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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. Stephen Bennett, Special Referee

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Appellate Case No. 2024-000006

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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.

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**FINAL BRIEF OF APPELLANT SC OPCO, LLC**

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## TABLE OF CONTENTS

TABLE OF AUTHORITIES ..... ii
STATEMENT OF ISSUES ..... 1
STATEMENT OF THE CASE ..... 2
A. Factual Background ..... 2
B. Procedural History ..... 3
ARGUMENT ..... 14
I. SC OPCO Is Entitled to Relief from the Judgment ..... 14
A. SC OPCO Made a Good-Faith Mistake of Fact ..... 15
B. SC OPCO Acted Promptly ..... 17
C. SC OPCO Has a Meritorious Defense to Liability on the Contract ..... 17
D. SC OPCO Is Not a Successor to Ridgeland ..... 18
E. SC OPCO's Receipt of Services and Invoices Does Not Establish Liability under the Contract ..... 21
II. The Damages Award Is Unfair, Unjust, and Unconscionable ..... 22
A. SC OPCO Should Not Be Held Liable for the Early Termination Penalty ..... 23
B. The Award of Attorneys' Fees Is Unreasonable ..... 25
III. SC OPCO Should Be Liable, at Most, in *Quantum Meruit* ..... 28
CONCLUSION ..... 30

## TABLE OF AUTHORITIES

**Cases**

*Am. Fed. Bank, FSB v. Number One Main Joint Venture*,
321 S.C. 169, 467 S.E.2d 439 (1996) ........................................................................28

*Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co.*,
360 S.C. 127, 600 S.E.2d 76 (Ct. App. 2004)........................................................................14

*Bob Hammond Const. Co. v. Banks Const. Co.*,
312 S.C. 422, 440 S.E.2d 890 (Ct. App. 1994)........................................................................18

*Boykin Contracting, Inc. v. Kirby*,
405 S.C. 631, 748 S.E.2d 795 (Ct. App. 2013)........................................................................29

*Carroll v. Page*,
264 S.C. 345, 215 S.E.2d 203 (1975) ........................................................................29

*Chan v. Thompson*,
302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990)........................................................................30

*Collins Ent. Corp. v. Coats & Coats Rental Amusement*,
368 S.C. 410, 629 S.E.2d 635 (2006) ........................................................................23

*Columbia Pools, Inc. v. Galvin*,
288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986)........................................................................15, 16

*Equitable Trust Co. of Columbia v. Columbia Nat'l Bank*,
145 S.C. 91, 142 S.E. 811 (1928) ........................................................................12, 21

*Ex parte Trustgard Ins. Co.*, No. 2019-001506,
2023 WL 5944276 (S.C. Ct. App. Sept. 13, 2023)........................................................................15

*Foreman v. Foreman*,
280 S.C. 461, 313 S.E.2d 312 (Ct. App. 1984)........................................................................29

*Frank Ulmer Lumber Co. v. Patterson*,
272 S.C. 208, 250 S.E.2d 121 (1978) ........................................................................14

*Glasscock v. Glasscock*,
304 S.C. 158, 403 S.E.2d 313 (1991) ........................................................................11, 25

*Global Protection v. Halbersberg*,
332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998)........................................................................27

*In re Estate of Weeks*,
329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997)........................................................................14

*Jackson v. Speed*,
326 S.C. 289, 486 S.E.2d 750 (1997) ........................................................................26

*Lanier v. Lanier*,
251 S.C. 117, 160 S.E.2d 558 (1968) ........................................................................15

*Lewis v. The Congress of Racial Equality and/or C.O.R.E., Inc.*,
275 S.C. 556, 274 S.E.2d 287 (1981) ....................................................................24

*Mictronics, Inc. v. S.C. Dep't of Revenue*,
345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001).............................................................15

*Moser v. Gosnell*,
334 S.C. 425, 513 S.E.2d 123 (Ct. App. 1999).............................................................24

*Mozingo ex rel. Est. of Stewart v. Ford Motor Co.*, No. 2009-UP-282,
2009 WL 9528979 (S.C. Ct. App. June 4, 2009)...........................................................22

*Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*,
424 S.C. 256, 818 S.E.2d 447 (2018) ....................................................................21

*New Hampshire Ins. Co. v. Bey Corp.*,
312 S.C. 47, 435 S.E.2d 377 (Ct. App. 1993).............................................................15

*Renney v. Dobbs House, Inc.*,
275 S.C. 562, 274 S.E.2d 290 (1981) ...........................................................15, 22, 29

*Road, LLC v. Beaufort Cnty.*,
433 S.C. 164, 857 S.E.2d 371 (Ct. App. 2021).............................................................23

*S.C. Dep't of Transp. v. Revels*,
411 S.C.1, 766 S.E.2d 700 (2014) ....................................................................26

*S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*,
303 S.C. 74, 399 S.E.2d 8 (Ct. App. 1990).............................................................23

*S.C. Fin. Corp. of Anderson v. W. Side Fin. Co.*,
236 S.C. 109, 113 S.E.2d 329 (1960) ....................................................................23

*Seabrook Isl. Prop. Owner's Ass'n v. Berger*,
365 S.C. 234, 616 S.E.2d 431 (Ct. App. 2005).............................................................25

*Simmons v. Mark Lift Indus., Inc.*,
366 S.C. 308, 622 S.E.2d 213 (2005) ....................................................................19

*Solley v. Navy Fed. Credit Union, Inc.*,
397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012).............................................................23

*Sundown Operating Co. v. Intedge Indus., Inc.*,
383 S.C. 601, 681 S.E.2d 885 (2009) ....................................................................14

*Sunrise Sav. & Loan Ass'n v. Mariner's Cay Dev. Corp.*,
295 S.C. 208, 211-12, 367 S.E.2d 696, 698 (1988).......................................................27

*Tate v. LeMaster*,
231 S.C. 429, 99 S.E.2d 39 (1957) ....................................................................24

*Trancik v. USAA Ins. Co.*,
354 S.C. 549, 581 S.E.2d 858 (Ct. App. 2003).............................................................18

*Walton v. Mazda of Rock Hill*,
376 S.C. 301, 657 S.E.2d 67 (Ct. App. 2008) .......... 19

*Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*,
408 S.C. 87, 757 S.E.2d 557 (Ct. App. 2014) .......... 22

*Williams v. Watkins*,
384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009) .......... 17

**Rules**

Rule 55(c), SCRCP .......... 14, 15

Rule 59(e), SCRCP .......... 11

Rule 60(b), SCRCP .......... 10, 14, 15

**Treatises**

27 Am. Jur. *Equity* § 103 (1966) .......... 29

49 C.J.S. *Judgments* § 290 (2023) .......... 25

## STATEMENT OF ISSUES

I. Did the Special Master err in denying Appellant SC OPCO's motion to set aside default and for new trial, where SC OPCO's default was due to a mistake of fact?

II. Did the Special Master err in awarding damages pursuant to the contract, where SC OPCO was neither a party to the contract nor subject to liability under settled principles of successor liability?

III. Did the Special Master err in awarding fees based on the contingency fee agreement between Respondent and its counsel, where the settled law is that the agreement between attorney and client does not control the determination of reasonable fees pursuant to a contractual fee provision?

## STATEMENT OF THE CASE

Appellant SC OPCO, LLC ("SC OPCO") appeals orders entered by the Jasper County Court of Common Pleas, pursuant to which SC OPCO was ordered to pay $154,178.33 in damages, early termination penalties, and attorneys' fees to Respondent Bullard & Sons, Inc. d/b/a Lowcountry Medical Linens ("Bullard"). The award was made under a contract to which SC OPCO is neither a party, nor an assignee, nor a successor. Even if SC OPCO were bound by the terms of the contract (which it is not), the damages and attorneys' fees awarded by the Special Referee are grossly excessive and unsupported in fact or law. At most, SC OPCO is potentially responsible in *quantum meruit* for the value of certain services actually provided to it.

### A. Factual Background

This matter concerns an agreement (the "Contract") for Bullard to provide linen services to Ridgeland Nursing Center in Ridgeland, South Carolina (the "Facility"). The Contract, which was attached as Exhibit A to Bullard's Complaint, was executed on March 3, 2020. (R. p. 49 (Contract).) At that time, the Facility was owned and operated by Ridgeland Nursing Center, Inc. ("RNC, Inc.") and Ridgeland NC, LLC (together with RNC, Inc., "Ridgeland").

Under the Contract, Bullard was to provide linen services to Ridgeland for period of 60 months (five years, or 260 weeks) beginning April 1, 2020. (*Id.*) The Contract provides, *inter alia*, that invoices over 30 days "will be subject to a 1.5% late charge (18% per annum)" and that Bullard could recover attorneys' fees incurred in collecting late balances. (*Id.*) The Contract allowed Bullard—but not Ridgeland—to cancel the

agreement at any time without penalty, subject only to 30 days' notice. (*Id.*) Ridgeland, in contrast, could terminate the Contract only for cause or by incurring an early termination penalty of "50% of the rental rate times the number of weeks left in the agreement." (*Id.*) However, nothing in the Contract establishes the "rental rate" applicable to this early termination provision. The Contract also provides that it "shall enure [sic] to the benefit of any successors or assignees." (*Id.*)

On November 1, 2021, SC OPCO purchased Ridgeland's assets and took over operation of the Facility. (R. pp. 83-84 (Affidavit of Joe Neuman ("Neuman Aff.")) at ¶¶ 2, 4.) In the transaction, SC OPCO did not assume any liabilities or contractual obligations of Ridgeland. (R. p. 84 (Neuman Aff. ¶ 4).) There is no affiliation between SC OPCO and Ridgeland. (*Id.*)

Between February 28, 2022 and June 22, 2022, Bullard submitted 50 invoices to the Facility for linen services totaling $20,311.36. (R. pp. 45 (Compl. ¶ 16).)

**B. Procedural History**

Bullard filed its Complaint on January 5, 2023, asserting claims for breach of contract and unjust enrichment/*quantum meruit* against RNC, Inc.; Ridgeland NC, LLC ; and SC OPCO. (R. pp. 44-48 (Complaint).) The Complaint alleged that Bullard and "Ridgeland Nursing Center" had entered into the Contract and that Bullard had invoiced Ridgeland Nursing Center for services rendered between February 28, 2022 and June 22, 2022. (R. pp. 45-47 (Compl. ¶¶ 8, 14-16).) The Complaint went on to allege that

"Defendants" had breached the Contract by failing to pay those invoices.[1] (R. p. 47 (Compl. ¶ 17).) In addition to $20,311.36 for the unpaid invoices, Bullard's breach of contract claim sought recovery of:

- $1,243.83 for "lost, unreturned inventory from the June 27, 2022 invoice";
- $2,266.59 for "late charges through December 31, 2022 that continues to accrue interest at 18% per annum";
- an early termination penalty of $90,353.85; and
- attorneys' fees.

(R. p. 47 (Compl. ¶ 18).)

The Complaint alleges no facts to support Bullard's claim for the early termination penalty. In particular, the Complaint never alleges that the Contract was terminated or the date on which such termination allegedly occurred. It also fails to allege the number of weeks remaining in the Contract or the weekly rental rate used to calculate the early termination penalty.

The Complaint asserted a second cause of action for unjust enrichment/*quantum meruit*. (R. p. 48 (Compl. ¶¶ 19-23).) This claim sought recovery only for the value of the unpaid invoices and the unreturned items. (*Id.* (Compl. ¶ 23).) The unjust enrichment/*quantum meruit* claim does not seek recovery of late charges, the early termination penalty, or attorneys' fees.

Although both counts of the Complaint are alleged against "All Defendants," SC

[1] The invoices were listed in the Complaint but were not attached as exhibits. Furthermore, there is no indication that the invoices were entered as exhibits during the damages hearing conducted by the Special Referee.

OPCO is mentioned only in the jurisdictional allegations, where it is described in exactly the same manner as RNC, Inc. and Ridgeland NC, LLC, *i.e.*, as "own[ing] property and transact[ing] business in Jasper County through the Ridgeland Nursing Center." (R. p. 44 (Compl. ¶¶ 2-4).) The Complaint does not allege that SC OPCO is a signatory to the Contract; in fact, it alleges that the Contract is between Bullard and "Ridgeland Nursing Center." (R. p. 45 (Compl. ¶ 8).) The Complaint also fails to allege any facts concerning the relationship between SC OPCO and the other two Defendants—not even that SC OPCO is the current operator of the Facility. In particular, the Complaint does not allege facts suggesting that the Contract was assigned to SC OPCO or that SC OPCO is bound by the Contract as a successor of either RNC, Inc., or Ridgeland NC, LLC.

The Complaint was served on SC OPCO through its registered agent, Cogency Global, Inc., on January 6, 2024. (R. p. 50 (Affidavit of Service on SC OPCO).) On January 11, 2023, the Complaint was served on Ridgeland NC, LLC through its Administrator, Janelle Greene. (R. p. 51 (Affidavit of Service on Ridgeland NC, LLC).) No affidavit of service was ever filed as to RNC, Inc.

On February 14, 2023, Bullard filed affidavits of default as to SC OPCO and Ridgeland NC, LLC. (R. pp. 52-55; 56-59 (Affidavit of Default as to SC OPCO; Affidavit of Default as to Ridgeland NC, LLC).) No affidavit of default was filed as to RNC, Inc. Four days later, on February 18, 2023, the matter was referred to Special Referee C. Stephen Bennett, Esquire. (R. pp. 1-3 (Order of Reference to Special Referee).) On March 1, 2023, Entries and Orders of Default were filed as to SC OPCO and Ridgeland NC, LLC. (R. pp. 4-6; 7-10 (Entry and Order of Default as to SC OPCO; Entry and Order of Default

as to Ridgeland NC, LLC).) No default was entered or ordered as to RNC, Inc.

The Special Referee conducted a damages hearing on April 25, 2023. (R. p. 11 (Judgment, at 1).) According to the Judgment, notice of the hearing was provided to SC OPCO and Ridgeland NC, LLC "by first class mail in compliance with Rule 55, SCRCP."[2] (R. p. 14 (Judgment, at 4).) No notice of this hearing was filed with the Court, and Bullard did not file any certificates of service for the notice of hearing.

The Judgment states that the Special Referee considered "numerous exhibits and … heard testimony from Perry Bullard." (R. p. 15 (Judgment, at 5).) However, the damages hearing was not transcribed and the exhibits were not filed on the Public Index, leaving the text of the Judgment as the only source of information regarding the existence of factual support for the damages award. The Judgment provides the following descriptions of the exhibits submitted in support of Bullard's damages:

- Exhibit 2 was a calculation of the interest owed on the unpaid invoices as of March 31, 2023;
- Exhibit 3 set forth Bullard's calculation of the early termination penalty;
- Exhibit 4 showed that Bullard incurred costs of $500.54 in bringing this action.

(R. pp. 15-16 (Judgment, at 5-6).)

According to the Judgment, Exhibit 3 showed that "50% of the early termination weekly amount ($623.13) times the number of weeks (145 weeks) left in the [Contract], … equals $90,353.85." (R. p. 16 (Judgment, at 6).) The Special Referee also awarded

[2] Although the Judgment refers to "Ex. 1" in support of this finding, no exhibits were attached to the Judgment or otherwise filed on the Public Index.

attorneys' fees, stating: "Plaintiff hired counsel to represent it on a 33 1/3% contingent fee arrangement, which totals $38,419.45." (R. p. 16 (Judgment, at 6).) The Judgment contained no findings regarding the reasonableness of this fee.

Altogether, the Special Referee awarded judgment against SC OPCO and Ridgeland NC, LLC in the total amount of $154,178.33, consisting of the following amounts:

| Item | Amount |
| --- | --- |
| Unpaid Invoices | $20,311.36 |
| 1.5% Late Charge | $3,349.30 |
| Unreturned Products | $1,243.83 |
| Early Termination Penalty | $90,353.85 |
| Attorney's Fees | $38,419.45 |
| Costs | $500.54 |
| **Total:** | **$154,178.33** |

SC OPCO learned of the status of the litigation through counsel, who found the information on the Public Index for Jasper County in the course of work for SC OPCO on a different matter. (R. p. 85 (Neuman Aff. ¶ 12).) Counsel for SC OPCO promptly reached out to Bullard's counsel, who responded on May 17, 2023 and provided a copy of the Judgment, which had not yet been entered on the Public Index. (R. pp. 73-82 (Ex. A to SC OPCO's Notice of Motions and Motions (1) to Set Aside Default; and (2) for New Trial ("Mot. to Set Aside")).) Prior to that time, SC OPCO had no knowledge of the Judgment, a copy of which had not been served on it. (R. p. 86 (Neuman Aff. ¶ 13).)

SC OPCO filed its Motion to Set Aside on May 25, 2023, less than ten days after first learning that a judgment had been submitted to the court—and in fact, on the same

day the Judgment was actually entered on the Public Index. In support of the Motion to Set Aside, SC OPCO submitted the affidavit of Mr. Neuman, stating that letters Bullard's counsel sent to the Facility led to SC OPCO's confusion and good-faith mistake of fact regarding the need to respond to the litigation. (R. p. 84 (Neuman Aff. ¶ 8).) On or about January 11, 2023, the Facility received a letter from Bullard's counsel addressed to Ray Williams as registered agent for RNC, Inc. (the "January 2023 Letter").[3] (R. p. 85 (Neuman Aff. ¶ 9).) The letter enclosed a copy of the Summons and Complaint, but the correspondence was directed to RNC, Inc., with no reference to SC OPCO.[4] (*Id.*) At the time, this made sense to SC OPCO because if Bullard had a contract it sought to enforce, it was not with SC OPCO. (*Id.*) Accordingly, SC OPCO did not realize it was expected to take action in response to the January 2023 Letter. (*Id.*)

On or about April 4, 2023, the Facility received a second letter from Bullard's counsel, this time addressed to "Jerry Patton, Registered Agent, Sheri Boyles, Administrator, Janelle Green, Administrator, Ridgeland NC, LLC, 1516 Grays Hwy., Ridgeland, SC 29936" (the "April 2023 Letter").[5] (R. p. 85 (Neuman Aff. ¶ 10).) The April 2023 Letter enclosed a copy of a Notice of Hearing in this matter set for April 25, 2023.

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[3] A "Business Entities Search" on the website for the South Carolina Secretary of State for "Ridgeland Nursing Center, Inc." shows that RNC, Inc. is in good standing and that Ray Williams is its registered agent. *See* https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/afac3849-0d2b-44d6-ad77-22a453e701b1 (last visited Mar. 4, 2024).

[4] As noted above, no affidavit of service was ever filed as to RNC, Inc.

[5] A "Business Entities Search" on the website for the South Carolina Secretary of State for "Ridgeland NC, LLC" shows that Ridgeland NC, LLC is in good standing and that Jerry Patton is its registered agent. *See* https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/f919f751-8976-48e2-a2d8-95e556744945 (last visited Mar. 4, 2024).

(*Id.*) Again, it made sense that the letter was not addressed to SC OPCO, which did not have a contract with Bullard. (*Id.*)

Thus, both the January 2023 Letter and the April 2023 Letter concerned this litigation, but neither was addressed to SC OPCO. The letters were, instead, directed to the registered agents for RNC, Inc. and Ridgeland NC, LLC. Additionally, the letters were sent to the Facility even though each registered agent's address for service of process is *not* the Facility's address. No letters, pleadings, or notices concerning this litigation were ever delivered to SC OPCO at the Facility; any communications directed to SC OPCO were sent to SC OPCO's registered agent *at the registered agent's address*. (R. p. 85 (Neuman Aff. ¶ 11); R. p. 50 (Affidavit of Service on SC OPCO); R. p. 97 (Notice of Hearing to SC OPCO).) These circumstances resulted in SC OPCO's confusion and good-faith mistake of fact was that there was no expectation that SC OPCO was to respond to any of this correspondence. (R. p. 84 (Neuman Aff. ¶ 8).)

Bullard opposed the Motion to Set Aside. Exhibit 1 to Bullard's Opposition was a Notice of Hearing informing SC OPCO of the damages hearing scheduled for April 25, 2023. (R. pp. 97-98 (Ex. 1 to Opp. to Mot. to Set Aside).) The Certificate of Service states that the Notice of Hearing was sent via first-class mail to SC OPCO's registered agent, not to SC OPCO at the Facility. (R. p. 98.)

The Special Referee conducted a virtual hearing on the Motion to Set Aside on July 20, 2023. (R. pp. 166-200 (Hrg. Transcript).) Thereafter, on September 13, 2023, the Special Referee entered an order denying the Motion to Set Aside. (R. pp. 19-31 (Order Denying Mot. to Set Aside).) The Order noted SC OPCO's statement that it "purchased the assets

of Ridgeland Nursing Center but not its liabilities or contracts" and that it was not aware of the terms of the Contract. (R. p. 20 (Order Denying Mot. to Set Aside, at 2).) The Order also stated that "Sheri Boyles, who signed the agreement and had knowledge of its terms, remained employed by SC OPCO until May 2022." (*Id.*)

The Special Referee concluded that SC OPCO had failed to show a mistake of fact as required for relief from a default judgment under Rule 60(b), SCRCP. (R. p. 22 (Order Denying Mot. to Set Aside, at 4).) Specifically, the Special Referee rejected SC OPCO's contention that it had made an honest mistake of fact in believing that it was not required to respond to the Complaint because it was not a party to the Contract, had not assumed Ridgeland's liabilities, and was not a primary defendant in the litigation. (R. pp. 22-24 (Order Denying Mot. to Set Aside, at 4-6).) The Special Referee also found that SC OPCO had not acted promptly because it had not monitored the progress of the case. (R. p. 25 (Order Denying Mot. to Set Aside, at 7).)

The Special Referee also rejected SC OPCO's arguments that it had meritorious defenses, in that (1) it was not a party to the Contract; and (2) the attorneys' fee award was unreasonable. (R. p. 26 (Order Denying Mot. to Set Aside, at 8).) The Special Referee primarily reasoned that because SC OPCO had accepted services from Bullard and had received invoices for those services, it must have known it was bound to the terms of the Contract. The Special Referee repeatedly emphasized that SC OPCO should not be able to avoid paying for services it had actually received. However, the Special Referee did not explain why receiving services from Bullard should bind SC OPCO to all Contract terms, including the provisions for the early termination penalty and attorneys' fees,

rather than simply obligating SC OPCO to pay in *quantum meruit* for the value of the services actually received.[6]

The Special Referee also rejected SC OPCO's argument that it was unreasonable to award attorneys' fees based on the contingency fee agreement between Bullard and its counsel. The Special Referee first rejected SC OPCO's reliance on *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), which sets forth the factors that should govern the determination of a reasonable attorney's fee, on the grounds that *Glasscock* had expressly disapproved the use of percentage fees in domestic cases. (R. p. 27 (Order Denying Mot. to Set Aside, at 9).) The Special Referee went on to state that he would have reached the same result by applying the *Glasscock* factors, although without identifying or discussing the application of any specific factor. (R. p. 28 (Order Denying Mot. to Set Aside, at 10).) The Special Referee also stated, incorrectly, that this case "has been pending for over a year-and-a-half," when in truth it had only been pending for nine months.[7] (*Id.*)

SC OPCO timely moved for reconsideration under Rule 59(e), SCRCP. (R. pp. 112-132 (Motion to Alter or Amend Order Denying Motion to Set Aside Default Judgment and Motion for New Trial ("Mot. for Reconsideration")).) SC OPCO argued that

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[6] Notably, the Special Referee rejected SC OPCO's argument that it had not acquired Ridgeland's contractual liabilities by, again, pointing to the services actually received from Bullard, stating: "This is not about a pre-existing liability [*i.e.*, under the Contract]. *It is about services rendered to SC OPCO after it purchased the facility*." (R. p. 27 (Order Denying Mot. to Set Aside, at 9).) As this statement appears to recognize, that SC OPCO might be responsible in *quantum meruit* for the value of services rendered does not mean that it is subject to Ridgeland's "pre-existing liability" under the terms of the Contract.

[7] The Complaint was filed on January 5, 2023, and the Order Denying the Motion to Set Aside was entered on September 13, 2023.

reconsideration was warranted because Bullard had not presented any evidence to counter the sworn affidavit submitted on behalf of SC OPCO. (R. p. 117 (Mot. for Reconsideration, at 6).) SC OPCO also argued that the Special Referee erred in relying on *Equitable Trust Company of Columbia v. Columbia National Bank*, 145 S.C. 91, 142 S.E. 811 (1928), because that case involved knowledge imputed through a corporate agent or officer, not a corporation's successor liability. (R. p. 118 (Mot. for Reconsideration, at 7).)

Further on the issue of successor liability, SC OPCO pointed out a core flaw in the Special Referee's reasoning, namely, that it equated continued receipt of services with knowledge and acceptance of the terms of the Contract. SC OPCO argued that the Special Referee's reasoning ran counter to settled principles of successor liability, under which "mere continuation" must be established through proof of commonality of ownership, not merely of personnel or of operations. (R. p. 119 (Mot. for Reconsideration, at 8).)

SC OPCO also argued that Bullard was not entitled to recovery of the early termination penalty because it had not alleged or proved that SC OPCO had ever terminated the Contract. (R. pp. 120-121 (Mot. for Reconsideration, at 9-10).) SC OPCO also pointed out the punitive nature of the early termination penalty, which was four times the amount of actual damages awarded to Bullard. (R. pp. 121-122 (Mot. for Reconsideration at 10-11).)

In its opposition to the Motion for Reconsideration, Bullard offered for the first time a June 21, 2022 email from an employee of SC OPCO, stating that SC OPCO would be doing its linens in-house and no longer needed Bullard's services. (R. p. 151 (Ex. A to Opp. to Mot. for Reconsideration).) The email refers to Bullard's "services" but does not

mention the Contract.

By order entered on December 7, 2023, the Special Referee denied SC OPCO's Motion for Reconsideration. (R. pp. 32-42 (Order Denying Mot. for Reconsideration).) SC OPCO timely filed its Notice of Appeal on January 2, 2024. (R. pp. 201-202 (Notice of Appeal).)

## ARGUMENT

### I. SC OPCO Is Entitled to Relief from the Judgment

"The power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co.*, 360 S.C. 127, 131, 600 S.E.2d 76, 78 (Ct. App. 2004) (citing *Frank Ulmer Lumber Co. v. Patterson*, 272 S.C. 208, 250 S.E.2d 121 (1978); *In re Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454 (Ct. App. 1997)). Under Rule 55(c), SCRCP, the standard for setting aside an entry of default is mere "good cause," requiring the party seeking relief "to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The court must also consider "(1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888.

Once a default judgment has been entered, the party seeking relief must meet the "more rigorous" standard applicable under Rule 60(b), SCRCP. *Id.* at 608, 681 S.E.2d at 888. "Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.'" *Id.* (quoting Rule 60(b), SCRCP). "Under Rule 60(b)(1), SCRCP, a party may be relieved from a final order for mistake, inadvertence, surprise, or excusable neglect. In determining whether to grant a motion under Rule 60(b), the trial judge should consider: (1) the promptness with which relief is sought, (2)

the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510–11, 548 S.E.2d 223, 225–26 (Ct. App. 2001) (internal quotation marks omitted; citing *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993)).

Above all, "courts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits." *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 567, 274 S.E.2d 290, 292 (1981). "The court does not attempt to decide the case on its merits, but only decides whether a prima facie showing has been made." *Ex parte Trustgard Ins. Co.*, No. 2019-001506, 2023 WL 5944276, at *11 (S.C. Ct. App. Sept. 13, 2023) (cleaned up; quoting *Lanier v. Lanier*, 251 S.C. 117, 119, 160 S.E.2d 558, 559 (1968)). When a party has made "a good faith mistake of fact" and has not attempted "to thwart the judicial system," the court has a basis to vacate a default judgment. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) (construing predecessor statute to Rule 60(b), SCRCP).

It is SC OPCO's position that the Rule 55(c) standard, not the Rule 60(b) standard, applies here because, when it filed its Motion to Set Aside on May 25, 2023, the Judgment had not yet been entered on the Public Index. However, even if the more stringent standard under Rule 60(b) applies, SC OPCO is still entitled to relief from the Judgment.

### A. SC OPCO Made a Good-Faith Mistake of Fact

It is undisputed from the allegations of the Complaint and the face of the Contract that SC OPCO is not the contracting party. (R. p. 45 (Compl. ¶ 8); R. p. 49 (Compl. Ex. A).) When SC OPCO received a copy of the Complaint from its registered agent, it believed

in good faith that that no response was necessary because Bullard did not, and could not, plead that it entered into a contract with SC OPCO. (R. p. 84 (Neuman Aff. ¶¶ 5-6).) Moreover, SC OPCO knew that it had purchased Ridgeland's assets but had not assumed any liabilities or taken assignment of any contracts, including the Contract at issue here. (R. p. 84 (Neuman Aff. ¶ 4).) The identification of Ridgeland Nursing Center as the primary defendant in the lawsuit, as well as the fact that allegations were only made about Ridgeland Nursing Center and nothing was alleged about SC OPCO, also led SC OPCO to mistakenly believe that it was named erroneously in the action, and there was no relief that could be awarded to Bullard against SC OPCO under the Contract. (R. p. 84 (Neuman Aff. ¶ 7).)

Moreover, the January 2023 Letter addressed to RNC, Inc. enclosing the Summons and Complaint, and the April 2023 letter addressed to Ridgeland NC, LLC enclosing the Notice of Hearing, led SC OPCO to mistakenly believe that Bullard was pursuing the entities with whom it may have contracted, not SC OPCO, for collection of any monies allegedly owed. (R. p. 84 (Neuman Aff. ¶ 8).) No correspondence directed to SC OPCO was received at the Facility. (R. p. 85 (Neuman Aff. ¶ 11).)

Accordingly, SC OPCO submits it made an honest mistake of fact—that because it had no contract with Bullard, it need not respond to a dispute between Bullard and the contracting parties. Mistakes of fact have been found to constitute "good cause" to set aside defaults. *See, e.g.*, *Columbia Pools*, 288 S.C. at 61, 339 S.E.2d at 525 ("Therefore, we hold that where there is a good faith mistake of fact, and, no attempt to thwart the judicial system, there is basis for relief. We favor trial of issues on merit over securing judgment

by slight technicalities.”).

### B. SC OPCO Acted Promptly

SC OPCO acted promptly in seeking relief from the default. SC OPCO only discovered the entry of default in May 10, 2023, when its counsel happened upon this case while searching the Jasper County Public Index related to another matter. (R. p. 85 (Neuman Aff. ¶ 12).) Counsel for SC OPCO promptly reached out to Bullard’s counsel on May 16, 2023, to advise that SC OPCO had retained counsel in the matter. (R. p. 73 (Mot. to Set Aside, Ex. A).) At that time, SC OPCO had no knowledge that the Judgment had been drafted and submitted to the Special Referee though it had not yet been entered. (*Id.* (advising that counsel had “sent the attached Judgment … to the Jasper Clerk’s Office for filing this past Friday.”).) SC OPCO filed its Motion to Set Aside on May 25, 2023, less than ten days after first learning that a judgment had been submitted to the court—and in fact, on the same day the Judgment actually appeared on the Public Index. (R. p. 11 (Judgment, at 1).) Accordingly, SC OPCO submits that the first factor under Rule 60(b)—the promptness with which relief was sought—should weigh in its favor.

### C. SC OPCO Has a Meritorious Defense to Liability on the Contract

Moreover, SC OPCO has a meritorious defense to liability under the Contract. “To establish a meritorious defense, the party does not have to show he would prevail on the merits. Rather, a meritorious defense need be only one which is worthy of a hearing or judicial inquiry because it raises a question 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).

Bullard's Complaint alleges that the Contract is between Bullard and Ridgeland and was entered into on March 3, 2020. (R. p. 45 (Compl. ¶ 8).) This was some twenty months before SC OPCO purchased Ridgeland's assets on November 1, 2021. (R. p. 83 (Neuman Aff. ¶ 2).) Accordingly, there is no privity of contract between Bullard and SC OPCO. "Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff." *Bob Hammond Const. Co. v. Banks Const. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994). "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." *Trancik v. USAA Ins. Co.*, 354 S.C. 549, 553-54, 581 S.E.2d 858, 861 (Ct. App. 2003) (citation omitted).

### D. SC OPCO Is Not a Successor to Ridgeland

The Special Referee rejected SC OPCO's privity-of-contract argument by noting, in part, that "the Contract specifically states that it 'shall enure to the benefit of any successors or assignees.'" (R. p. 27 (Order Denying Mot. to Set Aside, at 9).) This reasoning incorrectly assumes that SC OPCO is a "successor" of Ridgeland. As a matter of settled South Carolina law, however, SC OPCO is not a successor to Ridgeland and cannot be bound to the Contract on that basis.

As a matter of long-established South Carolina law, "[i]n the absence of a statute, a successor company is not ordinarily liable for the debts of a predecessor company under a theory of successor liability." *Walton v. Mazda of Rock Hill*, 376 S.C. 301, 305-06, 657 S.E.2d

67, 69 (Ct. App. 2008). The only exceptions to this rule are if "(1) there was an agreement to assume such debts, (2) the circumstances surrounding the transaction warrants a finding of a consolidation or merger of the two corporations, (3) the successor company was a mere continuation of the predecessor, or (4) the transaction was entered into fraudulently for the purpose of wrongfully defeating creditors' claims." *Simmons v. Mark Lift Indus., Inc.*, 366 S.C. 308, 312, 622 S.E.2d 213, 215 (2005) (citing *Brown v. American Ry. Express Co.*, 128 S.C. 428, 123 S.E. 97 (1924)).

Bullard has never made any effort to demonstrate that SC OPCO is subject to liability under the Contract as a successor to Ridgeland. Other than naming SC OPCO as a defendant and asserting that it does business in Jasper County through operation of the Facility, the Complaint contains no allegations whatsoever regarding SC OPCO's relationship with Ridgeland. The Complaint does not allege, even on information and belief, that SC OPCO agreed to assume Ridgeland's debts; that the transaction was a consolidation or merger; that SC OPCO is a mere continuation of Ridgeland; or that the transaction was fraudulently entered into for the purpose of defeating creditors' claims.

In contrast, SC OPCO submitted the sworn testimony of Joe Neuman, who "oversee[s] the business activities of SC OPCO and as such ha[s] primary responsibility for the business operations of Ridgeland Nursing & Rehab." (R. pp. 83-84 (Neuman Aff. ¶ 3).) Mr. Neuman's sworn testimony includes that he has personal knowledge of November 1, 2021 transaction and that the purchase was of "certain assets owned by Ridgeland Nursing Center, Inc.," but 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," and that there was no affiliation between SC OPCO and Ridgeland. (R. pp. 83-84 (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. 84 (Neuman Aff. ¶ 4).) Finally, Mr. Neuman testifies that "SC OPCO has never negotiated a contract with [Bullard] for medical linen services and never agreed to pay an 18% per annum interest rate on invoices, attorney's fees and costs or a termination fee for such services." (R. p. 84 (Neuman Aff. ¶ 5).)

Bullard submitted no evidence refuting Mr. Neuman's testimony. While the Special Referee "reject[ed] SC OPCO's assertion that it did not have any knowledge of the contract or its terms," there is no explanation for why his unrebutted testimony was rejected.[8] (R. p. 26 (Order Denying Mot. to Set Aside, at 8).) Instead, the Special Referee relied on (1) imputing to SC OPCO knowledge allegedly held by a former Ridgeland employee, and (2) SC OPCO's continued acceptance of Bullard's services after purchasing Ridgeland's assets and beginning to operate the Facility to find that SC OPCO was bound by contractual terms agreed to by an unaffiliated predecessor owner some 20 months before SC OPCO purchased Ridgeland's assets.

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[8] The Order does state, "[n]owhere does [Mr. Neuman] explain why SC OPCO does not owe money for services it received or why it did not pay [Bullard's] invoices." (R. p. 26 (Order Denying Mot. to Set Aside, at 8).) This overlooks or ignores that SC OPCO's Motion to Set Aside specifically noted that it was still investigating Bullard's unjust enrichment/*quantum meruit* claim. (R. p. 28 (Mot. to Set Aside, at 10).) To the extent the Special Referee's harsh criticism of SC OPCO stemmed from a mistaken belief that SC OPCO denied liability under Bullard's equitable claim, it is important to note that SC OPCO is not challenging the award of damages in the amount of the unpaid invoices for services actually received.

The Special Referee's discussion of imputed knowledge cites *Equitable Trust Company of Columbia v. Columbia National Bank*, 145 S.C. 91, 142 S.E. 811 (1928). (R. pp. 26-27 (Order Denying Mot. to Set Aside, at 8-9). The parenthetical description of *Equitable Trust* demonstrates a misunderstanding of the South Carolina Supreme Court's ruling in that case. In *Equitable Trust*, the Court cited at length from Fletcher Cyclopedia of the Law of Corporations, exploring the distinctions applicable to an agent or officer's receipt of knowledge while acting on behalf of a corporation versus while acting as an individual during the time of service to such corporation. *See Equitable Trust*, 142 S.E. at 817-18. However, nothing about the authorities quoted in *Equitable Trust* or the facts in that case involved imputation of knowledge to a purchaser of corporate assets. *Equitable Trust* certainly is not authority for the proposition that mere imputed knowledge can serve as a substitute for successor liability. Indeed, such a rule would be flatly contrary settled South Carolina law that mere "enterprise continuity"—e.g., using the same "name, location, website and goodwill"—is never sufficient to establish successor liability. *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 266, 818 S.E.2d 447, 453 (2018). Rather, successor liability on a continuation theory may be found only "where there is commonality of officers, directors, and shareholders." *Id.* (emphasizing that all three commonalities must be present).

**E. SC OPCO's Receipt of Services and Invoices Does Not Establish Liability under the Contract**

In the Orders denying SC OPCO's Motion to Set Aside and its Motion for Reconsideration, the Special Referee repeatedly suggested that SC OPCO could be held

liable under the Contract because it had received services from Bullard but had failed to pay the corresponding invoices. (*E.g.*, R. p. 26 (Order Denying Mot. to Set Aside, at 8 ("Contract or no contract, SC OPCO has no meritorious defense to payment of the invoices for services received and for the unreturned linens.")); *see also* R. pp. 22-23 (*id.* at 4, 5); R. p. 34 (Order Denying Mot. for Reconsideration, at 3).)

For the first time in its opposition to SC OPCO's Motion for Reconsideration, Bullard submitted new evidence in the form of an email sent on June 21, 2022, purportedly showing that SC OPCO terminated the Contract. (R. p. 151 (Opp. to Mot. to Reconsider, Ex. A).) The Special Referee relied on this new evidence in denying SC OPCO's Motion to Reconsider. (R. p. 34 (Order Denying Mot. to Reconsider, at 3).) This was error, because "a party cannot use Rule 59(e) to present new evidence to the court." *Mozingo ex rel. Est. of Stewart v. Ford Motor Co.*, No. 2009-UP-282, 2009 WL 9528979, at *1 (S.C. Ct. App. June 4, 2009).

## II. The Damages Award Is Unfair, Unjust, and Unconscionable

Even if SC OPCO is not entitled to relief from the entry of default or from the default judgment, reversal of the damages award would nevertheless be required on the grounds that it is unsupported in fact and law. "[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." *Renney*, 275 S.C. at 566, 274 S.E.2d at 292. "Even in a default case, therefore, 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)

(cleaned up; quoting *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 204, 723 S.E.2d 597, 603 (Ct. App. 2012)). "[T]he principle that a plaintiff must prove his damages even when the defendant is in default applies to all damages claims in default cases." *Id.* at 90, 757 S.E.2d at 559.

"In a breach of contract action, damages serve to place the nonbreaching party in the position he would have enjoyed had the contract been performed. The measure of damages for breach of contract is the loss actually suffered by the contractee as the result of the breach." *Road, LLC v. Beaufort Cnty.*, 433 S.C. 164, 175, 857 S.E.2d 371, 376–77 (Ct. App. 2021) (internal quotation marks omitted; quoting *S.C. Fed. Sav. Bank v. Thornton-Crosby Dev. Co.*, 303 S.C. 74, 77, 399 S.E.2d 8, 10 (Ct. App. 1990), and *S.C. Fin. Corp. of Anderson v. W. Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E.2d 329, 335 (1960)). Moreover, the non-breaching party is always required to mitigate its damages. *See Collins Ent. Corp. v. Coats & Coats Rental Amusement*, 368 S.C. 410, 416 n.5, 629 S.E.2d 635, 638 n.5 (2006).

### A. SC OPCO Should Not Be Held Liable for the Early Termination Penalty

The Contract provides, "If the Customer terminates this agreement prior to the agreement term, the Customer agrees to pay the Supplier at a depreciated rate of ***50% of the rental rate*** times the number of weeks left in the agreement." (R. p. 49 (emphasis added).) Even if SC OPCO were bound by the terms of the Contract, this provision is an unenforceable penalty. While typically "[t]he question of whether a sum stipulated to be paid upon breach of a contract is liquidated damages or a penalty is one of construction and is generally determined by the intention of the parties." *Moser v. Gosnell*, 334 S.C. 425,

431, 513 S.E.2d 123, 126 (Ct. App. 1999). Here, however, the Special Referee explicitly found that the Contract provides for "specified *penalties* in the events of non-payment and *early termination*." (R. p. 19 (Order Denying Mot. to Set Aside, at 1 (emphasis added)).) "If the provision be for a penalty, recovery is measured not by the sum stipulated, but by the amount of actual damage proven to have been sustained as the result of the breach." *Tate v. LeMaster*, 231 S.C. 429, 441-42, 99 S.E.2d 39, 46 (1957).

As noted above, the Complaint alleges that "Ridgeland Nursing Center" failed to pay invoices from Bullard, but nowhere does it allege that the Contract was terminated. It also appears that no such evidence was presented at the damages hearing. As described in the Judgment, Bullard submitted an exhibit purporting to show that "50% of the early termination weekly amount ($623.13) times the number of weeks (145 weeks) left in the agreement … equals $90,353.85." (R. p. 16 (Judgment, at 6).) This amount constitutes an unenforceable penalty because it is "clearly disproportionate to any probable damage resulting from a breach" of the Contract. *Moser*, 334 S.C. at 432, 513 S.E.2d at 127. Where a contract provision is "not based upon actual damages in the contemplation of the parties, but is intended to provide punishment for breach of the contract, the sum stipulated is a penalty." *Tate*, 231 S.C. at 441-42, 99 S.E.2d at 46.

"[C] ourts should closely scrutinize default judgments to prevent harsh results and drastic action." *Lewis v. The Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981). "Whether a defendant is or is not in default, it is incumbent upon the judge … to make a judicial determination of the amount of damages based on the proof, and such proof must be by the preponderance of the evidence." *Id*. at 561, 274

S.E.2d at 289. "Judgment should not be rendered for an amount greater than that prayed for in the declaration or complaint, ***or justified by the facts alleged***." 49 C.J.S. *Judgments* § 290 (2023) (emphasis added; footnotes omitted). Here, the Court should be concerned that the Judgment imposes damages in the form of contractual penalties against SC OPCO (a stranger to the Contract), pursuant to a Complaint that lacks essential allegations supporting an entitlement to recover such damages from SC OPCO (e.g., as a successor or assignee), following a damages hearing during which, it appears, little or no substantive evidence was presented.

**B. The Award of Attorneys' Fees Is Unreasonable**

"In South Carolina, the authority to award attorney's fees can come only from a statute or be provided for in the language of a contract. There is no common law right to recover attorney's fees." *Seabrook Isl. Prop. Owner's Ass'n v. Berger*, 365 S.C. 234, 238-39, 616 S.E.2d 431, 434 (Ct. App. 2005) (citations omitted). As our Supreme Court long ago made clear:

> a fee award must be based upon a reasonable hourly fee. Applying the above six factors to determine an appropriate fee award, the reasonableness of the hourly rate shall be determined according to: (1) the professional standing of counsel; and (2) the customary legal fees for similar services. The reasonableness of the number of hours billed shall be determined according to: (1) the nature, extent, and difficulty of the case; and (2) the time necessarily devoted to the case.

*Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).[9]

[9] The Special Referee rejected SC OPCO's reliance on *Glasscock* on the grounds that *Glasscock* expressly disapproved the use of percentage fees in domestic cases. (R. p. 27 (Order Denying Mot. to Set Aside, at 9).) But SC OPCO did not cite *Glasscock* for the proposition that the contingency fee arrangement between Bullard and its counsel was

Bullard’s Complaint seeks attorneys’ fees pursuant to the Contract, which provides for recovery of attorneys’ fees incurred in collecting unpaid invoices. (R. p. 47 (Compl. ¶ 18); R. p. 49 (Compl. Ex. A).) Bullard did not identify the amount of attorney’s fees or costs requested anywhere in the Complaint, nor is the amount identified in the Affidavit of Default filed by Bullard’s counsel. (R. pp. 52-54 (Affidavit of Default as to SC OPCO).) The Judgment indicates that the Special Referee was informed that Bullard had a 33 1/3% contingency fee with its counsel and awarded $38,419.45 in attorney’s fees on that basis. (R. p. 16 (Judgment, at 6).) This was error.

South Carolina law is clear 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. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759 (1997).

> 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. It merely reflects the value of those services to the parties bound by that agreement inter se. It is not binding on the court in awarding an appropriate attorney’s fee.

*S.C. Dep’t of Transp. v. Revels*, 411 S.C.1, 11, 766 S.E.2d 700, 705 (2014) (internal quotation marks omitted).

Here, there is simply no rational basis to support an award of nearly $40,000 in

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impermissible; it cited *Glasscock* as identifying the factors relevant to determining the amount of an attorneys’ fee award, which apply regardless of the terms of any fee agreement between the prevailing party and its attorney.

attorneys' fees in a case involving a mere $20,000 in actual damages where default judgment was obtained four months after filing.[10] Rather than address the six specifically enumerated factors set by the Supreme Court for determining a reasonable fee award, the Special Referee simply stated that "[t]he contingency agreement is customary for similar services," citing *Global Protection v. Halbersberg*, 332 S.C. 149, 161, 503 S.E.2d 483, 489 (Ct. App. 1998). (R. p. 28 (Order Denying Mot. to Set Aside, at 10).) The critical point of *Global Protection*, however, is that the contingency fee arrangement between the plaintiff and its counsel did not control the award of attorneys' fees. The fee agreement in *Global Protection* provided for a 40% contingency fee, while the court awarded attorneys' fees only amounting to 1/3 of the recovery. *See Global Protection*, 332 S.C. at 161, 503 S.E.2d at 489. It is also clear that the circumstances in *Global Protection* supported a substantial fee award, where "the case presented numerous and complex issues, requiring time-consuming research and trial preparation." *Id.* at 160, 503 S.E.2d at 489. Here, in contrast, the issues were few and straightforward, and there was no trial, merely an unopposed damages hearing.

Moreover, an award of attorneys' fees must be supported by competent evidence. *See Sunrise Savings & Loan Ass'n v. Mariner's Cay Dev. Corp.*, 295 S.C. 208, 211-12, 367 S.E.2d 696, 698 (1988). In *Sunrise*, the South Carolina Supreme Court reversed an attorneys' fee award of $125,000 for a single claim where the only support for the award was an affidavit

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[10] Inexplicably, the Order Denying Motion to Set Aside finds the fee award reasonable because the case "has been pending for over a year-and-a-half" but this is not correct—the Complaint was filed on January 5, 2023. (*Compare* R. p. 28 (Order Denying Mot. to Set Aside, at 10) *with* R. p. 44 (Complaint).)

by counsel "stating, in conclusory fashion, that the fees were reasonable." *Id.* at 211, 367 S.E.2d at 698. The Court described the award as "outrageous and shocking to the conscience of the court," noting that the matter was not complex. *Id.* at 210-11, 367 S.E.2d at 697-98. The Court further noted that although "a large amount of money was involved in collection of the note" at issue in the case, "this fact does not govern the size of the fees." *Id.*

In this case, as in *Sunrise*, there is essentially no competent evidence to support the reasonableness of the fee award, which appears to be based on nothing more than the fee agreement between Bullard and its counsel and the Special Referee's conclusory statements regarding counsel's efforts, professional standing, and beneficial results, with no reference to any underlying evidentiary basis. (R. p. 16 (Judgment, at 6).) Similarly, the Order Denying the Motion to Set Aside does not identify any evidence in the record that might support a finding that the attorneys' fee award is reasonable. (R. p. 23 (Order Denying Mot. to Set Aside, at 10).) Absent evidence demonstrating that the amount of time spent at a customary and usual rate would support nearly $40,000 in attorney's fees, the award is unreasonable and an abuse of discretion. *See Am. Fed. Bank, FSB v. Number One Main Joint Venture*, 321 S.C. 169, 175, 467 S.E.2d 439, 442-43 (1996) (reversing attorneys' fees where contract authorized "a reasonable attorney's fee" and the trial court awarded 10% of the amount of the judgment despite evidence of fees incurred being substantially less).

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

"An action based on a theory of quantum meruit sounds in equity." *Boykin*

*Contracting, Inc. v. Kirby*, 405 S.C. 631, 637, 748 S.E.2d 795, 797 (Ct. App. 2013). General principles of equity that should guide the court include the following:

> First, the equities of both sides are to be considered, and each case must be decided on its own particular facts. Second, the court of equity must "balance the equities" between the parties in determining what if any relief to give. The equities on both sides must be taken into account.

*Foreman v. Foreman*, 280 S.C. 461, 464-65, 313 S.E.2d 312, 314 (Ct. App. 1984) (citing *Carroll v. Page*, 264 S.C. 345, 215 S.E.2d 203 (1975); 27 Am. Jur. *Equity* § 103 (1966)). Here, notwithstanding SC OPCO's admitted failure to timely respond to the Complaint, the Special Referee was nevertheless required to consider "the equities of both sides," which necessarily includes the fact that while SC OPCO received services from Bullard, it was never party to the Contract. As a matter of equity, therefore, Bullard's recovery from SC OPCO should be limited to the reasonable value of the services Bullard actually provided to SC OPCO, in the amount of $20,311.36.

"Whether a defendant is or is not in default, it is incumbent upon the judge and/or the jury to make a judicial determination of the amount recoverable based on the proof." *Renney*, 275 S.C. at 567, 274 S.E.2d at 293. In *Renney*, the South Carolina Supreme Court raised *ex mero motu* the issue of damages awarded in a default judgment where the "award [was] patently so greatly out-of-proportion to the wrongs alleged in the complaint that [the Court], as a matter of common law … should not allow the same to stand." *Id.* The *Renney* Court further cited 46 Am. Jur. 2d *Judgments* § 807 for the proposition that "there is authority for the rule that in a proper case, a court of equity may look behind a judgment at law in order to do justice between the parties, and that

relief from a judgment may be decreed in equity where it is against conscience to execute the judgment." *Id.*

There is no basis alleged or established by Plaintiff that supports interest of 18% per annum, an early termination fee or an award of attorney's fees against SC OPCO other than the terms of the Contract entered between Plaintiff and Ridgeland Nursing Center. Since SC OPCO was not a party to the contract a judgment for breach of contract cannot be rendered against it. *See Chan v. Thompson*, 302 S.C. 285, 292, 395 S.E.2d 731, 735-36 (Ct. App. 1990) (order on pet. for rehg.). The only credible evidence ever presented to the Court by Plaintiff was SC OPCO's liability for linen services it received but did not timely pay for, therefore the only relief requested in the Complaint that would be available as against SC OPCO was the equitable claim for unjust enrichment/*quantum meruit*.

**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,

July 8, 2024
Greenville, South Carolina

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