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**Jan 18 2024**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

The Honorable Robert W. Buffington, Special Referee

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Case No. 2022-CP-43-00508  
Appellate Case No. 2023-001638

Mae McGruder,

Respondent,

v.

Dollar General Corporation,  
d/b/a Dollar General Store #1677 and Janie Davis,

Appellants.

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**RESPONDENT'S RETURN TO APPELLANTS' MOTION FOR LEAVE TO FILE  
MOTION FOR RELIEF FROM JUDGMENT PURSUANT TO RULE 60(b), SCRCF**

Appellants' Motion for Leave to File Motion for Relief from Judgment Pursuant to Rule 60(b), SCRCF should be denied because (1) the lower court does not have jurisdiction to hear the motion given that the Court of Appeals has exclusive jurisdiction pursuant to Rule 205, SCRCF and (2) the relief that they are seeking was litigated and decided below and is now on appeal.

**THE LOWER COURT LACKS JURISDICTION TO HEAR THE MOTION BECAUSE  
THE ISSUES RAISED ARE THE SAME AS THOSE UNDER APPEAL**

Rule 205, SCACR provides the appellate court with exclusive jurisdiction over matters on appeal. When a case is on appeal, the lower court may only proceed with matters not affected by the appeal. Arnal v. Fraser, 371 S.C. 512, 518-19, 641 S.E.2d 419,

422 (2007). In this case, Appellants appealed three orders of the lower courts, specifically orders: 1) Denying Motion for Relief from Entry of Default and Denying Motion for Limited Discovery; 2) Denying Motion to Reconsider the Order Denying the Motion of (sic) Set Aside Default and 3) Order of Judgment. See Notice of Appeal, October 19, 2023. Appellants now want to invoke Rule 60(b), SCRCF and have the lower court to revisit the very issues decided in the orders that are on appeal.

In the orders under appeal, the lower court denied Appellants' Motion for Relief from Default, addressing issues of whether the proper parties were named in the Complaint, whether the Appellants were properly served, and whether good cause existed for relief from default. Appellants' Ex. G, Order Denying Motion for Entry of Default and Denying Motion for Limited Discovery at 2. After their motion was denied, Appellants filed a motion to reconsider the lower court's decision, asserting that the decision was unsupported by the evidence. Appellants' Exhibit H, Motion to Reconsider the Order Denying Their Motion to Set Aside Default at 1-2. That motion was also denied. Appellants' Exhibit I, Order Denying Motion to Reconsider the Order Denying the Motion to Set Aside Default. Following a hearing on damages, the lower court issued an Order of Judgment awarding Respondent \$925,000.00 in damages. Appellants' Exhibit J Order of Judgment at 4.

Appellants' now want the lower court to consider again the issues decided in the Orders that they have appealed, specifically whether Dollar General Corporation was served and whether Dolgencorp was properly served and whether the damage award in

the Order of Judgment was excessive. Appellants' Motion for Leave at 5, 6, and 9.<sup>1</sup> Appellants seek to have the lower court rule on the very issues that the appellate court will decide on appeal and this would be improper. Therefore, Appellants' Motion for Leave must be denied.

**APPELLANTS ARE NOT ENTITLED TO RELIEF PURSUANT TO RULE 60(b),  
SCRCP ON ISSUES THAT ARE UNDER APPEAL**

A party may not invoke Rule 60(b), SCRCP where it could have pursued the issue on appeal. See Smith Companies of Greenville v. Hayes, 311 S.C. 358, 428 S.E.2d 900 (Ct.App.1993) (finding relief from judgment is not a substitute for appeal from final judgment, particularly when it is clear party seeking relief could have litigated at trial and on appeal claims he now makes by motion); Tench v. S.C. Dep't of Educ., 347 S.C. 117, 121, 553 S.E.2d 451, 453 (2001).

In this case, it is clear that Appellants have appealed the lower court orders denying relief from default after having appeared and litigated the issues before the lower court. They are not entitled to litigate the same issues again by way of Rule 60(b), SCRCP and Appellants' Motion for Leave should be denied and the appeal in this case should proceed.

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<sup>1</sup> Respondents' assertion that Davis is not a proper party cannot be addressed while the Respondents' are in default: "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." Roche v. Young Bros., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998).

Respectfully submitted,

January 18, 2024

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PROOF OF SERVICE

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I certify that I have served the Respondent's Return to Appellants' Motion for Leave to File Motion for Relief from Judgment Pursuant To Rule 60(b), SCRCF on Appellants Dollar General Corporation, d/b/a Dollar General Store #1677 and Janie Davis by electronic mail only to their following attorneys of record:

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January 18, 2024

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