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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

Judge Lawton McIntosh

Case No. 2020-CP-23-03949
Appellate Case No.: 2023-001227

Brian W. Bowles and Kristina Bowles,

Appellants,

v.

Nery Rodas d/b/a RNG Contracting,
LLC.

Respondent.

INITIAL BRIEF OF APPELLANTS

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1. Table of Authorities

1. South Carolina Code Ann. § 14-3-330.
2. South Carolina Rules of Civil Procedure, Rule 26.
3. South Carolina Rules of Civil Procedure, Rule 55.
4. *Beckham v. Durant*, 300 S.C. 329, 331 n.2, 387 S.E.2d 701, 703 (Ct. App. 1989).
5. *Dymon, Inc. v. Hyman*, 305 S.C. 170, 406 S.E.2d 388 (Ct. App. 1991).
6. *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 274 S.E.2d 287 (1981).
7. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978).
8. *Clague v. Bednarski*, 105 F.R.D. 552 (E.D.N.Y. 1985).
9. *Bashforth v. Zampini*, 576 A.2d 1197 (R.I. 1990).
10. *Dungan v. Superior Court*, 512 P.2d 52, 53 (Ariz. 1973).
11. *5Star Life Ins. Co. v. Peek Performance Inc.*, 434 S.C. 334, 863 S.E.2d 468 (S.C. App. 2021).
12. *Solley v. Navy Federal Credit Union Inc.*, 397 S.C. 192, 723 S.E.2d 597 (S.C. App. 2012).
13. *Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 123 (Ct. App. 1987).
14. *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004).
15. *Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503 (S.C. Ct. App. 2004).

2. Jurisdictional Statement

The Court of Appeals has jurisdiction over this appeal pursuant to South Carolina Code § 14-3-330 following a final judgment entered by the Spartanburg County Court of Common Pleas on July 20th, 2023. Notice of Appeal was timely filed on July 31st, 2023.

3. Statement of the Issues

1. Whether the lower court erred in finding the homeowners in default and dismissing the counterclaims without considering the independent nature of said counterclaims

4. Factual Background

This appeal arises from a dispute between Brian and Kristina Bowles, the appellants and homeowners, and Nerys Rodas d/b/a RNG Contracting, LLC. the appellee and builder. The dispute originated over issues relating to construction on the appellants' property in connection with an agreement for the same. In response to the builder's initial claims, the homeowners filed counterclaims alleging:

- a. Breach of Contract: The defendant alleges that the plaintiff breached the contractual agreement between them concerning the construction of a residence and a barn. Specifically, the defendant asserts that the plaintiff performed substandard work and was not licensed to undertake the contract, leading to a breach of the agreement.
- b. Negligent Misrepresentation: The defendant claims that the plaintiff misrepresented himself as a licensed contractor authorized to conduct business under the agreement. The defendant relied on these representations to his detriment, leading to damages that need to be proved at trial.
- c. Fraud: The defendant alleges that the plaintiff committed fraud by misrepresenting his licensing status and entering into an agreement knowing he was unlicensed. This

misrepresentation led the defendant to suffer damages, for which he seeks actual and punitive damages.

- d. Fraud in the Inducement: Similar to the fraud claim, the defendant asserts that the plaintiff fraudulently induced him into entering the contract by misrepresenting his licensing status. This counterclaim focuses on the initial deception that led to the contract's formation.
- e. Violation of South Carolina's Unfair Trade Practices Act: The defendant alleges that the plaintiff's actions of conducting business without a license are against public interest and violate South Carolina law, specifically the Unfair Trade Practices Act. The defendant seeks damages resulting from these alleged unfair and deceptive practices.
- f. Unjust Enrichment: The defendant contends that he conferred a benefit on the plaintiff by paying for labor and materials under the belief that the plaintiff was a licensed, bonded, and insured contractor. The defendant seeks an equitable claw back of monies paid for the alleged faulty and substandard workmanship.

Following procedural developments, the homeowners were found to be in default due to their failure to file an answer in response to a May 23, 2022 order *See* May 23, 2022 Order wherein Kristina Bowles was added as a Defendant to the relevant action. The order also addressed the incomplete discovery responses provided by the homeowners. The Order cautioned the homeowners that the failure to cooperate with discovery may result in sanctions, which could include finding the homeowners in default. *See id.* This Order did not address the homeowners' counterclaims. Default was not entered in this Order. At this point, the homeowners did not have legal representation due to the suspension of their previous attorney

and a lack of financial resources to secure a new one. *See* Motion to be Relieved as Counsel for Defendant.

The builder filed a Motion for Entry of Default on July 8, 2022 (*See* Defendant's Motion for Default) and a Motion for Damages on July 12, 2022. *See* Defendant's Motion for Damages. A damages hearing was scheduled to be heard on January 26, 2023. The homeowners were able to retain new counsel in December of 2022 who requested a continuance in the case. *See* Defendants' Motion to Continue. The case was continued, and the homeowners' new counsel sent discovery requests including requests for any and all documents already produced. A new hearing date of June 29, 2023 was set, but the homeowners' counsel had not received any discovery. *See* Ex. A to Defendant's Memorandum of Law in Support of Motion to Compel Discovery and Motion to Stay Damages Hearing. On April 10, 2023, counsel for the homeowners reached out regarding the same and opposing counsel responded that they would be provided in ten (10) days. Despite this, no discovery was received. On June 21, 2023, counsel for the homeowners reached back out regarding the outstanding discovery as well as question regarding the supposed default. At this point opposing counsel insisted that the homeowners were not entitled to discovery and refused to produce the previously promised discovery, including that which was previously produced. *See id.*

Subsequently, the presiding judge ruled that due to the default, all the homeowners' counterclaims were also in default and thus dismissed them. *See* Transcript of Record, p.4-5. This dismissal was made without a separate assessment of the counterclaims or consideration of their independent nature.

The homeowners contend that this dismissal was in error and that the counterclaims warrant separate consideration and adjudication. The homeowners argue that the trial court failed

to recognize the procedural distinction between an entry of default and a default judgment and the substantive need for an independent assessment of the counterclaims. Furthermore, the homeowners assert that the dismissal of the counterclaims denied them the due process and fair trial guaranteed under the law.

The homeowners filed a timely notice of appeal, seeking reversal of the trial court's dismissal of the counterclaims and requesting that the appellate court remand the case for discovery and a new trial on these counterclaims. The homeowners seek a fair opportunity to present their case and for the court to hear and determine the counterclaims on their merits.

This appeal presents the court with the opportunity to address the important legal question of whether a default in responding to the main claims automatically necessitates the dismissal of counterclaims and how the principles established in relevant case law should guide the trial court's approach to handling such situations.

5. Standard of Review

5.1. Abuse of Discretion

The trial court's procedural and discretionary decisions, including the dismissal of counterclaims and the denial of motions related to discovery and stay pending discovery, are reviewed for an abuse of discretion. This standard requires the appellate court to uphold the trial court's decision unless it is determined that the trial court acted arbitrarily or capriciously, with no reasonable justification or was influenced by an error of law. The seminal case of *Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004) illustrates the application of this standard in the context of procedural and evidentiary rulings. Under this standard, the appellate court will examine whether the trial court's dismissal of counterclaims and handling of procedural matters during the damages hearing were made with proper consideration and legal basis. The Supreme Court of South Carolina in *Elam* reiterates the well-

established principle that the decision to grant or deny a motion for a new trial absolute based on the excessiveness of the verdict lies within the sound discretion of the trial court and will not be disturbed on appeal unless it is found to be an abuse of discretion. *See Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004). The appellate court will reverse the trial court only where there is no evidence to support the ruling below. *Elam* clarifies that appellate courts are to give deference to the lower courts' decisions unless there is a clear misapplication or unreasonable judgment. *See id.* Such an abuse of discretion occurs when the decision is based upon an error of law or when the order is without evidentiary support. *See Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503 (S.C. Ct. App. 2004). The decision in *Stark* reiterates that the decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *See id.* This discretion is not to be reversed absent an abuse of that discretion, which occurs when the order is controlled by an error of law or when the order is without evidentiary support. *See id.*

The trial court's outright dismissal of the counterclaims, especially as it did not adequately consider the independence and factual basis of each counterclaim or the procedural fairness owed to the homeowners, could be seen as an arbitrary dismissal of substantive claims. This is particularly poignant if the counterclaims presented viable disputes that warranted separate consideration from the default judgment against the homeowner. The appellate court, applying the abuse of discretion standard from *Elam*, should closely scrutinize whether the trial court's actions were justified and consistent with the principles of procedural fairness and judicial discretion. The appellate court, therefore, should closely examine the record to ensure that the trial court's decisions were not arbitrary, capricious, or manifestly unreasonable. If it is found that the trial court's dismissal of the counterclaims lacked evidentiary support, was influenced by

an error of law, or otherwise constituted an abuse of discretion, it would be appropriate for the appellate court to reverse the dismissal and remand the case for further proceedings.

6. Argument

6.1. The Trial Court Erred in Entering Default Against the Homeowners and Dismissing the Counterclaims

Default is addressed in Rule 55(a) of the South Carolina Rules of Civil Procedure. *See* SCRPC, Rule 55. Pursuant to the same, the clerk shall enter default upon the calendar. Only after this entry is made, can a Plaintiff proceed for an entry of default judgment and its accompanying damages hearing. *See* SCRPC 55(a) and 55(b); *see Beckham v. Durant*, 300 S.C. 329, 331 n.2, 387 S.E.2d 701, 703 (Ct. App. 1989) (“The entry of default is an official recognition of the failure to appear or otherwise respond but is not a judgment by default. Judgment by default is not properly entered until damages are determined.”); *see also Thynes v. Lloyd*, 294 S.C. 152, 153, 363 S.E.2d 122, 123 (Ct. App. 1987). The rules further require that a party against whom a judgment by default is sought to be given written notice of the application of the judgment at least three (3) days prior to the hearing if the party “has appeared” in the action. *See Dymon, Inc. v. Hyman*, 305 S.C. 170, 406 S.E.2d 388 (Ct. App. 1991).

Rule 26(b) permits discovery by parties “regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party. . .” (SCRPC, Rule 26(b)). Further, regardless of whether a defendant is in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount of damages based on sufficient proof. *See Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 274 S.E.2d 287 (1981). The prayer in an action may not serve as a substitute for proof. *See id.* A

plaintiff must prove by competent evidence the amount of her damages. *See Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978).

There does not appear to be a case in South Carolina directly on point, other jurisdictions have addressed the issue of “discovery-in- default,” and those jurisdictions have embraced the basic due process right of a party in default to engage in discovery prior to a hearing on damages. *See Clague v. Bednarski*, 105 F.R.D. 552 (E.D.N.Y. 1985); *see also Bashforth v. Zampini*, 576 A.2d 1197 (R.I. 1990); *see also Dungan v. Superior Court*, 512 P.2d 52, 53 (Ariz. 1973).

Clague involved a claim for damages resulting from an automobile accident. The defendant defaulted, but moved the court to compel the plaintiff to attend a deposition and physical examination so that the defendant could prepare for a damages trial. *See Clague v. Bednarski* at 105 F.R.D. at 552-553. After noting that a default constitutes a concession of the truth of the factual allegations in the complaint related to liability, but not those related to damages, the *Clague* court stated, “there would be little point in allowing a defendant to contest the amount of damages if the defendant is not permitted adequately to prepare for the hearing on damages.” *See id.*

Similarly, the *Bashforth* defendants served discovery requests and deposition notices on the plaintiff, but the plaintiff refused to participate in discovery. *See Bashworth* at 576 A.2d at 1197. The trial court entered a protective order in the plaintiff’s favor, but the Rhode Island Supreme Court reversed and allowed the discovery, concluding that a defendant held in default must be permitted to engage in discovery to protect his rights in the damages trial. *See id* at 576 A.2d at 1200. The *Bashforth* court reasoned, “[s]ince we are committed to an adversary system of justice we do not construe Rule 55(b)(2) to mean that a hearing ipso facto means a one-sided presentation by the party seeking the default judgment.” *Id* at 576 A.2d at 1197, 1200.

In *Dungan*, the defendant in default sought the continuance of a scheduled hearing on entry of default judgment, arguing that he had “inadequate opportunity for discovery as to the extent of the plaintiff’s injuries.” *Dungan* at 512 P.2d at 52. The trial court denied the motion, and the defendant appealed. The Court of Appeals of Arizona reversed noting, as did the *Bashforth* court, that a default judgment hearing on damages does not mean a one-sided presentation by the party seeking the judgment. *See Bashworth* at 512 P.2d at 53. The court remanded to the trial court with instructions to reconsider the motion for continuance. *See id* at 512 P.2d at 53.

6.1.1. Dismissing the Counterclaims and Associated Motions on the Basis of Default Judgment was Premature and Ignored the Independence of Counterclaims and was an Abuse of Discretion by the Trial Court

The trial court abused its discretion in dismissing the homeowner's counterclaims solely based on the entry of default against them, ignoring the independent nature and substantive merits of those counterclaims. Further, the trial court's denial of motions to stay and compel discovery before the damages hearing was procedurally improper. Parties are entitled to a fair process, which includes the opportunity to conduct discovery and present relevant evidence, especially in the context of determining damages. According to *5Star Life Ins. Co. v. Peek Performance Inc.*, there is a clear distinction between an entry of default and an entry of default judgment. *See 5Star Life Ins. Co. v. Peek Performance Inc.*, 434 S.C. 334, 863 S.E.2d 468 (S.C. App. 2021). As outlined in *Elam*, applies to a trial court's decisions on procedural matters and its ruling on motions such as those for a new trial or to amend judgments. *See Elam v. South Carolina Department of Transportation*, 361 S.C. 9, 602 S.E.2d 772 (2004). The appellate court will not overturn a trial court's decision unless it is found to be arbitrary or without reasonable justification, reflecting an abuse of discretion. An entry of default is a procedural acknowledgment that does not inherently determine the finality of claims or the assessment of

damages. Counterclaims should be regarded independently and not automatically dismissed due to a default in the primary claim. The decision in *5Star Life Ins. Co.* emphasizes the procedural nature of default entries and suggests that such entries do not directly dictate the outcomes of associated counterclaims. *See id.* Counterclaims are inherently independent and possess their own legal and factual basis that warrants separate consideration. This understanding aligns with principles of due process and ensures that each claim and counterclaim is afforded an appropriate hearing based on its merits.

The limitations placed on the homeowners' participation in the damages hearing infringed upon their rights to a fair hearing. The denial of the motion to stay pending discovery and the motion to compel discovery, indicates a potential failure to allow the homeowners sufficient means to prepare and argue their case regarding the counterclaims and damages effectively. Even in default cases, defendants retain certain rights, including the right to participate in a damages hearing, albeit in a limited capacity. *See Howard v. Holiday Inns, Inc.* (1978). The denial of these motions restricted the homeowners' ability to present a fully informed argument and potentially collect and present evidence essential to their counterclaims and the assessment of damages. These motions were critical to ensuring a fair and comprehensive hearing, and their denial could have significantly impacted the outcome.

In the present case, the homeowner's counterclaims present distinct issues from the original claims filed by the builder. By dismissing these counterclaims solely due to a default judgment against the homeowners on the original claims, the trial court failed to consider the separate nature and merits of these counterclaims. This dismissal was premature and ignored the legal principle that default judgment on the main claim does not equate to a comprehensive dismissal of all related counterclaims. The trial court's action disregarded the procedural and

substantive protections afforded by the law, specifically as elucidated in the *5Star Life Ins. Co.* case. *See 5Star Life Ins. Co.* (S.C. App. 2011).

The trial court's dismissal of the homeowners' counterclaims upon entering default judgment against them also warrants reconsideration in light of the principles established in *Beckham v. Durant*. *See Beckham v. Durant*, 300 S.C. 329, 331 n.2, 387 S.E.2d 701, 703 (Ct. App. 1989). In *Beckham*, the South Carolina Court of Appeals underscored the distinction between an entry of default and an entry of default judgment, clarifying that the former does not conclude the latter's final determination of claims or damages. *See id.* This legal principle is pertinent to the present case, suggesting that the lower court's immediate dismissal of the counterclaims post-default may have been premature and overlooked the necessity for a separate and substantive evaluation of each counterclaim.

The application of *Beckham* to the current scenario implies that the trial court should not have summarily dismissed the homeowner's counterclaims merely due to the default on the main claims. Instead, it should have recognized the procedural step as an official acknowledgment of failure to appear or respond, allowing for a subsequent, distinct consideration of the counterclaims. The homeowners' counterclaims, bearing their own legal and factual basis, deserved an independent evaluation, one not automatically negated by the default in the primary case.

Thus, this court is urged to consider the procedural nuances and substantive rights implicated in the default judgment and counterclaim dismissal process. By applying the *Beckham* precedent, it becomes clear that a more nuanced approach was necessary — one that respected the procedural distinction between default entry and judgment and allowed for the individual merits of the counterclaims to be properly considered and adjudicated.

Accordingly, the Court should consider the denial of these preliminary motions as part of the grounds for reversing the trial court's decision and remanding for a new hearing that includes the opportunity for complete discovery. Appellants respectfully assert that the trial court's dismissal of the counterclaims was erroneous and inconsistent with the principles established in both *5Star Life Ins. Co.* and *Beckham v. Durant*, and Appellants request that the appellate court reverse this decision and remand for a proper hearing on the counterclaims and any associated damages, respecting the procedural integrity and substantive rights of the homeowners as a party in default, ensuring due process and a fair trial for all Involved parties.

6.1.2. Default Judgment Admits Liability but Not the Extent of Damages or the Viability of Separate Claims

The trial court erred in dismissing the homeowner's counterclaims based on the entry of default against them. Default judgment admits liability, but not the extent of the damages nor the viability of separate claims.

In *Solley v. Navy Federal Credit Union Inc.*, the court highlighted that a defendant in default admits liability but not the amount of damages. *See Solley v. Navy Federal Credit Union Inc.*, 397 S.C. 192, 723 S.E.2d 597 (S.C. App. 2012). Extending this principle, it can be argued that a default judgment on the original claim does not automatically admit the non-viability or irrelevance of separate counterclaims. *See id.* The trial court is required to conduct a separate assessment of damages and should consider the counterclaims' validity and weight independently.

Applying the principles from *Solley*, the trial court in our case should not have dismissed the homeowners' counterclaims purely on the basis of default without a separate assessment of their validity and the implications of the default judgment on these specific counterclaims. The homeowners' counterclaims may present legitimate disputes that warrant consideration

irrespective of the default status on the main claims. This dismissal overlooked the nuanced understanding that while a default may concede certain aspects of liability, it does not extend to a comprehensive dismissal of all connected claims, especially when those counterclaims have not been adequately examined for their standalone merits and relevance. Therefore, the dismissal of the homeowners' counterclaims was procedurally improper and substantively unjust, depriving them of the opportunity to have their day in court to address separate and distinct issues raised in their defense.

The ruling in *Howard v. Holiday Inns Inc.*, provides further legal guidance. *See Howard v. Holiday Inns Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978). *Howard* emphasizes the necessity of an evidence-based determination of damages, even in default cases, highlighting that while a defendant in default admits liability, this does not equate to an admission of the extent of damages. *See id.* The case insists on a procedural right to a hearing on damages where the defaulting party can participate, albeit in a limited capacity. *See id.*

Moreover, a default judgment admits liability, but does not automatically determine the amount of liability nor the viability of separate counterclaims. *See id.* The lower court is required to conduct a separate assessment of damages and should consider the counterclaims' validity and weight independently. *See id.* This procedural diligence and requirement for proving damages even in default situations underscores the need for a distinct and fair process for assessing damages, applying to both main claims and any counterclaims. The trial court's wholesale dismissal failed to recognize these procedural safeguards and requirements for a separate assessment of damages and the inherent rights of the parties, even in default situations.

Applying the principles from *Howard* to the current situation, it's clear that the trial court's dismissal of the homeowners' counterclaims upon default may have overlooked the need

for a separate, evidence-driven assessment of each claim, particularly concerning the determination of any damages. The homeowners' counterclaims warrant individual consideration, and any associated damages require a specific, factual, and legal evaluation rather than an automatic dismissal alongside the default judgment.

Therefore, this court should recognize that the lower court's dismissal was inconsistent with the procedural and substantive requirements as underscored in *Howard* and the appellate court should reverse the dismissal and remand for a proper hearing on the counterclaims, ensuring a thorough and evidence-based assessment of the claims and any related damages. This approach respects the procedural integrity and substantive rights of the homeowners, ensuring due process and a fair trial. It emphasizes the importance of a detailed and just process for all litigants, even those who have defaulted on initial claims, reaffirming the need for an accurate and fair determination of damages in line with established legal precedents.

The principles from *Lewis v. Congress of Racial Equality and/or C.O.R.E. Inc.*, are highly pertinent. *See Lewis v. Congress of Racial Equality and/or C.O.R.E. Inc.*, 275 S.C. 556, 274 S.E.2d 287 (1981). *Lewis* emphasizes that mere allegations are insufficient for relief, particularly regarding damages, and that plaintiffs must substantiate their claims with competent evidence. *See id.* This precedent is crucial in arguing that the trial court erred in dismissing the homeowner's counterclaims without proper consideration and assessment, as it implies that even in default situations, there remains a need for an evidentiary determination of the claims and damages involved.

Applying the *Lewis v. CORE* principles to the current scenario suggests that the trial court's summary dismissal of the homeowners' counterclaims, particularly without a detailed and evidence-based assessment, was premature and potentially overlooked critical aspects of the

case. The homeowners' counterclaims, which present distinct legal issues from the builder's initial claims, should not have been dismissed solely based on the default judgment against the homeowners for the original claims. Instead, there should have been a substantive examination of the counterclaims, including the opportunity for the homeowners to provide evidence supporting their claims and the extent of any alleged damages.

Therefore, we assert that the dismissal of the homeowners' counterclaims was inconsistent with the principles established in *Lewis v. CORE*. *See id.* The appellate court should reverse the trial court's dismissal and remand the case for a proper hearing on the counterclaims, including a comprehensive and evidence-based assessment of the claims and any associated damages. This approach respects both the procedural integrity and substantive rights of the homeowners and ensures due process and a fair trial. It also upholds the judicial standard that all claims, especially those involving damages, require a foundation of solid evidence, not assumptions or cursory evaluations. By mandating a remand for further proceedings, the court will reinforce the importance of a thorough and just adjudication process, consistent with established legal standards and the fundamental principles of justice.

7. Conclusion

In conclusion, the trial court's dismissal of the homeowners' counterclaims upon entering default judgment was procedurally and substantively flawed, overlooking the essential legal precedents that govern the handling of default judgments and counterclaims.

The trial court's dismissal of the homeowners' counterclaims upon entering a default judgment against them must be scrutinized under the abuse of discretion standard, as informed by the principles outlined in cases such as *Stark*. *See Stark v. Superior Construction Corp.* (S.C. Ct. App. 2004) The appellate court is tasked with determining whether the trial court's decisions

were made within the bounds of its considerable discretion and whether those decisions were based on a reasonable assessment of the evidence and the applicable legal standards.

The distinction between an entry of default and an entry of default judgment, as clarified in *5Star Life Ins. Co. v. Peek Performance Inc.* and further supported by *Beckham v. Durant*, establishes that default does not inherently dictate the dismissal of counterclaims or the conclusive assessment of damages. These cases advocate for the independent and substantive consideration of counterclaims, underscoring that each should be treated based on its own merits.

Further, the findings in *Howard v. Holiday Inns Inc.* and *Lewis v. Congress of Racial Equality and/or C.O.R.E. Inc.* reinforce the necessity for an evidence-based determination of damages in default cases, highlighting that a default judgment admits liability but does not conclude the extent of damages or the viability of separate claims such as counterclaims. This principle is crucial in ensuring that damages are not assumed but are substantiated through a fair and just process, allowing for the accurate and equitable resolution of claims.

Moreover, *Solley v. Navy Federal Credit Union Inc.* specifically addresses the implications of a default judgment on the viability and assessment of counterclaims. It emphasizes that default judgment on the original claim does not automatically dismiss or undermine the relevance of separate counterclaims, necessitating a separate assessment of damages and consideration of the counterclaims' validity and weight` independently. The trial court's dismissal of the homeowners' counterclaims without this separate and thorough assessment was therefore procedurally improper and substantively unjust.

Incorporating the insights from these cases, we assert that the appellate court should reverse the trial court's dismissal of the homeowners' counterclaims and remand the case for a proper hearing. This hearing should include a comprehensive and evidence-based assessment of

the counterclaims and any associated damages, respecting the procedural integrity and substantive rights of the homeowners as a party in default. By doing so, the appellate court will ensure that due process and a fair trial are upheld.

The homeowners' counterclaims represent distinct legal issues that warrant an independent and thorough evaluation, separate from the default judgment entered against them in the primary case. Remanding the case for further proceedings will reaffirm the importance of procedural due process and the rightful consideration of all claims and counterclaims, aligning with established legal standards and ensuring a just and equitable resolution for all parties involved.

Therefore, we respectfully request this court to reverse the trial court's dismissal of the counterclaims and remand the case with specific instructions. First, appellants ask that the court remand this case to the trial court for a new hearing date for these counterclaims, allowing the homeowners to properly present their case and for the court to consider each claim on its merits. A new hearing will provide the necessary procedural platform for the homeowners to argue their counterclaims and for the court to make a just determination based on the full breadth of evidence and legal argumentation. Second, appellants ask that the court enter an order compelling discovery on the homeowners' counterclaims to allow for the collection and presentation of all relevant evidence, ensuring a complete and fair assessment of the claims.

Granting these reliefs would ensure that the homeowners' rights are preserved, and that justice is served in accordance with the principles of law and equity. It is only through a fair and comprehensive process that the homeowners can fully present their counterclaims and seek appropriate redress for their grievances. We trust that the court will recognize the significance of

these procedural and substantive rights and grant the relief sought to rectify the errors of the lower court.

Respectfully submitted,

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