

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

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

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

.....Respondent,

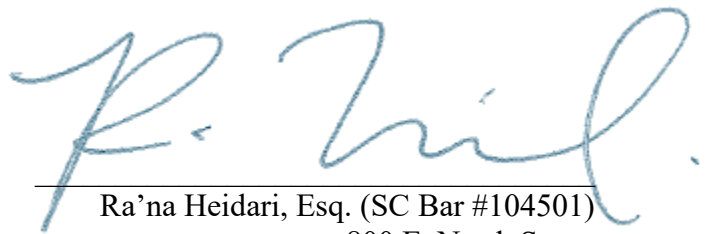
v.

Brian W. Bowles and Kristina Bowles

.....Appellants.

APPELLANTS’S RESPONSE TO RESPONDENT’S INITIAL BRIEF

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April 29, 2024

I.	TABLE OF CONTENTS	2
II.	TABLE OF AUTHORITIES	3
III.	STATEMENT OF ISSUES ON APPEAL	4
IV.	STATEMENT OF THE CASE	4
V.	STANDARD OF REVIEW	5
	a. ABUSE OF DISCRETION	
VI.	ARGUMENTS IN RESPONSE	5
	a. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY DISMISSING THE HOMEOWNERS’ COUNTERCLAIMS SOLELY ON THE BASIS OF THE DEFAULT JUDGMENT ENTERED AGAINST THEM, WITHOUT A SEPARATE ASSESSMENT OF THE MERITS OF THOSE COUNTERCLAIMS OR THE DAMAGES CLAIMED.	
	i. <i>Appellant Brian Bowles is not in default.</i>	
	ii. <i>Proceeding with the damages hearing was improper.</i>	11
	b. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN DISMISSING APPELLANT’S COUNTERCLAIMS.	14
VII.	CONCLUSION	17

II. TABLE OF AUTHORITIES

1. Rule 13, SCRCF
2. Rule 15, SCRCF
3. Rule 55, SCRCF
4. *5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 863 S.E.2d 468 (Ct. App. 2021)
5. *Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 407 S.E.2d 630 (1991)
6. *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct. App. 2000)
7. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978)
8. *McDow v. Brown*, 2 S.C. 95 (1870)
9. *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 506, 602 S.E.2d 99, 100 (Ct. App. 2004)
10. *Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54 n.2, 504 S.E.2d 117 n.2 (1998)
11. *Waldrop v. Leaman*, 30 S.C. 428, 9 S.E. 466 (1889)
12. *Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994)

III. STATEMENT OF ISSUES ON APPEAL

- a. **Did the trial court err by dismissing the homeowners' counterclaims solely on the basis of the default judgment entered against them, without a separate assessment of the merits of those counterclaims or the damages claimed?**
- b. **Did the Trial Court commit reversible error in dismissing Appellant's counterclaims?**

IV. STATEMENT OF THE CASE

This appeal stems from the trial court's decision to enter a default judgment against the appellants, Brian Bowles and Kristina Bowles, and to dismiss their counterclaims. The litigation originated with the respondent's damage claims, citing breach of contract among other issues. Concurrently, Mr. Bowles, alongside his original answer to the complaint, filed counterclaims for breach of contract and damages relating to the same transactions specified in the respondent's allegations.

During these proceedings, the respondent amended the complaint to include Kristina Bowles. The amendment did not substantively alter the existing allegations but expanded them to encompass Ms. Bowles. Due to circumstances related to their previous counsel leaving them *pro se*, Ms. Bowles failed to file a response.

Respondent subsequently filed a motion for an entry of default judgment against Brian and Kristina Bowles. At this point appellants were able to retain counsel. The appellants' subsequent motion to stay default judgment was denied, as was their motion to compel discovery previously promised by respondent's counsel. Crucially, while there was a subsequent damages hearing, there was no hearing on the motion for default itself and whether it applied to both appellants. The trial court adjudged both appellants in default during the damages hearing, despite Mr. Bowles having

fully responded to the initial complaint and no substantive changes affecting him in the amended complaint.

At the damages hearing, the trial court decided the damages amounted to a "sum certain" based on the respondent's affidavit, totaling \$90,684.15, inclusive of both principal claims and attorney's fees. Appellants argued that their counterclaims were both timely and substantively distinct from the main action, deserving independent consideration. Consequently, the trial court dismissed their counterclaims on the grounds of this default, asserting that the counterclaims were barred due to the appellants' default in the main action.

The appellants appealed the decisions, challenging the trial court's application of default judgment procedures under Rule 55 and the dismissal of their counterclaims.

V. STANDARD OF REVIEW

a. Abuse of Discretion

The decision to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial court. *See Washington v. Whitaker*, 317 S.C. 108, 451 S.E.2d 894 (1994) and *Haselden v. Davis*, 341 S.C. 486, 534 S.E.2d 295 (Ct. App. 2000). This decision will not be disturbed on appeal unless there is a clear showing of an abuse of that discretion. An abuse of discretion occurs when a judgment is controlled by some error of law, or when an order, based on factual conclusions rather than legal ones, lacks evidentiary support *See Strother v. Lexington County Recreation Comm'n*, 332 S.C. 54 n.2, 504 S.E.2d 117 n.2 (1998).

Decisions by the trial court to exclude evidence, deny motions, or issue specific rulings are also reviewed for an abuse of discretion. Under this standard, the appellate court upholds the trial court's decision unless it reflects an error of law or a factual conclusion unsupported by evidence *See also Carlyle v. Tuomey Hosp.*, 305 S.C. 187, 407 S.E.2d 630 (1991) (*absent showing of clear*

abuse of discretion, trial court's admission or rejection of evidence is not subject to reversal on appeal).

The appellate court's role is to ensure that the trial court's discretion is exercised in accordance with legal standards and factual support, ensuring decisions align with established law and the interests of justice.

VI. ARGUMENTS IN RESPONSE

- a. The Trial Court committed reversible error by dismissing the homeowners' counterclaims solely on the basis of the default judgment entered against them, without a separate assessment of the merits of those counterclaims or the damages claimed.**

i. Appellant Brian Bowles is not in default.

Appellants contend that the trial court improperly applied Rule 55 by holding Brian Bowles in default, given the factual context of his response to the initial complaint and the non-substantive nature of the amendments in the subsequent complaint. The appellants request de novo review of this application.

South Carolina Rule of Civil Procedure 55 outlines the process for entering default and default judgments against a party who fails to plead or otherwise defend against a claim. Rule 15(a) complements this by specifying that an amended complaint does not necessitate a new response unless it introduces substantive changes. The standard of review for the application of these rules in this context is de novo, allowing the appellate court to examine the issue without deference to the trial court's findings.

Rule 55(a) allows a court to enter default when a party fails to respond to a complaint or other pleading as required. However, this rule must be considered alongside Rule 15(a), which provides that an answer to an initial complaint suffices if subsequent amendments do not materially alter the claims or defenses. The intention behind these rules is to safeguard the procedural rights of defendants by not unduly penalizing them for failing to respond to non-substantive amendments. De novo review is appropriate here to ensure that the legal standards and rules are correctly applied, independent of the trial court's initial interpretation.

Brian Bowles had responded appropriately to the initial complaint. The subsequent amended complaint did not introduce substantive changes that would legally necessitate a new response. Under Rule 15(a), his original answer remains effective against the claims as they were not substantively altered. Therefore, holding him in default for not responding to the amended complaint represents a misapplication of Rule 55, as the conditions necessitating a new answer were not met.

Howard v. Holiday Inns, Inc. supports the principle that defendants retain their procedural rights even when in default. The courts have emphasized that default judgments should not be entered without ensuring that all procedural requirements are satisfied, particularly regarding the necessity of responses to amended complaints. *See Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978).

Furthermore, *5Star Life Ins. Co. v. Peek Performance, Inc.* highlights the courts' responsibility to ensure that default judgments are only entered based on clear procedural grounds that respect the rights of defendants to understand and respond to the claims against them. *See 5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 863 S.E.2d 468 (Ct. App. 2021).

Respondent's reliance on *McDow v. Brown* and *Waldrop v. Leaman* is misplaced. Respondent argues that courts should not intervene in self-wrought misfortunes. However, these cases are inapplicable as they deal primarily with the consequences of personal decisions in estate disputes and trust management, not procedural defaults in civil litigation. *See McDow v. Brown*, 2 S.C. 95 (1870); *see also Waldrop v. Leaman*, 30 S.C. 428, 9 S.E. 466 (1889).

The *Waldrop* case involved a breach of fiduciary duty by a trustee who purchased estate interests from heirs without full disclosure of the estate's value, thus misleading them for his own benefit. *See Waldrop v. Leaman*, 30 S.C. 428, 9 S.E. 466 (1889). The court refused to protect an individual from the consequences of their own decisions when those decisions were made foolishly but without coercion or deception by others. In the current situation, the appellants did not engage in a transaction out of folly; rather, they missed court deadlines due to errors arguably attributable to their legal representation, not a deliberate or negligent choice on their part.

Further, *McDow v. Brown* involved an estate dispute where an administrator failed to account for certain estate assets. *See McDow v. Brown*, 2 S.C. 95 (1870). The court discussed the reopening of settled accounts on grounds of mistake, emphasizing that both fraud and mistake in such accounts must be proved clearly to warrant reopening. A settled account cannot be reopened without clear evidence of fraud or a significant, demonstrable mistake. *See McDow v. Brown*, 2 S.C. 95 (1870). Unlike *McDow*, where there was an attempt to reopen a financial account on grounds of oversight or error by administrators, the current case revolves around procedural defaults due to potential attorney mismanagement, not mishandling of estate finances or assets.

In *McDow*, the focus was on reopening settled accounts only with clear evidence of fraud or mistake, which differs significantly from default judgment scenarios where procedural rights and proper damage assessments are in question. *Waldrop* involved fiduciary misconduct and the

deliberate misleading of beneficiaries, contexts not analogous to procedural defaults in civil litigation where the primary concern is ensuring fairness in the judicial process and the accuracy of awarded damages. *See generally McDow v. Brown*, 2 S.C. 95 (1870) and *Waldrop v. Leaman*, 30 S.C. 428, 9 S.E. 466 (1889).

The defaults in our case are linked to potential attorney errors in procedure and deadlines, rather than a misunderstanding or misconduct related to estate management or financial settlements. The appellants' situation reflects a failure in legal counsel, not an informed decision-making process about estate management as in *Waldrop* or *McDow*. Unlike the parties in *Waldrop* and *McDow*, who were directly responsible for their decisions or the handling of estate matters, our appellants relied on their attorney's guidance, which they expected to be competent and timely. Their default was not a product of their own action or decision but rather the result of the failure of their legal representation. Courts often differentiate between errors arising from a party's negligence or folly and those arising from professional advice or representation. *See Waldrop v. Leaman*, 30 S.C. 428, 9 S.E. 466 (1889). Here, equitable relief might be justified to prevent a miscarriage of justice due to procedural, not substantive, failures. The precedents focus on substantive errors in handling estate matters. In contrast, the current case involves procedural errors potentially outside the appellants' control, warranting a different judicial approach to ensure fairness and justice.

The present case revolves around ensuring procedural correctness and fairness in legal proceedings, a distinct context where ensuring the accuracy and justice of judicial processes is paramount. Respondent's reliance on *McDow* and *Waldrop* is misplaced as these cases do not address the core issues relevant to this default judgment—namely, the rigorous and transparent determination of damages in line with procedural rules and case law. Therefore, the appellants

assert that the trial court's approach resulted in a reversible error due to its procedural shortcomings and inadequate consideration of the appellants' rights during the damages assessment phase. This court is urged to reconsider the default judgment to align with the fundamental principles of justice and ensure compliance with due process standards.

Here, entering default based solely on Brian Bowles's non-response to the amended complaint, which did not substantively alter the claims against him, is a procedural error. The trial court's application is inconsistent with the principles intended to prevent parties from being unduly burdened by repeated pleadings in response to amendments that do not materially change the nature of the claims. *See* Rules 13 and 15, SCRCP. This misapplication disregards the protective intent of the rules designed to ensure fairness and prevent undue prejudice against litigants who have actively participated in their defense by responding to the original claims properly.

In the current case, as per appellants' assertions, the Amended Summons and Complaint did not introduce new substantive allegations or claims requiring a new or different defense from Brian Bowles, thereby rendering the default judgment procedurally inappropriate. The court's decision to hold Brian Bowles in default implies a misinterpretation or misapplication of Rule 15(a) concerning amended pleadings. *See* Rule 15(a), SCRCP. A clear distinction should be drawn between amendments that introduce new claims or cause of action and those that merely clarify or restate previous allegations without substantive changes.

Default in this context appears to be used punitively rather than as a procedural necessity, undermining the fairness of the judicial process and potentially violating the principles of natural justice, which require that litigants be given a fair opportunity to contest claims against

The trial court's decision to hold Brian Bowles in default violates the procedural standards set by Rule 55 and Rule 15(a) of the South Carolina Rules of Civil Procedure. *See* Rules 15(a) and

55, SCRCP. This misapplication potentially deprives him of his rights to fair process and undermines the integrity of judicial proceedings. Accordingly, the appellate court should reverse the default entry against Brian Bowles and remand for further proceedings consistent with the proper application of these rules. This would align the case with established legal principles ensuring that actively participating litigants are not unjustly penalized for procedural misinterpretations, as reviewed de novo by this court.

ii. Proceeding with the damages hearing was improper.

Appellants contend that the trial court's decision to proceed with a damages hearing was procedurally improper, particularly in light of the pending motions and unresolved issues.

South Carolina Rule of Civil Procedure 55(b) allows a court to hold a hearing to determine the amount of damages after entering default judgment. *See* Rule 55(b), SCRCP. However, this rule presupposes that all procedural matters, including counterclaims and related motions, have been resolved, ensuring a fair and balanced proceeding. Rule 15(a) of the South Carolina Rules of Civil Procedure indicates that an amended pleading that does not substantively alter the claims or defenses does not require a new response if the original response is still applicable. *See* Rule 15(a), SCRCP.

The appellants provided a detailed defense and justification against the entry of default as it relates to both parties, as outlined in Section 6.1 of the initial brief. They argued that proceeding to a damages hearing without appellant's new counsel having access to discovery was erroneous. This denial prevented a full exploration of the appellants' defenses and hindered their ability to contest the respondent's claims effectively.

Brian Bowles had timely filed counterclaims intertwined with the damages sought by the respondent. The trial court dismissed these counterclaims without proper consideration, despite

their relevance to the broader proceedings. The dismissal neglected to recognize the compulsory nature of these counterclaims under Rule 13(a), which emphasizes that claims arising from the same transaction or occurrence as the opposing party's claim must be adjudicated alongside them. *See* Rule 13(a), SCRCP. The appellants' motions to stay the default judgment and to compel discovery, which directly affected the damages hearing, were denied. The trial court's decision to proceed without addressing these procedural matters not only prevented a full exploration of the appellants' defenses but also undermined their ability to contest the respondent's claims effectively.

Proceeding directly to a damages hearing without addressing unresolved matters undermined the procedural integrity of the trial. The South Carolina Supreme Court emphasized in *Howard v. Holiday Inns, Inc.* that procedural rights must be safeguarded and all relevant matters addressed to ensure due process and fairness. *See Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978). Ignoring pending motions and counterclaims contradicts this principle, leading to an improper hearing and potential injustice.

In this case, the appellants argued that the damages were not properly established as a "sum certain," and the process lacked necessary procedural safeguards, in contrast to the principles laid out in *Howard* and *5Star*. *See generally Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978) and *5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 863 S.E.2d 468 (Ct. App. 2021). The trial court's acceptance of the respondent's affidavit, awarding \$90,684.15 in damages, including principal claims and attorney's fees, lacked thorough examination. *Howard* reinforces that default judgments should not serve as a basis for unchecked damages awards, necessitating substantive scrutiny. *See Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978).

This aligns with the current case where the respondent claims a sum certain was determined without a hearing. However, the requirement under Rule 55(b)(2) to ascertain damages through evidence applies irrespective of whether the damages are claimed as a sum certain. The principle is to ensure fairness and accuracy in the quantification of damages, preventing arbitrary judgments based purely on allegations. In both *Howard* and *5Star*, the courts were dealing with the need to ascertain damages through evidence, not presuming them even in default scenarios. *Howard* particularly emphasizes that even if a party is in default, the damages cannot simply be presumed from the complaint but must be established through evidence. *See generally Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978) and *5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 863 S.E.2d 468 (Ct. App. 2021).

The respondent points out that in both *Howard* and *5Star*, motions to set aside the default were filed, contrasting with the current case where no such motion was made. While this is a procedural difference, it does not fundamentally alter the necessity for proper and fair damage assessment procedures, nor does it negate the appellants' right to challenge the process used to determine damages. Appellants filed a motion to stay entry of the judgment prior to the damages hearing, thereby arguing against the default. The core issue remains whether the damages were ascertained in a manner consistent with due process and fairness, which is a concern in both the cited cases and the current scenario.

The cases of *Howard* and *5Star* both underscore the judiciary's obligation to ensure that any award of damages, even in default situations, is supported by concrete evidence and judicial scrutiny. *See generally Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978) and *5Star Life Ins. Co. v. Peek Performance, Inc.*, 434 S.C. 334, 863 S.E.2d 468 (Ct. App. 2021). This principle should hold even if the appellants did not file motions to set aside the default, as the

overarching goal is to uphold the integrity of judicial proceedings and ensure that all judgments are founded upon substantiated claims, not merely procedural defaults or unchallenged allegations. The appellants argue that this approach is consistent with the equitable administration of justice and safeguards against arbitrary or unjust enrichment at the expense of procedural missteps.

The trial court's failure to ensure that the damages hearing adhered to the principles of fairness and transparency, as required under Rule 55(b)(2) and exemplified in *Howard* and *5Star*, demonstrates a procedural oversight that can lead to an unjust default judgment. The appellants' inability to effectively challenge the computation of damages underscores a deviation from procedural justice.

The trial court's decision to hold a damages hearing was improper, bypassing unresolved matters and leading to procedural shortcomings. The appellate court should review this process comprehensively, ensuring fair proceedings and accurate assessments of damages.

b. The Trial Court committed reversible error in dismissing Appellant's counterclaims.

Even if the appellants were found to be in default, the trial court committed reversible error in dismissing the appellants' counterclaims, failing to consider their substantive merit independently from the default judgment.

Rule 13(a) of the South Carolina Rules of Civil Procedure mandates that a pleading must state as a counterclaim any claim that, at the time of serving the pleading, the pleader has against an opposing party, if it arises out of the transaction or occurrence that is the subject matter of the opposing party's claim. Rule 55 allows for default and subsequent judgments, but these must be applied while preserving the substantive rights to litigate genuinely contested issues, particularly regarding compulsory counterclaims with an independent basis. *See* Rules 13(a) and 55, SCRPC.

Compulsory counterclaims arise from the same transaction or occurrence as the plaintiff's claims and are intended to be adjudicated alongside the primary claims, avoiding multiplicity of lawsuits and achieving a full resolution of related disputes. Dismissing such claims purely on procedural grounds of default, particularly when they involve significant substantive issues, contradicts the equitable principles in civil procedure aimed at achieving complete justice.

As outlined in Section 6.1.1 of the initial brief, appellants provided a detailed defense and justification for their counterclaims which arose directly from the same set of transactions disputed by the respondent. The dismissal of these claims, therefore, should not have been automatic upon the entry of default but should have considered their intrinsic ties to the claims of the complaint.

The appellants' counterclaims, addressing breach of contract and damages, arose directly from the same set of transactions disputed by the respondent. Their dismissal should not have been automatic upon entry of default but should have considered their intrinsic ties to the respondent's claims. *Howard v. Holiday Inns, Inc.* supports the notion that default in one aspect of a case does not preclude contesting related claims, particularly when those claims might affect the outcome or scope of the default judgment. *See Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978).

The dismissal overlooked the compulsory nature of the counterclaims and their significant substantive issues. Appellants argued that their counterclaims addressed legal and contractual violations by the respondent, requiring adjudication. Furthermore, *Stark Truss Co. v. Superior Constr. Corp.* cited by respondents does not conclusively support dismissal without considering the merits of the counterclaims, as these cases emphasize judicial discretion and careful application of procedural rules to ensure fairness. *See Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct. App. 2004)

Dismissing the appellants' counterclaims solely based on their default under Rule 55 was procedurally and substantively improper. This action overlooked the compulsory nature of the counterclaims and their potential to affect the overall disposition of the case. The appellate court should reverse the dismissal of the counterclaims and remand for a full hearing on their merits, consistent with Rule 13(a) to achieve equitable and comprehensive resolution.

VII. CONCLUSION

For the foregoing reasons, the appellants respectfully request that this court reverse the trial court's entry of default judgment and dismissal of the counterclaims and remand the case for further proceedings consistent with proper legal standards.

The trial court's decision to hold Brian Bowles in default was a misapplication of Rule 55 and Rule 15(a) of the South Carolina Rules of Civil Procedure. The amended complaint did not introduce substantive changes, and Brian Bowles had responded appropriately to the initial complaint. This decision ignored the rules designed to safeguard the procedural rights of defendants and prevent undue penalties for non-substantive amendments.

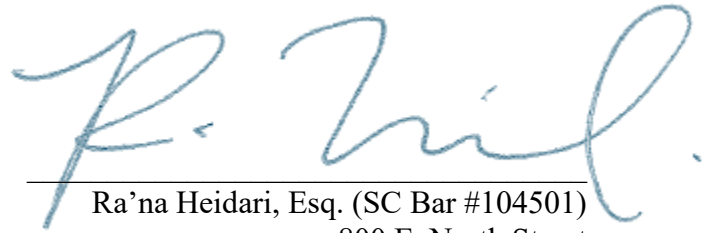
The trial court's decision to proceed directly to a damages hearing without addressing unresolved motions and procedural matters was improper. This bypassing undermined the appellants' ability to contest the respondent's claims effectively and failed to provide the necessary procedural safeguards to ensure a fair and accurate assessment of damages.

The trial court's dismissal of the appellants' counterclaims without proper consideration overlooked their compulsory nature under Rule 13(a) and the substantive issues they addressed. This dismissal contradicts the equitable principles in civil procedure, which aim to achieve complete justice by adjudicating all related claims in a single forum.

Therefore, the appellate court should reverse the entry of default judgment and the dismissal of the counterclaims, remanding the case for further proceedings that ensure equitable and comprehensive resolution.

Respectfully submitted,

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THE STATE OF SOUTH CAROLINA
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Nery Rodas d/b/a RNG Contracting, LLCRespondent,

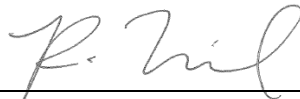
v.

Brian W. Bowles and Kristina BowlesAppellants.

PROOF OF SERVICE

I, the undersigned attorney for the Appellants, Brian W. Bowles and Kristina Bowles, do hereby certify that I have served a copy of the Appellants’ Response to Respondent’s Initial Brief, by depositing a copy of it in the United States Mail, postage prepaid, on April 29, 2024, addressed to their attorneys of record, Charles G. Blackburn, Goodwyn Law Firm, LLC, 2309 Devine Street, Columbia, SC 29205, and by electronic mail at: cblackburn@goodwynlaw.com. I also certify that I have served a copy of the Appellants’ Response to Respondent’s Initial Brief by depositing it in the United States Mail, postage prepaid, on April 29, 2024, addressed to The Honorable Jenny Abbott Kitchings, Clerk of Court, P.O. Box 11629, Columbia, SC 29211, and by electronic mail at: ctappfilings@sccourts.org.

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Via US Mail and Email

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
Clerk of Court
PO Box 11629
Columbia, SC 29211

RE: *Nery Rodas d/b/a RNG Contracting, LLC v. Brian W. Bowles and Kristina Bowles*
Circuit Case No: 2020-CP-23-03949
Appellant Case No: 2023-00127

Dear Ms. Kitchings:

Please find enclosed herewith one copy of Appellants Brian W. Bowles and Kristina Bowles's Response to Respondent's Initial Brief, along with a Proof of Service for the same.

Should you have any questions, please do not hesitate to contact us.

Very truly yours,

HOLDER PADGETT LITTLEJOHN + PRICKETT, LLC



Sarah Kellner
Paralegal

/skk

Enclosures

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