THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
May 16 2024
SC Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. Stephen Bennett, Special Referee

Appellate Case No. 2024-000006

Bullard & Son, Inc., d/b/a Lowcountry Medical Linens, ... Respondent,

v.

Ridgeland Nursing Center, Inc., Ridgeland NC, LLC, and SC OPCO, LLC, ... Defendants,

Of whom

SC OPCO, LLC is the ..... Appellant.

INITIAL REPLY BRIEF OF APPELLANT SC OPCO, LLC

MAYNARD NEXSEN, PC

Kirsten E. Small, SC Bar No. 75681
104 South Main Street, 9th Floor
Greenville, SC 29601
Telephone: 864.370.2211
KSmall@maynardnexsen.com

Kyle A. Brannon, SC Bar No. 100550
Jennifer J. Hollingsworth, SC Bar No. 73535
1230 Main Street, Suite 700
Columbia, SC 29201
Telephone: 803.771.8900
KBrannon@maynardnexsen.com
JHollingsworth@maynardnexsen.com

Attorneys for Appellant SC OPCO, LLC

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Rules

ARGUMENT

I. SC OPCO Has Not Waived Any Arguments

Throughout its brief, Bullard points to isolated sentences in the Special Referee's Order and contends that by not objecting to that particular sentence, SC OPCO has "waived" numerous arguments. These contentions are without merit.

First, Bullard states that the Special Referee "denied the motion for a new trial for four reasons," three of which SC OPCO supposedly has not challenged on appeal. (Respondent's Br. at 10.) SC OPCO's appeal, however, focuses on the Special Referee's denial of its motion to set aside the default judgment and other errors committed by the Special Referee, not on the denial of its alternative request for a new trial.

Next, Bullard repeatedly claims SC OPCO "waived" any challenge to the damages award by failing to attend the damages hearing. (Respondent's Br. at 10-12, 23.) Similarly, Bullard contends that because a default establishes *liability*, SC OPCO is precluded from challenging *damages*. (Respondent's Br. at 23-24.) These arguments ignore settled South Carolina law that "[e]ven in a default case … the plaintiff must prove the amount of his damages, and such proof must be by a preponderance of the evidence." *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014). A defaulting defendant's nonattendance at a damages hearing does not alleviate the plaintiff's burden of proof, nor does it absolve the factfinder of its duty to hold the plaintiff to its burden. For the reasons explained in SC OPCO's opening brief and herein, the damages award is not supported by the evidence and therefore this Court should reverse it.

Bullard also contends that SC OPCO has not challenged certain reasons for the Special Referee's denial of the Rule 60(b) motion. (Respondent's Br. at 11-12.) The first of these is that the Special Referee "correctly addressed mistake of fact as the only ground for good cause because that is the only ground that SC OPCO argued." (*Id.* at 11.) This is a tautology, not an issue subject to waiver. It is self-evident that since SC OPCO asserted only mistake of fact in support of its Rule 60(b) motion, the Special Referee only addressed whether there was a mistake of fact. There is no need to challenge the correctly stated premise for the Special Referee's analysis under Rule 60(b). However, SC OPCO certainly has not waived its challenge to the substance of the Rule 60(b) analysis. Bullard also claims SC OPCO waived the issue that "there is no meritorious defense to the payment of invoices because SC OPCO admits it owes for the services." (Respondent's Br. at 11; *see id.* at 19.) Here, Bullard simply ignores one of SC OPCO's core arguments, *i.e.*, that potential liability in *quantum meruit* for services actually provided does not suffice to establish liability under the Contract for the early termination penalty and attorneys' fees. SC OPCO has not waived its numerous arguments that it has meritorious defenses to liability under the Contract.

With respect to the award of attorneys' fees, Bullard claims that SC OPCO "waived" the issues that Bullard "properly pled attorney's fees in the complaint" and that "[a]ll of counsel's work … is properly included in the fees award." (Respondent's Br. at 12; *see id.* at 27 n.7.) Again, neither of these is an issue subject to waiver. That Bullard properly pleaded a claim for attorneys' fees at the beginning of the case says nothing whatsoever about the validity of the actual award at the end of the case, which is what

SC OPCO is challenging. Similarly, there is no reason for SC OPCO to dispute the legal principle that an attorneys' fee award should compensate the prevailing party for work actually performed. In fact, SC OPCO is challenging the fee award on the grounds that the Special Referee failed to apply this fundamental rule. Rather than determining the fee award based on the actual work performed by Bullard's counsel, the Special Referee simply awarded fees according to the representation agreement between Bullard and its counsel. This is contrary to settled South Carolina law and requires reversal.

II. SC OPCO Is Entitled to Relief from the Judgment

There has never been any dispute that SC OPCO was not a signatory to the Contract. The parties to the Contract are Bullard and Ridgeland. (R. p. __ (Contract).) Ridgeland entered into the Contract long before the transaction in which SC OPCO purchased Ridgeland's assets. And, the uncontradicted affidavit of Joe Neuman ("Neuman Aff.") establishes that SC OPCO purchased only Ridgeland's assets; it did not succeed to, or accept assignment of, any of Ridgeland's liabilities or obligations. (R. p. __ (Neuman Aff. ¶¶ 2, 4).)

A. SC OPCO Made a Mistake of Fact and Acted Promptly

Knowing it was not a party to the Contract, SC OPCO concluded that a complaint for breach of the Contract should be the concern of the contracting party, Ridgeland. This mistaken factual belief was bolstered by subsequent events, including particularly letters being delivered to contracting party Ridgeland at the Facility, while communications to SC OPCO were delivered to its registered agent—even though SC OPCO was, by that time, operating the Facility. (*See* Appellant's Br. at 8-9; *id.* at 16.) SC OPCO was entitled

to relief from the default judgment, at least as to liability under the Contract, because it made a factual error regarding the circumstances of the dispute between the two contracting parties, Bullard and Ridgeland.

Moreover, SC OPCO acted promptly upon learning of the default through its counsel. Counsel alerted SC OPCO to the status of this matter on May 10, 2023. Less than a week later—and before entry of the default judgment awarding damages and attorneys' fees—counsel for SC OPCO contacted Bullard's counsel and advised she would be making an appearance in the case. And, SC OPCO again acted promptly by filing its Motion to Set Aside less than ten days after first learning, from Bullard's counsel, that a damages hearing had been conducted and a proposed judgment had been drafted.

The Special Referee erred in his findings to the contrary, and should be reversed.

B. SC OPCO Should Not Be Bound to the Contract's Terms

The Special Referee also erred in finding that SC OPCO could be held to the terms of the Contract. Even if SC OPCO does not ultimately prevail on its defenses to contractual liability, they are at least sufficient to be "worthy of a hearing or judicial inquiry because [they raise] question[s] of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 917-18 (Ct. App. 2009).

1. No Privity of Contract or Assignment

To begin, it is undisputed that Bullard and SC OPCO have never been in privity of contract. Bullard and Ridgeland entered into the Contract on March 3, 2020, some twenty months before SC OPCO purchased Ridgeland's assets. (R. p. __ (Contract); R. p.

__ (Neuman Aff. ¶ 2).) Thus, absent some basis for a finding that SC OPCO subsequently came into privity of contract with Bullard, there is no grounds for holding SC OPCO to the terms of the Contract.[1] *See Trancik v. USAA Ins. Co.*, 354 S.C. 549, 553-54, 581 S.E.2d 858, 861 (Ct. App. 2003) ("South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it. By the same token, an individual who is not a party to a contract generally cannot be liable for its breach.").

SC OPCO would be bound to the specific terms of the Contract if it were a "successor or assignee" of Ridgeland. (R. p. __ (Contract).) There appears to be no dispute that SC OPCO is not an "assignee" of the Contract. The Complaint does not allege this, and Neuman's affidavit clearly states that SC OPCO "did not assume any liabilities of the former owner or assume, or take assignment of, any contracts entered by the former owner" when it purchased Ridgeland's assets. (R. p. __ (Neuman Aff. ¶ 4).)

2. SC OPCO Is Not a Successor to Ridgeland

This leaves only successor liability as a means of binding SC OPCO to the terms of the of the Contract. As a matter of law, successor liability does not apply here.

a. This Issue Is Not Moot

Bullard contends any question of successor liability is "moot," pointing to the

[1] As SC OPCO explained in its opening brief, whether it is liable in *quantum meruit* for services actually provided by Bullard is entirely distinct from whether SC OPCO is bound to the specific terms of the Contract as though it were a contracting party. (Appellant's Br. at 20-21.) The Special Referee failed to understand or acknowledge this key distinction, improperly holding that SC OPCO, by merely accepting services from Bullard, became bound to the terms of the Contract as though it were one of the contracting parties.

Special Referee's claim, in his order denying SC OPCO's Motion for Reconsideration under Rule 59(e), SCRCP, that "[t]he Court did not make a ruling based on successor liability." (Respondent's Br. at 20; R. p. __ (Order Denying Mot. for Reconsideration, at 4).) But in his Order denying SC OPCO's Motion to Set Aside, the Special Referee explicitly identified the Contract's "successors or assignees" language as one two reasons for finding that SC OPCO was bound by its terms:

> I find [SC OPCO] … has no meritorious defenses to those specific terms [of the Contract] for two independent reasons. First, SC OPCO accepted services under the contract after purchasing Ridgeland Nursing Center. …
>
> Second, *the Contract specifically states that it "shall enure to the benefit of any successors or assignees."* SC OPCO argues that it is not bound by this provision because it did not agree to accept Ridgeland Nursing Center's liabilities. (Mot. p. 10). It misses the point. This is not about a preexisting liability. It is about services rendered to SC OPCO after it purchased the facility. SC OPCO accepted Lowcountry's services with knowledge of the contract *and, thus, accepted the contract*. I do not believe that a multi-state, federally regulated corporation bought a skilled nursing home facility without reviewing its contracts or assumed operations of the facility without knowing the source of its daily linen service. *SC OPCO knew about Lowcountry's services* at least by November 2021 when it paid Lowcountry's invoices. It then continued to accept the services. *SC OPCO is bound to the terms of the Contract.*

(R. p. __ (Order Denying Mot. to Set Aside, at 9 (emphasis added)).) Clearly, the Special Referee thought the "successors or assignees" clause was important, listing it as the second of "two independent reasons" why SC OPCO was properly bound to the terms of the Contract.

b. Bullard Alleged No Facts Showing Successor Liability

Bullard attempts to sidestep the question of successor liability by relying on the

general legal rule that a defaulting defendant "admits liability." (Respondent's Br. at 24.) However, the law of South Carolina is that a defaulting defendant admits liability only as to the allegations of the complaint. "It is well established that the relief granted in a default judgment is limited to that supported by the allegations in the Complaint and the proof submitted at the damages hearing." *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E.2d 566, 579 (2013). Thus, a defaulting defendant concedes liability only in the sense that "[b]y defaulting, a defendant forfeits his right to answer or otherwise plead *to the complaint*." *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 428 S.C. 261, 266, 834 S.E.2d 204, 207 (Ct. App. 2019) (emphasis added; quoting *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978)). As a matter of basic due process, a defaulting defendant cannot be held to have admitted allegations that are not made in a complaint. "[A] defendant, though in default as to liability, has a right to expect that the judgment of the court … will be in keeping … with the allegations of the complaint and the prayer for relief." *Lewis v. Cong. of Racial Equal. &/or C. O. R. E., Inc.*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981); *see State v. Broad River Power Co.*, 177 S.C. 240, 181 S.E. 41, 53 (1935) (rejecting State's argument that a conveyance was a donation where "[t]he complaint alleges no facts to support such theory").

Here, Bullard failed to plead any facts that would establish successor liability. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 574, 743 S.E.2d 778, 785 (2013) ("It is elementary that the principal purpose of pleadings is to inform the pleader's adversary of the legal and factual positions which he will be required to meet on trial.") (quoting *S.C. Nat'l Bank v. Joyner*, 289 S.C. 382, 387, 346 S.E.2d 329, 332 (Ct. App. 1996)). The *only*

facts alleged regarding SC OPCO are that it "is a foreign limited liability corporation that owns property and transacts business in Jasper County through the Ridgeland Nursing Center." (R. p. __ (Complaint ¶ 4).) The Complaint alleges no other facts regarding SC OPCO, its operations, or its relationship to the other two defendants.

To plead a claim for SC OCPO's liability as a successor to the Contract, Bullard would have had to allege facts showing an exception to the general rule that a successor company is not liable for the obligations of its predecessor. *See Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d 67, 69 (S.C. Ct. App. 2008).[2] These exceptions are "(1) express agreement to assume such debt; (2) consolidation or merger; (3) continuation of the predecessor; or (4) fraudulent transfer for the purpose of defeating creditors [sic] claims." *Pacific Capro Indus. v. Glob. Advantage Distribution, Inc.*, No. 4:08-cv-4155-RBH, 2010 WL 890052, at *4 (D.S.C. Mar. 8, 2010) (citing *Brown v. Am. Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924)). As noted, however, the Complaint alleges no facts concerning how SC OPCO came to operate the Facility, much less facts that would support a finding of successor liability.

As explained above, a defaulting defendant admits liability only as to the allegations and claims actually asserted in the Complaint. *See Limehouse*, 404 S.C. at 116, 744 S.E.2d at 579. Since Bullard did not allege successor liability in the Complaint, SC

[2] Bullard criticizes SC OPCO's citation of *Walton* on the grounds that *Walton* refers to "debts" of the prior company rather than its contractual obligations. (Respondent's Br. at 20.) As our Supreme Court has recognized, however, the successor liability doctrine "originated in the common law … in the context of *contract* and creditor-debtor cases." *Simmons v. Mark Lift Indus., Inc.*, 366 S.C. 308, 316, 622 S.E.2d 213, 217 (2005) (emphasis added).

OPCO's default cannot operate as an admission of successor liability.

C. SC OPCO's Acceptance of Services Did Not Constitute Acceptance of the Contract's Terms

Bullard urges the Court to accept the Special Referee's conclusion that by accepting linen services from Bullard after the asset purchase, SC OPCO can be deemed to have accepted all terms of the Contract. (Respondent's Br. at 19-20.) As SC OPCO explained in its opening brief, however, the Special Referee concluded that by accepting services after the asset purchase, SC OPCO somehow acquired actual knowledge of the Contract's terms. Not only is there no evidence to support such a finding, there is uncontradicted evidence to the contrary. Neuman's sworn, uncontradicted testimony is that SC OPCO purchased "certain assets owned by Ridgeland Nursing Center, Inc.," but "did not assume any liabilities of the former owner or assume, or take assignment of, any contracts entered by the former owner," and that there was no affiliation between SC OPCO and Ridgeland. (R. p. __ (Neuman Aff. ¶¶ 2, 4).) Mr. Neuman's sworn testimony was that he has "no knowledge of the terms of any contracts that may have existed between" Bullard and Ridgeland. (R. p. __ (Neuman Aff. ¶ 4).) Indeed, there would be no reason for Neuman—or anyone at SC OPCO—to know the terms of any of Ridgeland's contracts, because it purchased only assets, not contractual liabilities.

Bullard also contends that knowledge and acceptance of the Contract's terms should be imputed to SC OPCO because it continued to employ Sheri Boyles for a period of time after the asset acquisition. (Respondent's Br. at 20-21.) Bullard further contends that the Special Referee properly relied on *Equitable Trust Co. of South Carolina v. Columbia*

National Bank, 145 S.C. 91, 142 S.E. 811 (1928), for the proposition that knowledge of a company's agent is properly imputed to the company.

Equitable Trust does not support the Special Referee's imputed actual knowledge theory. At most, *Equitable Trust* establishes that Ms. Boyles's knowledge of the Contract's terms could be imputed to Ridgeland because she was its employee and agent when she signed the Contract. *Equitable Trust* does not hold, or even suggest, that mere continuation of employment following an asset purchase is sufficient to impute actual knowledge of contractual terms to the purchaser. In fact, such a rule would be contrary to the principles of successor liability discussed above, under which successor liability on a continuation theory may be found only "where there is commonality of officers, directors, and shareholders." *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 266, 818 S.E.2d 447, 453 (2018) (emphasizing that all three commonalities must be present).

III. The Damages Award Is Unfair, Unjust, and Unconscionable

Even if the Court determines that the Special Referee did not abuse his discretion in refusing to set aside the default judgment, the damages award is erroneous and should be reversed.

A. SC OPCO Has Not Waived Its Challenge to the Damages Award

Bullard contends that by defaulting and by not appearing at the damages hearing, SC OPCO waived any ability to challenge the damages award. (Respondent's Br. at 23, 24, 27 n.7.) However, "[e]ven in a default case … the plaintiff must prove the amount of his damages, and such proof must be by a preponderance of the evidence." *Wells Fargo Bank*, 408 S.C. at 90, 757 S.E.2d at 558 (cleaned up; quoting *Solley v. Navy Fed. Credit Union,*

Inc., 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012)); *see Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981) ("[A] defendant in default admit[s] liability but [does] not admit the damages as set forth in the prayer for relief. The amount of damages must be proved by the preponderance of the evidence."). Accordingly, SC OPCO is entitled to this Court's review of the damages award to ensure that it is consistent with the law and supported by competent evidence.

B. SC OPCO Should Not Be Liable for the Early Termination Fee

The Special Referee determined that the early termination fee is a penalty. (Appellant's Br. at 23-24.) Attempting to distance itself from this holding, Bullard argues that the early termination fee is not a penalty because it is not disproportionate to its probable damages. (Respondent's Br. at 25.) As SC OPCO argued in its opening brief, however, no evidence was presented at the damages hearing to show that the Contract was terminated.[3] Moreover, Bullard's proportionality argument presented on appeal ignores that the early termination penalty imposed by the Special Referee is *four times* the actual damages (*i.e.*, unpaid invoices) alleged by Bullard.

C. The Evidence Does Not Support the Attorneys' Fees Award

Bullard argues that the Special Referee's award of attorneys' fees should be affirmed because "a contingency fee agreement is proper in a breach of contract action." (Respondent's Br. at 26-27.) That is beside the point. The issue on appeal is whether the

[3] Bullard's belated introduction—in opposition to SC OPCO's Motion for Reconsideration—of an email from an SC OPCO employee does not cure its failure to present the necessary evidence at the time of the damages hearing.

contingency fee arrangement between Bullard and its counsel determines the amount of an attorneys' fee award under the Contract. As a matter of settled South Carolina law, it does not.

The Contract provides that Ridgeland would be responsible for "all legal fees to collect any unpaid balances." (R. p. __ (Contract).) By its plain terms, therefore, the Contract requires that the award of attorneys' fees be limited to those *actually incurred* for the purpose of collecting unpaid balances. *Ballard v. Admiral Ins. Co.*, 442 S.C. 22, 34, 897 S.E.2d 183, 189 (Ct. App. 2023) ("Where the contract's language is clear and unambiguous, the language alone determines the contract's force and effect."). Moreover, "[a] fee contract is a matter between the client and the attorney. The amount due under that contract *may not serve* as a basis for computing an attorney's fee award against the unsuccessful party." *S.C. Dep't of Transp. v. Revels*, 411 S.C.1, 11, 766 S.E.2d 700, 705 (2014) (emphasis added; internal quotation marks omitted); *see Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997) (holding that "the contract between the client and his counsel does not control the determination of a reasonable hourly rate" for purposes of determining an award of attorneys' fees).

Under clear South Carolina law, therefore, the Special Referee was required to base the fee award on the number of hours reasonably incurred times a reasonable hourly rate, with specific attention to the factors enumerated in *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991). While the Special Referee claimed to have performed this analysis, he could not possibly have done so because the record contains no evidence regarding the number of hours incurred by Bullard's counsel, counsel's customary hourly

rate, or any other evidence that would have allowed the Special Referee to determine a reasonable fee. And, assuming the proper analysis was performed, the Special Referee failed to articulate his reasoning, making it impossible for this Court to review the reasonableness of the award.

Under these circumstances, the fee award was an abuse of discretion and should be reversed.

IV. SC OPCO Should Be Liable, at Most, in *Quantum Meruit*

Bullard contends that it would be "inequitable" not to award it the full amount of damages claimed under the terms of the Contract. (Respondent's Br. at 29.) However, in the absence of a contract between Bullard and SC OPCO (and for the reasons already explained, SC OPCO cannot be bound to the Contract), Bullard is only entitled to equitable relief. In this context, such equitable relief is measured by the reasonable value to SC OPCO of the services provided. *See Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994) ("Absent an express contract, recovery under quantum meruit is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value.").

In its opening brief, SC OPCO cited and analyzed *Renney v. Dobbs House, Inc.* , 275 S.C. 562, 274 S.E.2d 290 (1981), wherein the South Carolina Supreme Court, in reviewing a default judgment, raised the damages issue *ex mero motu* because the amount awarded was "patently so greatly out-of-proportion to the wrongs alleged in the complaint" that

it could not be allowed to stand. *Id.* at 567, 274 S.E.2d at 293. Under *Renney*, this Court must consider whether it was fair and reasonable to impose a judgment of $154,178.33, more than *seven times* the maximum amount of Bullard's actual damages. Bullard makes no response to this argument; indeed, it does not even cite *Renney* in its brief.[4]

Bullard contends the Special Referee properly relied on *Stringer Oil Co. v. Bobo*, 320 S.C. 369, 465 S.E.2d 366 (Ct. App. 1995), in concluding that the proper measure of an unjust enrichment award would be the same as the amount that would have been owed if SC OPCO had been a party to the Contract. (Respondent's Br. at 29-30; R. p. __ (Order Denying Mot. for Reconsideration, at 6).) However, *Stringer* concerned improvements to real property, and in that context the Court held that unjust enrichment should be measured by the increase in the value of the defendant's real property, rather than by the plaintiff's costs to perform the improvements.[5]

In subsequent cases, this Court has rejected application of *Stringer* to cases not involving improvements to real property. *See Kosich v. Decker Indus., Inc.*, No. 2005-UP-149, 2005 WL 7083829, at *3 (Ct. App. Mar. 3, 2005) (reversing where the lower court "fix[ed] the amount of recovery" in unjust enrichment "as a 'commission' earned by Kosich," because "the award necessarily becomes a function of what Kosich would have received had a contract been entered into and fully performed, rather than a

[4] The Court should disregard Bullard's unsupported assertion that SC OPCO "does not have clean hands" and cannot resort to equitable principles.

[5] Thus, the Court concluded Stringer could recover only $40,000 (the value of the improvements to Bobo) and not $74,642.58 (the amount of Stringer's investment). *Id.* at 373-74, 465 S.E.2d at 369.

determination based strictly on the value of the benefit actually conferred upon Decker"); *see also Boykin Contracting, Inc. v. Kirby*, 405 S.C. 631, 641, 748 S.E.2d 795, 800 (Ct. App. 2013) (rejecting application of *Stringer* where the parties' arrangement was that the plaintiff "would perform certain work in exchange for payment of those services" by the defendant).

Notably, *Stringer* makes clear that there must be evidentiary support for any unjust enrichment award. In *Stringer*, "the only competent evidence" regarding value was provided by the defendant, who testified without contradiction that that the value of the improvements to him was $40,000. *Id.* at 374, 465 S.E.2d at 369. In the absence of any contrary evidence, the Court held this was the appropriate amount of the unjust enrichment award, even though the plaintiff's actually incurred costs were much higher (roughly $74,600). *See id.* Here, Bullard provided no evidence showing that the value received by SC OPCO was greater than the amount charged on the unpaid invoices. Disregarding the lack of proof, the Special Master simply concluded—without any meaningful analysis or explanation—that the value received by SC OPCO was the exact same amount as the damages owed under the terms of the Contract. This was error and requires reversal. *See Kosich*, 2005 WL 7083829, at *3 (reversing unjust enrichment award that simply duplicated the amount that would have been owed under a contract).

CONCLUSION

For the reasons set forth herein, SC OPCO respectfully requests reversal and remand for entry of an order vacating the default judgment and/or setting aside the entry of default. Alternatively, SC OPCO requests that the Court vacate the damages award

and remand for further proceedings regarding damages.

Respectfully submitted,

May 16, 2024
Greenville, South Carolina

MAYNARD NEXSEN, PC

s/ *Kirsten E. Small*

Kirsten E. Small, SC Bar No. 75681
104 South Main Street, 9th Floor
Greenville, SC 29601
Telephone: 864.370.2211
Facsimile: 864.282.1177
KSmall@maynardnexsen.com

Kyle A. Brannon, SC Bar No. 100550
Jennifer J. Hollingsworth, SC Bar No. 73535
1230 Main Street, Suite 700
Columbia, SC 29201
Phone: 803.771.8900
KBrannon@maynardnexsen.com
JHollingsworth@maynardnexsen.com

Attorneys for Appellant SC OPCO, LLC