserted a breach of contract claim against it. The damages awarded are supported by the law and facts of this case.

VI. The Court correctly denied SC OPCO’s Rule 60(b), SCRPC argument.

SC OPCO challenges the Court’s denial of its Rule 60(b) motion, arguing its findings as to each of the factors are incorrect. The Court disagrees and stands by its ruling.

SC OPCO first argues there are four grounds for good cause under Rule 60(b)—“mistake, inadvertence, surprise, or excusable neglect”—and accuses the Court of considering only mistake. (Mot. pp. 13-14). This accusation is unfair. SC OPCO’s motion states that the same facts support a finding on all four grounds, but it focused on only an alleged mistake of fact.² (Mot. to set aside

² “This was an honest **mistake** of fact.” (Mot. p. 7) (emphasis added). “. . . all led SC OPCO to **mistakenly** believe” (Mot. p. 7) (emphasis added). “SC OPCO submits it made an honest **mistake** of fact” (Mot. p. 7) (emphasis added). “SC OPCO’s **mistake** was a good faith error” (Mot. p. 8) (emphasis added). “That’s a **mistake** of fact, and we contend that . . . satisfies the

default pp. 7-8). Notably, SC OPCO does not even now articulate why its conduct could meet the three other grounds. Regardless, I find the sole fact that SC OPCO admits it received service of process and chose not to respond prohibits a finding of inadvertence, surprise, or excusable neglect.

As to mistake of fact, SC OPCO argues the Court did not consider or wrongly rejected its argument that Lowcountry sent a correspondence to the facility that was not addressed to SC OPCO and did not file a showing of service of process on Ridgeland Nursing Center. (Mot. pp. 14-15). These arguments are irrelevant. The alleged mistake of fact is failing to file an answer. SC OPCO received actual service of a complaint with its name on it. Nothing about correspondence or service on another party affected SC OPCO's ability to answer and appear.

As to timing, SC OPCO argues it timely sought relief based on when it learned of the default judgment. (Mot. p. 15). It does not provide law stating that the only relevant time period is from when a party learns of judgment until when it files a Rule 60(b) motion. More importantly, SC OPCO does not refute the law that 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). "When a SCRPC 60(b) motion is made within one year of the original judgment, whether the motion was made within a reasonable time after discovery of the mistake is within the sound discretion of the trial judge." *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992). Because SC OPCO already knew about the lawsuit and damages hearing, and its obligation to monitor its case, the Court correctly found its motion untimely.

As to a meritorious defense, SC OPCO challenges the Court's rulings as to the contract termination fee and attorney's fees but does not challenge that it has no meritorious defense to payment of the invoices. (Mot. pp. 15-16). The absence of a meritorious defense to payment of invoices alone supports the rulings on mistake of fact and a meritorious defense.

burden under – under Rule 60(b) . . . and is the basis, really, the heart of the motion." (Tr. of hearing pp. 5-6) (emphasis added).

As to prejudice, SC OPCO challenges this finding for two reasons—the statement of the length of the case and the reference to other creditors. (Mot. p. 16). Both are supported by the record.

First, the dispute between Lowcountry and SC OPCO for unpaid invoices began in March 2022, when SC OPCO stopped paying for services. Therefore, it has been ongoing for a year-and-a-half. Regardless, that statement was made in the ruling on a meritorious defense to attorney’s fees and not related to prejudice.

Second, the existence of another judgment is relevant to prejudice. TCI Business Capital got a default judgment against SC OPCO in February 2023 and has already initiated collection proceedings and received a nulla bona. TCI’s collection efforts make it less likely that money may be available for Lowcountry to collect. Even without TCI’s collection efforts, the Court listed numerous other, independent reasons for finding prejudice. (Order p. 10).

VII. The attorney’s fee award is reasonable and supported by the law.

SC OPCO continues to argue that it should not have to pay attorney’s fees under the contract. That is a liability argument that it is not bound to the contract, and that argument is barred by the default and waived by SC OPCO’s choice not to participate in the damages hearing. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012); *Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994).

Even considering the merits, the Court disagrees with SC OPCO’s five arguments.

First, SC OPCO argues that Lowcountry did not list an amount of attorney’s fees requested in the Complaint or the affidavit for entry of default. (Mot. p. 17). That is not a requirement. Under Rule 55(b)(3), SCRPC, “[i]f 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” the party files a motion with an affidavit of fees. Rule 55(b)(3), SCRPC. In this case, the Court held a hearing to address attorney’s fees. SC OPCO got notice of that hearing but chose not to attend.

SC OPCO cites to Rule 54(c), SCRPC, but omits key words. (Mot. pp. 16-17). The sentence, in full, states: “A judgment by default shall not be different *in kind from or* exceed in amount that prayed for in the demand for judgment.” Rule 54(c), SCRPC (emphasis added). Here, the “kind” of damages requested in the Complaint included attorney’s fees, satisfying Rule 54(c).

Second, SC OPCO argues it is not bound to the attorney’s fee provision because it did not have a contract with Lowcountry. As ruled above and in the prior order, SC OPCO is bound to the contract. If it disagreed with the Complaint contract allegations, it should have filed an answer.

Third, SC OPCO says the work of Plaintiff’s counsel after the default judgment does not “justify[] the reasonableness of the fee awarded.” (Mot. pp. 17-18). All of the work that Lowcountry’s counsel does to seek recovery for it is justification for the reasonableness of the fee. There is no law that says an attorney’s fee for a default judgment stops at the moment of the judgment.

Fourth, SC OPCO argues the contingency fee agreement should not be controlling or exclusively relied upon as a basis for the fee award. (Mot. pp. 18-19). This Court did not treat it as such. Instead, because the Court addressed the *Glasscock* factors “without regard to the contingency fee arrangement” (Order p. 10), SC OPCO’s argument on this point is moot.

Fifth, SC OPCO argues there is insufficient evidence to support the attorney’s fees award. (Mot. pp. 18-20). When “determining a reasonable attorney’s fee,” the Court considers: “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services.” *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).³ The Court analyzed each factor. (Order p. 10). SC OPCO says its analysis is “conclusory” and without “reference to any underlying evidentiary basis.” (Mot. p. 19). The Court disagrees. The

³ SC OPCO criticizes the Court’s use of the *Glasscock* factors because it says those are used to decide whether to award an attorney’s fee and not the amount of the fee. (Mot. p. 20). This is unpreserved. Regardless, the “amount” factors that SC OPCO cites to do not warrant reconsideration because they are either inapplicable as dealing with an hourly rate or already included in the *Glasscock* factors.

attorney's fees evidence was addressed at the damages hearing that SC OPCO chose not to attend. There was evidence of all of the *Glasscock* factors. SC OPCO's disagreement with the analysis is not a basis for reconsideration, especially when it provides no conflicting evidence.

Finally, SC OPCO complains the attorney's fees exceeds the amount of the invoices. Notably, "[t]he amount of recovery and the contingency of compensation are only two of the six factors to be considered by the trial court in determining an appropriate attorney's fee." *Rice v. Multimedia, Inc.*, 318 S.C. 95, 101, 456 S.E.2d 381, 385 (1995). Regardless, that is not dispositive of an award of attorney's fees. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 385, 377 S.E.2d 296, 297 (1989) (noting that "other jurisdictions have awarded attorney fees which exceeded the verdict obtained" and affirming a \$26,000.00 attorney's fee for a \$16,151.00 judgment). "[T]here is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment." *Taylor by Taylor v. Medenica*, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998) (citing *Baron* as approving "an award of attorney's fees where the fee substantially exceeded the actual recovery"). The attorney's fee award is \$38,419.45, and the remainder of the judgment is over \$115,000.00. (Judgment pp. 5-6). The attorney's fee exceeds the judgment amount.

CONCLUSION

After considering SC OPCO's arguments, I see no reason in the law or facts to amend or reconsider the prior order. Lowcountry did everything that it could do to get SC OPCO to timely respond, and SC OPCO ignored all of it. If there was ever a case for default judgment, this is it. The damages award corresponds to the contract terms and complies with the law.

For these reasons, SC OPCO's motion is **DENIED**.

December 4, 2023
Ridgeland, SC



C. Stephen Bennett
Special Referee