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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The 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.

RECORD ON APPEAL

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Attorneys for Appellant SC OPCO, LLC

BARNES LAW FIRM, LLC

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	ORDER OF REFERENCE TO
	)	SPECIAL REFEREE
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	
	)	

THIS MATTER IS BEFORE THE COURT on motion of the Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens, for a Reference to a Special Referee pursuant to Rule 53, SCRCF. This motion is based on the Entry of Defaults against the Defendants, SC OPCO, LLC and Ridgeland NC, LLC, that is contemporaneously entered by the Court.

IT IS FURTHER ORDERED that this matter is referred to C. Stephen Bennett, Esquire, pursuant to Rule 53, SCRCF, for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff's Complaint against the Defendants, SC OPCO, LLC and Ridgeland NC, LLC. Pursuant to Rule 53(c), the special referee shall have and exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter for the claims. Any appeal from any order or judgment issued by the special referee shall be to the South Carolina Supreme Court or South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules. Rule 53(e), SCRCF.

IT IS SO ORDERED.

Carmen T. Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

February _____, 2023
Beaufort, South Carolina

*Order of Reference to
Special Referee
Page 2*

I SO CONSENT:

/s/C. Stephen Bennett
C. Stephen Bennett
Bennett Law Firm, P.S.
1130 Third Ave.
PO Box 1929
Ridgeland, SC 29936
Phone: (843) 726-9520
csb@bennettlawfirm.com

*The e-filer hereby certifies that she has obtained the required consent
from Counsel of Record to e-file this document.*



Jasper Common Pleas

Case Caption: Bullard & Son Inc VS Ridgeland Nursing Center Inc , defendant, et al

Case Number: 2023CP2700005

Type: Order/Referred to Master or Special Referee

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-02-18 18:24:51 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	ENTRY AND ORDER OF DEFAULT
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	
	)	

This matter comes before the Court on the Plaintiff's motion, pursuant to Rule 55, SCRCP for an Entry and Order of Default against the Defendant, SC OPCO, LLC.

The Summons and Complaint were filed in this action on January 5, 2023. It appears from the Affidavit of Service, filed on January 9, 2023, in the Jasper County Court of Common Pleas, that the Defendant, SC OPCO, LLC, was served by process server. Service of the Summons and Complaint was accepted by Lisa Culler, Registered Agent for SC OPCO, LLC and authorized to accept service for SC OPCO, LLC on January 6, 2023. (Exh. A). The affidavit of William F. Barnes, III, counsel for the Plaintiff, indicates that more than thirty (30) days have elapsed since January 6, 2023, excluding the day of such service and that no Answer, Demurrer, or Notice of Appearance was served upon him by or on behalf of the Defendant, SC OPCO, LLC, within the time required by the South Carolina Rules of Civil Procedure. Additionally, no Answer, Demurrer, or Notice of Appearance was filed in the Jasper County Court of Common Pleas by or on behalf of the Defendant, SC OPCO, LLC, within the time required by the South Carolina Rules of Civil Procedure.

Rule 12(a) mandates that "[a] defendant shall service his answer within 30 days after the service of the complaint upon him" Rule 12(a), SCRCP. Using the time computation rules set forth in Rule 6, their answer or other responsive pleading was due on or before February 5, 2023. In

this case, Defendant, SC OPCO, LLC, is in default as their Answer was not filed within thirty-days as required by Rule 12(a), SCRCP.

Based on the above, the Court finds that the Defendant, SC OPCO, LLC, was properly served with the Summons and Complaint in accordance with Rule 4, SCRCP, on January 6, 2023. The Defendant failed to properly answer or otherwise appear in this action as required by the South Carolina Rules of Civil Procedure, and is therefore in default pursuant to Rule 55, SCRCP.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, SC OPCO, LLC, is in default in this matter pursuant to Rule 55, SCRCP and the allegations of the Complaint are deemed admitted.

IT IS SO ORDERED.

Carmen T. Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit

February _____, 2023
Beaufort, South Carolina



Jasper Common Pleas

Case Caption: Bullard & Son Inc VS Ridgeland Nursing Center Inc , defendant, et al
Case Number: 2023CP2700005
Type: Order/Entry of Default

So Ordered

s/Margaret Bostick Jasper County Clerk of Court

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	ENTRY AND ORDER OF DEFAULT
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	
	)	

This matter comes before the Court on the Plaintiff's motion, pursuant to Rule 55, SCRCPP for an Entry and Order of Default against the Defendant, Ridgeland NC, LLC.

The Summons and Complaint were filed in this action on January 5, 2023. It appears from the Affidavit of Service, filed on February 1, 2023, in the Jasper County Court of Common Pleas, that the Defendant, Ridgeland NC, LLC, was served by process server. Service of the Summons and Complaint was accepted by Janelle Green, Administrator of Ridgeland NC, LLC and authorized to accept service for Ridgeland NC, LLC on January 11, 2023. (Exh. A). The affidavit of William F. Barnes, III, counsel for the Plaintiff, indicates that more than thirty (30) days have elapsed since January 11, 2023, excluding the day of such service and that no Answer, Demurrer, or Notice of Appearance was served upon him by or on behalf of the Defendant, Ridgeland NC, LLC, within the time required by the South Carolina Rules of Civil Procedure. Additionally, no Answer, Demurrer, or Notice of Appearance was filed in the Jasper County Court of Common Pleas by or on behalf of the Defendant, Ridgeland NC, LLC, within the time required by the South Carolina Rules of Civil Procedure.

Rule 12(a) mandates that "[a] defendant shall service his answer within 30 days after the service of the complaint upon him" Rule 12(a), SCRCPP. Using the time computation rules set forth in Rule 6, their answer or other responsive pleading was due on or before February 10, 2023. In

this case, Defendant, Ridgeland NC, LLC, is in default as their Answer was not filed within thirty-days as required by Rule 12(a), SCRCP.

Based on the above, the Court finds that the Defendant, Ridgeland NC, LLC, was properly served with the Summons and Complaint in accordance with Rule 4, SCRCP, on January 11, 2023. The Defendant failed to properly answer or otherwise appear in this action as required by the South Carolina Rules of Civil Procedure, and is therefore in default pursuant to Rule 55, SCRCP.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Defendant, Ridgeland NC, LLC, is in default in this matter pursuant to Rule 55, SCRCP and the allegations of the Complaint are deemed admitted.

IT IS SO ORDERED.

February _____, 2023
Beaufort, South Carolina

Carmen T. Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit



Jasper Common Pleas

Case Caption: Bullard & Son Inc VS Ridgeland Nursing Center Inc , defendant, et al
Case Number: 2023CP2700005
Type: Order/Entry of Default

So Ordered

s/Margaret Bostick Jasper County Clerk of Court

Electronically signed on 2023-03-01 08:39:12 page 3 of 3

AFFIDAVIT OF SERVICE



State of South Carolina

County of Jasper

Common Pleas Court

Bullard & Son, inc., et al, Plaintiff(s)

vs.

Case No: 2023CP2700005

Ridgeland Nursing Center, Inc., et al, Defendant(s)

For:

BARNES LAW FIRM

P.O. Box 897

Hampton, SC 29924

To be served on: Ridgeland NC, LLC

Ilene Shiansky, undersigned, being duly sworn, deposes and says:

that on January 11, 2023 at 12:30 pm at 1516 Grays Hwy, Ridgeland, SC

the undersigned served the documents described as:

Letter

Summons and Complaint; Exhibit A

A true and correct copy of the aforesaid document(s) was served on:

Ridgeland NC, LLC

By delivering them into the hands of an officer or managing agent whose name and title is

Janelle Green, Administrator

The person receiving documents is described as follows:

Sex F ; Race White ; Hair Color Blonde ; Facial Hair N/A
Approx. Age 30 ; Approx. Height 5'04" ; Approx. Weight 125

☒ To the best of my knowledge and belief, said defendant was not engaged in the US Military at the time of service.

Subscribed and sworn to before me this

15 day of January, 2023

CMBLack

NOTARY PUBLIC

My Commission Expires: 9/16/2030

I certify that I am over the age of 18, have no interest in the above action.
Undersigned declares under penalty of perjury that the foregoing is true and correct.

Ilene Shiansky
Ilene Shiansky

Process Server
Southern Pride Process, LLC
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

SPP File: 134414-2

Client File: _____



ELECTRONICALLY FILED - 2023 Feb 01 4:47 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005
ELECTRONICALLY FILED - 2023 Feb 14 11:24 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005
ELECTRONICALLY FILED - 2023 Mar 01 9:28 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
	)	
Plaintiff,	)	
	)	JUDGMENT
vs.	)	
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
	)	
Defendants.	)	

FILED
 JASPER COUNTY
 CLERK OF COURT
 2023 MAY 12 P 2:15

This matter came before me for a hearing on Tuesday, April 25, 2023, pursuant to the February 18, 2023 Order of Reference to a Special Referee. At the hearing, the Plaintiff, through Perry N. Bullard ("Lowcountry Medical Linens"), appeared with his counsel, William F. Barnes, III. The hearing began after 10:00 a.m. at Bennett Law Firm, P.A., 162 Second Avenue, Ridgeland, SC 29936. No one appeared for Defendant, Ridgeland NC, LLC or SC OPCO, LLC (collectively "Defendants"). After reviewing the exhibits presented and hearing testimony, I make the following findings of fact and conclusion of law.

FACTS

This action arises out of a breach of contract between Plaintiff and Defendants. Defendants transact business in Jasper County and operate the Ridgeland Nursing Center. (Compl.). On March 3, 2020, Ridgeland Nursing Center and Lowcountry Medical Linens entered into a valid, binding contract ("Contract") for various rental items. (Compl. ¶ 8). The Contract started on April 1, 2020, for a term of sixty (60) months. (Compl. ¶ 9). Ridgeland Nursing Center agreed in the Contract that "[a]ny invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum)." (Compl. ¶ 10). Ridgeland Nursing Center agreed in the Contract that it would "be responsible for all

¹
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legal fees to collect any unpaid balances.” (Compl. ¶ 11). The Contract provides that if Ridgeland Nursing Center terminated the Contract prior to the agreement term, Ridgeland Nursing Center agreed to pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement. (Compl. ¶ 12). The Contract inures to the benefit of any successors or assigns. (Compl. ¶ 13).

Starting on the Contract term of April 1, 2020, Lowcountry Medical Linens provided services and linens to Ridgeland Nursing Center. (Compl. ¶ 14). Lowcountry Medical Linens made deliveries, and invoices were paid by Ridgeland Nursing Center. (Compl. ¶ 15). Between February 28, 2022 and June 22, 2022, Lowcountry Medical Linens provided invoices for services provided to Ridgeland Nursing Center for rented medical linen supplies totaling \$20,311.36:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
1287515	02/28/2022	\$336.90
1287628	03/02/2022	\$574.39
1287783	03/04/2022	\$433.61
1287838	03/07/2022	\$335.15
1287966	03/09/2022	\$329.58
1288122	03/11/2022	\$462.60
1288182	03/14/2022	\$343.71
1288300	03/16/2022	\$337.27
1288461	03/18/2022	\$476.48
1288515	03/21/2022	\$343.54
1288643	03/23/2022	\$363.63
1288797	03/25/2022	\$474.18
1288853	03/28/2022	\$339.34
1288972	03/30/2022	\$388.36
1289130	04/01/2022	\$477.93
1289187	04/04/2022	\$505.70
1289321	04/06/2022	\$337.27
1289471	04/06/2022	\$509.13

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1289529	04/11/2022	\$337.99
1289645	04/13/2022	\$337.27
1289799	04/15/2022	\$455.37
1289864	04/18/2022	\$350.57
1290015	04/20/2022	\$337.27
1290163	04/22/2022	\$480.31
1290218	04/25/2022	\$346.25
1290333	04/27/2022	\$337.27
1290486	04/29/2022	\$516.09
1290538	05/02/2022	\$352.54
1290666	05/04/2022	\$527.93
1290841	05/06/2022	\$455.37
1290897	05/09/2022	\$309.40
1291043	05/11/2022	\$375.53
1291166	05/13/2022	\$484.48
1291221	05/16/2022	\$308.49
1291346	05/18/2022	\$364.57
1291491	05/20/2022	\$457.55
1291546	05/23/2022	\$314.08
1291691	05/25/2022	\$346.21
1291836	05/27/2022	\$478.77
1291862	05/30/2022	\$380.98
1291988	06/01/2022	\$370.40
1292137	06/03/2022	\$723.07
1292193	06/06/2022	\$324.37
1292312	06/08/2022	\$342.43
1292464	06/10/2022	\$479.89
1292513	06/13/2022	\$405.94
1292642	06/15/2022	\$389.93
1292791	06/17/2022	\$548.61
1292846	06/20/2022	\$348.80
1292964	06/22/2022	\$354.86

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Total: \$20,311.36

(Compl. ¶ 16). Despite receiving the services and linens provided by Lowcountry Medical Linens, Defendants have refused to pay the invoices, thereby breaching the Contract. (Compl. ¶ 17).

On January 5, 2023, Lowcountry Medical Linens filed suit against Defendants. (Compl.). On January 6, 2023, the Summons and Complaint were properly served on Defendant SC OPCO, LLC, through its Registered Agent at 2 Office Park Ct., Suite, 103, Columbia, South Carolina (SC OPCO Aff. of Svc.). SC OPCO failed to answer or appear and is in default. (Entry of Default).

On January 11, 2023, the Summons and Complaint were properly served on Defendant Ridgeland NC, LLC through Janelle Green, Administrator, at the Ridgeland Nursing Center, 1516 Grays Highway, Ridgeland, South Carolina. (Ridgeland NC Aff. of Svc.). Ridgeland NC, LLC failed to answer or appear and is in default. (Entry of Default). After SC OPCO, LLC and Ridgeland NC, LLC failed to timely answer or otherwise respond, the Court entered default against both defendants on March 1, 2023. (Entries of Default).

Neither Defendant appeared nor filed an answer or other responsive pleading in this action in accordance with Rule 12, SCRCp. On February 18, 2023, this matter was referred to the undersigned pursuant to Rule 53, SCRCp, "for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff's Complaint. . . ." (Order of Reference).

On March 30, 2023, Lowcountry Medical Linens sent Ridgeland NC, LLC and SC OPCO, LLC, a Notice of Damages Hearing by first class mail in compliance with Rule 55, SCRCp. (Ex. 1).

CONCLUSIONS OF LAW

"It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Roche v. Young Bros.*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). Defendants are deemed to have admitted the truth of Plaintiff's allegations and to have conceded liability for its damages.

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Both Defendants were properly served in accordance with Rule 4, SCRCF, and received proper notice of the hearing pursuant to Rule 55, SCRCF. However, despite receiving proper notice of the damages hearing, neither Defendant appeared at the hearing. At the hearing, Plaintiff presented numerous exhibits and I heard testimony from Perry Bullard.

The Court holds that Lowcountry Medical Linens and Defendants entered into valid, binding contract on March 3, 2020 for various rental items. The Contract is binding upon any successor or assign that operates the Ridgeland Nursing Center during its duration. The sixty-month contract started on April 1, 2020, and was to expire on March 31, 2025. The parties initially performed their respective obligations under the Contract with Lowcountry Medical Linens providing rental items and Ridgeland Nursing Center paying invoices for those items. Ridgeland Nursing Center agreed that "[a]ny invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum)" and that it would "be responsible for all legal fees to collect any unpaid balances." The Contract further provides that, if Ridgeland Nursing Center terminated the Contract prior to expiration of the 5-year term, it would pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement.

"The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach." *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Defendants, Ridgeland NC, LLC and SC OPCO, LLC, breached the Contract by refusing to pay invoices for rental items Defendants received that were provided by Plaintiff. Defendants are liable to Plaintiff for the unpaid invoices provided by Lowcountry Medical Linens from February 28, 2022 and June 22, 2022 that totals \$20,311.36. Defendants are also liable to Plaintiff for the June 27, 2022 invoice totaling \$1,243.83, which is for product provided to Ridgeland Nursing Center that was not returned to Plaintiff.

Defendants are also liable to Plaintiff for the 1.5% late charge (18% per annum) and the depreciated rate for early termination, both terms in the Contract. As of March 31, 2023, the 1.5%

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late charge totals \$3,349.30. (Ex. 2). Exhibit 3 contained a summary provided by Mr. Bullard for the early termination total. Defendants are liable to Plaintiff for 50% of the early termination weekly amount (\$623.13) times the number of weeks (145 weeks) left in the agreement, which equals \$90,353.85.

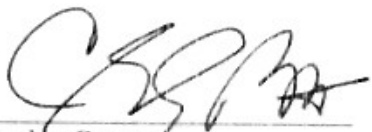
Ridgeland Nursing Center also agreed in the Contract to be responsible for all legal fees to collect any unpaid balances. Plaintiff hired counsel to represent it on a 33 1/3% contingent fee arrangement, which totals \$38,419.45. The case costs Plaintiff incurred bringing this action total \$500.54. (Ex. 4).

CONCLUSION

I find Plaintiff is entitled to a total judgment for actual damages against SC OPCO, LLC and Ridgeland NC, LLC for the breach of contract action in the amount of one hundred fifty-four thousand one hundred seventy-eight dollars and 33/100 (\$154,178.33). Even though punitive damages were sought in the Complaint, the Court does not award anything for punitive damages.

AND IT IS SO ORDERED.

May 12, 2023
Ridgeland, South Carolina


C. Stephen Benney
Special Referee

⁶
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STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-27-00005

Bullard & Son, Inc. d/b/a Lowcountry Medical Linens,
PLAINTIFF(S)

Ridgeland Nursing Center, Inc., Ridgeland NC,
LLC, and SC OPCO, LLC,
DEFENDANT(S)

Submitted by: William F. Barnes, III

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Bullard & Son, Inc. d/b/a Lowcountry Medical Linens	SC OPCO, LLC & Ridgeland NC, LLC	\$154,178.33
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

SCRCP Form 4C

Special Referee
C. Stephen Bennett

Judge Code

SC Bar 64087

Date

5-12-2023

Page 1

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

William F. Barnes, III
PO Box 457, Hampton, SC 29924

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

[illegible]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
	)	
Plaintiff,	)	
	)	ORDER DENYING DEFENDANT SC
vs.	)	OPCO, LLC'S MOTION TO SET ASIDE
	)	DEFAULT JUDGMENT AND MOTION
Ridgeland Nursing Center, Inc., Ridgeland	)	FOR A NEW TRIAL
NC, LLC, and SC OPCO, LLC,	)	
	)	
Defendants.	)	

This matter came before me on the Defendant SC OPCO, LLC's motions to set aside default judgment and for a new trial. The parties submitted memoranda on the motions. On July 20, 2023, I held a hearing on the motions. Present for Plaintiff Bullard & Son, Inc. d/b/a Lowcountry Medical Linens ("Lowcountry") was William F. Barnes, III. Present for Defendant SC OPCO, LLC, was Kyle A. Brannon. After carefully considering the parties' memoranda and exhibits, hearing argument of counsel, and reviewing the applicable law and pleadings, the Court denies SC OPCO's motions.

FINDINGS OF FACT

On March 3, 2020, Lowcountry entered into a contract with Ridgeland Nursing Center for Lowcountry to provide medical linens to the facility. The contract had a 60-month/5-year term and an April 1, 2020 start date, meaning it was effective from April 1, 2020 until March 31, 2025. The agreement specified penalties in the events of non-payment and early termination.

If the customer terminated the agreement before the five-year term ended, it agreed to pay Lowcountry "a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement." If the customer failed to pay any invoices, it agreed to pay "a 1.5% late charge (18% per annum)." The customer agreed to be "responsible for all legal fees to collect any unpaid balances."

Finally, the agreement states it “is in effect and shall enure to the benefit of any successors or assignees.” The agreement was signed by Sheri Boyles, the Administrator for the facility.

In November 2021, SC OPCO bought Ridgeland Nursing Center. SC OPCO is a New Jersey LLC that operates nursing homes in multiple states. SC OPCO says that it purchased the assets of Ridgeland Nursing Center but not its liabilities or contracts. SC OPCO employs someone to “have primary responsibility for the business operations of Ridgeland Nursing & Rehab, including negotiating contracts with vendors, as well as approving invoices for services.” (Aff. of Neuman p. 1). Despite this “primary responsibility,” that person claims to “have no knowledge of the terms of any contracts that may have existed between” Lowcountry and Ridgeland Nursing Center. *Id.* at p. 2.

From April 1, 2020, through January 2022, Lowcountry provided linen services and received payment for its services. This includes payments for November and December 2021, and January 2022, all after SC OPCO bought Ridgeland Nursing Center. Sheri Boyles, who signed the agreement and had knowledge of its terms, remained employed by SC OPCO until May 2022.

From February 28, 2022, until June 22, 2022, Lowcountry sent 50 invoices to SC OPCO that it did not pay. The invoices total \$20,311.36. SC OPCO continued to receive and use the medical linen services but refused to pay for them. SC OPCO also kept \$1,248.83 of Lowcountry’s linen products and did not return them.

On January 5, 2023, Lowcountry filed this action against SC OPCO, Ridgeland Nursing Center, Inc., and Ridgeland NC, LLC, for “Breach of Contract against All Defendants” and “Unjust Enrichment/Quantum Meruit as to All Defendants.” (Cmplt.) (emphasis added). A copy of the agreement was attached to and filed with the Complaint.

On January 6, 2023, Lowcountry served SC OPCO through its registered agent. Service of process is not in dispute. SC OPCO did not answer the Complaint. The Circuit Court filed an entry of default as to SC OPCO and referred the case to me “for all purposes” including a damages hearing.¹

On March 30, 2023, Lowcountry sent SC OPCO a notice of damages hearing through its registered agent. On April 25, 2023, the court held a damages hearing, and SC OPCO chose not to attend or otherwise respond. Lowcountry presented evidence at the hearing, and the court took testimony from Perry Bullard, the owner of Lowcountry. The court held that the agreement “is binding upon any successor or assign that operates Ridgeland Nursing Center during its duration.” (Judgment p. 5). Further, “SC OPCO, LLC, breached the Contract by refusing to pay invoices for rental items Defendants received that were provided by Plaintiff.” *Id.*

On May 12, 2023, the court entered judgment against SC OPCO for \$154,178.33, which includes \$20,311.36 in unpaid invoices, \$1,243.83 in missing linens, a \$3,349.30 late charge, a \$90,353.85 early termination fee, and \$38,419.45 in legal fees to collect the debt. *Id.* at pp. 5-6.

On May 17, 2023, SC OPCO filed a motion to set aside default, for a new trial, and for enlargement of the time to file an answer.

ARGUMENT

SC OPCO cites to four rules in its motions—Rules 55(c), 60(b), 59(a), and 6(b), SCRCp. None of those rules provide for relief in these circumstances.

I. Rule 55(c), SCRCp, does not apply.

“Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCp.” *Campbell v. City of N. Charleston*, 431 S.C. 454, 460, 848 S.E.2d 788, 792 (Ct. App. 2020). Because a default judgment for damages was already entered when SC OPCO filed its motions, Rule 55(c) does not apply. Instead, Rule 60(b), is SC OPCO’s only avenue of relief.

¹ Defendant Ridgeland NC, LLC, is also in default.

SC OPCO states that it “can meet both standards based on” the same arguments. (Mot. p. 6). I disagree, and find that it cannot meet either standard.

II. SC OPCO Does not Satisfy Rule 60(b), SCRCP.

A “court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect . . .” Rule 60(b)(1), SCRCP. SC OPCO asks the court to set aside the default judgment under Rule 60(b)(1) due to its “mistake” in believing that it did not need to answer the Summons and Complaint. (Mot. p. 8).

“Rule 60(b) requires a more particularized showing of mistake” than the Rule 55(c) standard. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). “The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk’s entry of default.” *Id.* at 608, 681 S.E.2d at 888-89. “In determining whether a default judgment should be set aside under Rule 60(b)(1), the promptness with which relief is sought, the reasons for the failure to act promptly, the existence of a meritorious defense, and the prejudice to the other parties are relevant.” *Tobias v. Rice*, 379 S.C. 357, 366, 665 S.E.2d 216, 221 (Ct. App. 2008) (internal quotation and alteration marks omitted). I find that SC OPCO fails to make the threshold showing of a mistake to warrant relief but, even if it could make this showing, the other relevant factors do not support relief in this case.

Mistake. SC OPCO argues that it made an “honest mistake of fact” by believing that it did not need to answer the complaint because it did not enter into a contract with Lowcountry, did not assume the liabilities or contracts of Ridgeland Nursing Center, and it was not the “primary defendant in the lawsuit.” (Mot. p. 7). None of these amount to a “mistake” warranting relief under Rule 60(b)(1).

For four months Lowcountry sent SC OPCO 50 invoices that it ignored and chose not to pay. (Cmplt. pp. 3-4). Not surprisingly, about five months later, Lowcountry filed suit against SC OPCO.

The Summons and Complaint list SC OPCO as a defendant. (Summons & Cmplt. ¶ 4). SC OPCO received personal service of process. The documents plainly state that “**YOU ARE HEREBY SUMMONED** and required to answer the complaint . . . and, if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded.” (Summons) (underline emphasis added). Lowcountry specifically asserted that the “Contract inured to the benefit of the [sic] any successor or assigns.” (Cmplt. ¶ 13). The Complaint also specifically seeks damages for invoices of linen services during SC OPCO’s ownership of the facility. (Cmplt. ¶¶ 16-18). Both causes of action are stated “as to All Defendants.” (Cmplt. pp. 2, 5). Even a cursory reading of these documents shows that a response is required from SC OPCO. Its alleged belief that it did not need to answer is neither reasonable nor credible.

SC OPCO is a sophisticated party that operates a federally-regulated health care facility. Yet, when it received repeated invoices for services rendered, it chose not to pay for those services. This further supports my decision to find that SC OPCO’s conscious choice to ignore the Summons and Complaint after ignoring invoices is not a mistake.

Even if I could find a mistake, it is a mistake of law and not of fact. The requirement to answer a complaint is not a fact—it is the law. Rule 12(a), SCRCP (“A defendant shall serve his answer within 30 days after the service of the complaint upon him” (emphasis added)). If a defendant believes that a complaint incorrectly names it as a party, the proper remedy is to file an answer and assert that as a defense. It is remarkable that SC OPCO believed it could get away with ignoring fifty invoices and valid legal process under these circumstances.

A mistake of law does not warrant relief under Rule 60(b). “[F]ailure to understand the legal process is not excusable neglect under Rule 60(b).” *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001); *see also Hillman v. Pinion*, 347 S.C. 253, 257, 554 S.E.2d 427, 429 (Ct. App. 2001) (“[B]ecause this is a mistake of law, not fact, we find this is not the type of mistake, surprise, inadvertence, and excusable neglect generally contemplated by Rule 60(b)(1).”). “It is always a

matter of regret that a party should not have his day in court. However, . . . [where] the appellant was duly served with the summons and complaint, [i]t was his duty to answer the complaint. . . .” *Hill*, 345 S.C. at 310, 547 S.E.2d at 897 (internal quotation marks omitted). SC OPCO is a sophisticated entity familiar with the legal system that knew before it received the Summons and Complaint that it owed Lowcountry money for unpaid invoices and even kept Lowcountry’s product. SC OPCO’s own conscious choice to ignore valid legal process does not warrant relief under Rule 60(b).

SC OPCO argues its belief that it did not have to answer is supported by correspondence that Lowcountry sent to the Facility that was not directed to SC OPCO. (Mot. pp. 4-5). The court disagrees. That Lowcountry **separately** served the registered agents for SC OPCO and Ridgeland Nursing Center actually shows that it intended to sue them both as separate entities. SC OPCO’s registered agent is not at the facility. Regardless, SC OPCO is not allowed to substitute its own judgments or assumptions for the express language of a legal document that says it is required to answer within thirty days.

SC OPCO asserts that it did not know “what events would cause a breach” of the contract. (Mot. p. 5). I reject this assertion. It received 50 invoices over four months and should have expected a lawsuit for its failure to pay.

SC OPCO relies upon *Mitronics v. S.C. Dep’t of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001), for its mistake-of-fact argument under Rule 60(b). (Mot. p. 8). That case is distinguishable. Mitronics filed a request for a contested case hearing in the ALC. *Id.* at 508, 548 S.E.2d at 224. The original hearing date was rescheduled, and Mitronics’ counsel mis-calendared the date. *Id.* When it did not appear at the hearing, the ALJ dismissed the request and treated the failure to appear as a default. *Id.* The Court of Appeals granted Mitronics relief under Rule 60(b) because it found “no evidence in the record that the mistake was anything but a good faith error” and Mitronics quickly asked for relief. *Id.* at 511, 548 S.E.2d at 226.

In stark contrast to that case, SC OPCO did not commit a “good faith error” such as a calendaring mistake but, instead, purposefully chose not to respond at all. It did not even contact legal counsel but simply ignored the complaint. I cannot get beyond the fact that SC OPCO made a conscious decision to repeatedly ignore a validly served Summons and Complaint and, to compound their self-made dilemma, it failed to contact me or appear at the April 25, 2023 damages hearing after receiving proper notice of the hearing. That is not a mistake at all—it is intention.

SC OPCO fails to prove a mistake to warrant relief under Rule 60(b). It actually chose to go into default by ignoring the complaint.²

Because there is no mistake, I do not need to address the additional factors. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013). However, even if SC OPCO could prove a mistake of fact, I would still deny the motion for failure to satisfy those factors.

Promptness in seeking relief. SC OPCO argues it “did not discover that [the] lawsuit progressed to the point” of entry of default until May 10, 2023, when its counsel “happened upon this case” in the public index. (Mot. p. 8) (emphasis added). Knowing about entry of judgment is entirely different from knowing the lawsuit exists. SC OPCO clearly knew about the lawsuit and the damages hearing. Regardless, a “party has a duty to monitor the progress of his case.” *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). SC OPCO received service of and knew about the lawsuit, and the Summons plainly states that default will be entered against it for not answering.

SC OPCO received fifty invoices from Lowcountry that it ignored. SC OPCO received valid service of the Summons and Complaint on January 6, 2023, and a notice of damages hearing on March 30, 2023, but it did not file a motion for relief until May 25, 2023. The procedure rules that govern the time periods to respond to a lawsuit are intended “to secure the just, speedy, and inexpensive

² In *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 12, 753 S.E.2d 537, 543 (2014), the Supreme Court held “[t]he circuit court acted within its discretion in concluding that losing a complaint was not a satisfactory explanation for failing to timely respond.” *Id.* at 12, 753 S.E.2d at 543. SC OPCO has even less of an explanation. It did not lose the complaint—it ignored it.

determination of every action.” Rule 1, SCRCP. They do not allow a party to ignore the legal process and then ask for relief when it does not like what happened in its intentional absence. I find that SC OPCO did not timely seek relief.

Meritorious defense. SC OPCO asserts two “meritorious” defenses—(1) there is no contract between it and Lowcountry, and (2) the amount of attorney’s fees and costs awarded is unreasonable. A meritorious defenses “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, 918 (Ct. App. 2009) (internal quotation marks omitted).

Contract or no contract, SC OPCO has no meritorious defense to payment of the invoices for services received and for the unreturned linens. It received those services and must pay for them. There is no meritorious defense to those damages.

What SC OPCO is really complaining about are the contract terms about the early termination fee and attorney’s fees. I find it also has no meritorious defense to those specific terms for two independent reasons. First, SC OPCO accepted services under the contract after purchasing Ridgeland Nursing Center. I find that it did so for a prolonged period of time—at least six months—and with knowledge of the contract and its terms. It even initially paid some of the invoices. SC OPCO is a sophisticated entity with an employee whose job is to negotiate contracts and approve invoices. (Aff. of Neuman). Nowhere does he explain why SC OPCO does not owe money for services it received or why it did not pay Lowcountry’s invoices. I reject SC OPCO’s assertion that it did not have any knowledge of the contract or its terms. It received services from a business and must (or should) have known they were provided under a contract. SC OPCO employed Sheri Boyles, who had firsthand knowledge of the contract because she signed it, and she continued to work for SC OPCO after it purchased the facility. *See Equitable Tr. Co. v. Columbia Nat’l Bank*, 145 S.C. 91, 114, 142 S.E. 811, 818 (1928) (“[I]f knowledge is acquired by an agent while not acting for the corporation,

but afterwards he acts for the corporation in a matter in which it becomes his duty to communicate the fact his knowledge is imputed to the corporation.”).

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 pre-existing 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.

As to the second defense of the reasonableness of the \$38,919.99 attorney’s fees and costs, I find this is not a meritorious defense. The contract states the “Customer will be responsible for all legal fees to collect any unpaid balances.” After SC OPCO ignored its invoices for months, Lowcountry was left with no choice but to hire legal counsel. It hired counsel on a 33 1/3% contingency fee. SC OPCO argues that a contingency fee award is not appropriate under *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). In *Glasscock*, the Court “expressly disapprove[d] any percentage fee agreement in a domestic case.” *Id.* at 161, 403 S.E.2d at 315 (emphasis added). It said nothing about a contingency fee for a breach of contract case based on an express contractual provision. There is no legal prohibition on a contingency fee in this case, and therefore, SC OPCO has no meritorious defense to that part of the default judgment.

Even if the court evaluated the case under the *Glasscock* factors without regard to the contingency fee arrangement, I still find the award reasonable.³ This is a breach of contract and quantum meruit case that has been pending for over a year-and-a-half. Counsel devoted time to preparing the Complaint, service, entry of default, a damages hearing with witnesses and documentary evidence, and now response to a motion for relief from entry of default. Counsel has almost fourteen years of legal experience, is in good professional standing, and has represented Lowcountry very well in this matter. Lowcountry hired counsel on a standard contingency agreement, and counsel timely obtained beneficial results of a judgment. The contingency agreement is customary for similar services. *See Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 161, 503 S.E.2d 483, 489 (Ct. App. 1998).

Prejudice to Lowcountry. SC OPCO argues there is no prejudice to Lowcountry because, if the default judgment is vacated, “the only consequence” is that Lowcountry will have “to prove it is entitled to relief.” (Mot. p. 12). I cannot accept this argument. Lowcountry did everything that it was required to do in this case. It sent invoices for months before resorting to the legal system. It filed and properly served a Summons and Complaint. It obtained an entry of default and then provided proper notice of a damages hearing. SC OPCO cannot ignore all of that and then argue that Lowcountry will not be prejudiced by starting over.

The timing of Lowcountry’s judgment is particularly important in this case. There is already another judgment against SC OPCO and other known creditors. Lowcountry will be prejudiced if it loses its priority date for collection of its judgment.

While it is desirable to decide a controversy on the merits, I find it just in this case to give effect to Lowcountry’s conduct in following all of the proper legal procedures to initiate this lawsuit

³ Notably, SC OPCO does not make an argument under any of the particular factors that the amount of the fee is unreasonable.

against SC OPCO. Its rights to have the default judgment upheld outweigh the right of SC OPCO, who ignored the legal process, to have its day in court.

III. Alternatively, if Rule 55(c), SCRCF, applied, SC OPCO fails to satisfy it.

If Rule 55(c), SCRCF, applied, I would still deny the motions because SC OPCO does not satisfy even the more lenient Rule 55(c) standard for relief from entry of default.

“The standard for granting relief from an entry of default under Rule 55(c) is mere “good cause.”” *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 11, 753 S.E.2d 537, 542 (2014) (quoting Rule 55(c), SCRCF). “This standard requires a party seeking relief from an entry of default under Rule 55(c) 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). “Once a party has put forth a satisfactory explanation for the default, the trial 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.

Explanation for the default. SC OPCO’s explanation for its default is the same as its “mistake” argument under Rule 60(b)—that it mistakenly believed it did not need to answer the Complaint. (Mot. p. 7). For the reasons explained above, this is not a sufficient explanation.

SC OPCO relies upon *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 339 S.E.2d 524 (Ct. App. 1986), for its mistake-of-fact argument under Rule 55(c). That case is distinguishable. Galvin received service of process on March 3 but “mistakenly” told his attorney he received it on March 4. *Id.* at 60, 339 S.E.2d at 524. The attorney used that date to calculate the time for serving an answer but actually served it a day late. *Id.* If March 4 had been correct, the answer would have been timely. *Id.* The date a defendant received service is a fact, and the defendant in *Columbia Pools* actually filed an answer and believed its answer was timely. In stark contrast to that case, SC OPCO purposefully

chose not to respond at all. It did not even contact legal counsel but simply ignored the complaint. Even if mistaken, it is a mistake of law.

SC OPCO fails to provide a reasonable explanation for its default. This would end the Rule 55(c) analysis. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013). However, even if Rule 55(c) applied, and even if SC OPCO could provide an explanation for default, I would still deny the motion for failure to satisfy the other factors as explained above.

IV. There is no basis for a new trial.

SC OPCO asks for a new trial under Rule 59(a), SCRCP. It includes a statement of the legal standard under Rule 59(a) but then makes no actual argument as to why it should receive a new trial. “The new trial motion assumes that the evidence is enough to go to the jury but asks whether, in light of all the evidence, the jury reached the appropriate result, the amount of the verdict is inadequate, excessive or shocks the conscience, or whether there was an error law affecting the verdict.” South Carolina Civil Procedure § 59.A (2014). No trial actually occurred in this case. Assuming that the damages hearing is “an action tried without a jury”, SC OPCO does not ask for a new trial as to damages. Rule 59(a).

On the merits, I deny the motion for the same reasons explained above to deny the Rules 60(b) and 55(c) motions. The judgment amount is adequate given the services provided and the contract terms, and the law supports maintaining the default judgment.

V. There is no “good cause” to extend the time to answer under Rule 6(b), SCRCP.

SC OPCO moves under Rule 6(b), SCRCP, to extend its time to answer. “[T]he court for cause shown may at any time in its discretion . . . upon motion made after the expiration of a specified period, for good cause shown, permit the act to be done.” Rule 6(b), SCRCP. I do not believe that an extension of time to file an answer may be granted after entry of default and default judgment. However, even if I could grant an extension, I deny the motion. For the reasons explained above, SC

OPCO has not shown “good cause” for an extension of time to file an answer. It chose not to file one, and ignoring legal process is not “good cause” for relief under these circumstances.

For these reasons, SC OPCO’s motions are **DENIED**.

September 13, 2023
Ridgeland, SC



C. Stephen Bennett
Special Referee

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
	)	
Plaintiff,	)	ORDER DENYING DEFENDANT SC
	)	OPCO, LLC'S MOTION TO ALTER OR
vs.	)	AMEND ORDER DENYING MOTION
	)	TO SET ASIDE DEFAULT JUDGMENT
Ridgeland Nursing Center, Inc., Ridgeland	)	AND MOTION FOR NEW TRIAL
NC, LLC, and SC OPCO, LLC,	)	
	)	
Defendants.	)	

This matter came before me on the Defendant SC OPCO, LLC's motion to alter or amend order denying motion to set aside default judgment and motion for new trial. On May 12, 2023, the Court entered judgment against SC OPCO. On May 17, 2023 SC OPCO filed a motion to set aside default judgment, for a new trial, and to enlarge the time to file an answer. On September 13, 2023, the Court entered an order denying SC OPCO's motion. On September 25, 2023, SC OPCO filed a motion to reconsider. The parties submitted memoranda on the motion. After carefully considering the parties' memoranda and reviewing the applicable law, the Court denies SC OPCO's motion.

ANALYSIS

At the core of the judgment in this case is that SC OPCO received service of process and chose not to respond. As a result, it is in default and admitted liability for breach of contract and unjust enrichment/quantum meruit, meaning there is a valid contract and SC OPCO is bound to its terms.

The law SC OPCO cites in this motion and its prior motions does not change or excuse the fact that it blatantly disregarded the Summons and Complaint and notice of the damages hearing. Had SC OPCO simply availed itself of a timely answer, it would not have been facing a damages hearing. Had it timely notified me after receiving notice of the hearing, then it could have appeared to contest damages. However, the time for SC OPCO to raise these issues is simply "too little and

too late.” I am particularly unpersuaded by the argument that SC OPCO is an uneducated or unsophisticated defendant who would make a mistake of fact about having to answer a complaint, or needing to respond to a hearing notice. For the reasons stated in this order and those in the Order Denying Defendant SC OPCO’s Motion to Set Aside Default Judgment and Motion for New Trial (which is incorporated herein), I deny SC OPCO’s motion.

I. SC OPCO’s motion for a new trial is denied.

SC OPCO asks the Court to hold a new damages hearing in which it remains in default but the Court considers anew the amount of damages awarded. (Mot. p. 5). For four independent reasons, the Court denies the motion on this basis.

First, SC OPCO had an opportunity to contest damages in default but chose not to attend the damages hearing. *Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived).

Second, its arguments on the amount of damages address liability by asserting different ways that it is not bound to the contract. (Mot. pp. 5-11). The Court cannot consider liability when SC OPCO is in default, which established that it is bound to the contract and its terms. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”).

Third, the Court correctly stated that, where the grounds for relief from default judgment and a new trial are the same, Rule 59(a) is not meant to provide relief separate from Rule 55 or 60. Contrary to SC OPCO’s assertion, I did not refuse to address the motion but, instead, considered the merits and still denied it. (Order p. 12). SC OPCO cites to no law that endorses separate motions under Rules 55, 60, and 59 all arguing the same grounds. To the contrary, the Court of Appeals held that a “Rule 59 motion pertaining to the default issue was more properly characterized as a Rule 60(b) motion, SCRCP.” *Yoko Kim Melton v. Chong Olenik*, 379 S.C. 45, 49 n.6, 664 S.E.2d 487, 489 (Ct. App. 2008) (separating the argument that the court should have granted the request for a court-

certified interpreter as proper under Rule 59 from the remainder of the arguments about excusable neglect and damages).

Fourth, I did not conduct a trial. I conducted a damages hearing, which SC OPCO chose not to attend and, thus, waived its right to contest damages. *Butler*, 316 S.C. at 467, 451 S.E.2d at 387-88 (stating a procedural right may be waived).

II. SC OPCO had knowledge of the contract and its terms.

SC OPCO argues that Joe Neumann's affidavit establishes it did not know about the contract or its terms. This is a liability argument that a defendant in default cannot make. (Mot. pp. 5-7); *Solley*, 397 S.C. at 203, 723 S.E.2d at 603. The motion is denied as to this issue on this basis alone.

As another independent basis for denial, the argument is wrong on the merits. There is evidence that SC OPCO knew about the contract. Six months after SC OPCO purchased the facility, its employee sent an email to Lowcountry to terminate its services. (Exh. A to Pl.'s Memo. in Opp.). The contract was the only basis for Lowcountry to provide services. SC OPCO operated a business that received weekly linen services from Lowcountry for months **after** it bought the facility. Between February 14, 2022, and April 29, 2022, SC OPCO wrote four separate checks to Lowcountry for outstanding invoices. (Exh. E to Pl.'s Memo. in Opp.). Lowcountry sent over 50 invoices to SC OPCO that it ignored. It knew about the contract and Lowcountry.

SC OPCO accuses me of not explaining the rejection of Neumann's assertions. (Mot. p. 6). I explained that I rejected them because the facts show otherwise, as described above. (Order p. 8).

SC OPCO complains about the finding that Sheri Boyles's knowledge is imputed to it. (Mot. Pp. 6-7). First, Boyles's knowledge is not dispositive of SC OPCO's knowledge because, as explained above, it independently knew about and accepted Lowcountry's services. Regardless, SC OPCO does not cite law to refute my holding but only incorrectly criticizes a decision I cited—*Equitable Tr. Co. v. Columbia Nat'l Bank*, 145 S.C. 91, 114, 142 S.E. 811, 818 (1928). SC OPCO says the case does not discuss knowledge of an employee who then works for a "successor

corporation” (Mot. p. 7), but the case is not about successor corporations. It is about employee knowledge and when that knowledge is imputed to an employer. Boyles had actual knowledge of the contract’s terms and existence, and she continued to work for SC OPCO. Under *Equitable Trust Co.*, her knowledge acquired prior to working for SC OPCO was imputable to it.¹

III. Successor liability is not at issue.

The Court did not make a ruling based on successor liability. Instead, it ruled based on SC OPCO’s own conduct in accepting the services with knowledge of the contract and its terms. I deny the motion on this basis for this reason alone.

Second, this argument goes to liability for breach of contract, which is established as a matter of law due to SC OPCO’s default. Therefore, SC OPCO is barred from making this argument.

Third, SC OPCO does not say that it gave Lowcountry notice of its purchase of the facility. SC OPCO’s acceptance of the services while not giving notice of the purchase and then arguing it is not bound to the contract under which Lowcountry believed it was providing services amounts to equitable estoppel. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001).

IV. The early termination fee is a proper damage.

I deny SC OPCO’s motion as to the early termination fee for four independent reasons.

First, the argument is barred as a matter of law because the default means that SC OPCO is bound to the contract terms. *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”). It cannot attack the enforceability of contract terms and masquerade that as a damages argument.

Second, the argument is waived. SC OPCO waived the right to challenge the amount of damages by admittedly choosing not to appear at the damages hearing. *See Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived).

¹ As of October 12, 2023, medicare.gov and SC DHEC records still show Boyles as the administrator.

Third, even addressing the merits, SC OPCO is wrong because there is evidence of termination. It terminated Lowcountry's services and, despite asking for a final invoice so it could pay, SC OPCO refused to pay Lowcountry's invoices. (Exh. A to Pl.'s Memo. in Opp.). Nonpayment is a basis to consider a contract terminated. *See Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008) (holding the failure to pay an installment is a "substantial breach" that gave the non-breaching party "the right to consider the contract at an end").

I am unpersuaded by SC OPCO's attack of the Complaint allegations. The Complaint alleges the existence of a contract, a breach, and the contract terms—including the early termination fee—and asks for damages for that fee. (Cmplt. pp. 2-4). SC OPCO knew that Lowcountry alleged it owed that fee but chose not to respond or challenge it at the damages hearing. It is too late.

Fourth, the early termination fee is not "grossly disproportionate to the actual damage" of the unpaid invoices amount. (Mot. p. 11). SC OPCO does not cite law that requires a termination fee to proportionately match another damages category. Regardless, it is not disproportionate in this case. The value of the contract to Lowcountry was approximately \$60,000.00 per year (using the \$20,000.00 owed for four months in 2022). SC OPCO terminated the contract in early 2022, with three years left in the term. That is approximately \$180,000.00 of revenue that Lowcountry expected and planned for but did not receive. An early termination fee for half of that is not grossly disproportionate. Further, the fee was contractually agreed upon.

V. The damages amount is equitable.

SC OPCO chose to go into default, making it liable for breach of contract and unjust enrichment. Because the damages awarded are fully supported by the breach of contract action, there is no reason to address equitable damages. I deny the motion on this basis for this reason alone.

Regardless, if the Court needed to address it, SC OPCO's arguments are wrong.

"In an action in quasi-contract, the measure of recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been

unjustly enriched at the expense of the plaintiff.” *Stringer Oil Co. v. Bobo*, 320 S.C. 369, 373, 465 S.E.2d 366, 369 (Ct. App. 1995). Prejudgment interest is recoverable in an unjust enrichment claim. *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105, 110 (Ct. App. 2004). The Court of Appeals stated the standard for calculating quantum meruit damages.

If the value of what was received and what was lost were always equal, there would be no substantial problem as to the amount of recovery, since actions of restitution are not punitive. In fact, however, the plaintiff frequently has lost more than the defendant has gained, and sometimes the defendant has gained more than the plaintiff has lost. In such cases the measure of restitution is determined with reference to the tortiousness of the defendant’s conduct or the negligence or other fault of one or both of the parties in creating the situation giving rise to the right to restitution. If the defendant was tortious in his acquisition of the benefit he is required to pay for what the other has lost although that is more than the recipient benefited. If he was consciously tortious in acquiring the benefit he is also deprived of any profit derived from his subsequent dealing with it.

Stringer Oil Co. v. Bobo, 320 S.C. 369, 373-74, 465 S.E.2d 366, 369 (Ct. App. 1995) (internal quotation marks omitted) (emphasis in original).

This case falls squarely within *Stringer*’s standard. SC OPCO’s conduct resulted in it gaining more than the mere \$20,311.36 in Lowcountry’s loss for the linens. It gained the time value of the money it retained, the ability to operate its facility on a daily basis for months without payment, and the time value of money in refusing to respond to invoices and proper service of this lawsuit. *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 467, 684 S.E.2d 756, 764 (2009).

SC OPCO refused to pay for the linens after repeated invoices—keeping money and interest that could have been earned on it for its own benefit. See *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 426 n.1, 746 S.E.2d 35, 38 (2013) (“One of equity’s most important aspects is the principle of right and fair dealing, between parties to particular transaction.”). SC OPCO benefitted from operating its business with linens that are necessary to its everyday operations and to fulfill obligations to residents. SC OPCO floated its operations without paying for them in full.

SC OPCO did not respond to Lowcountry’s payment demands and forced it to hire an attorney and file a lawsuit to try to get money it is rightfully owed. All the while, SC OPCO benefitted from

not hiring a lawyer to challenge payment. *Taff v. Smith*, 114 S.C. 306, 312, 103 S.E. 551, 553 (1920) (“No person shall be allowed to reap the benefits arising from his own wrongful acts.”).

SC OPCO operated its business with goods and services from Lowcountry without paying for them. This is the hallmark of inequitable conduct. The retention of goods, services, and money owed unjustly enriched SC OPCO, and the damages awarded are a remedy for that wrong. *Taff*, 114 S.C. at 312, 103 S.E. at 553 (“Equity will not suffer a wrong without a remedy.”).

SC OPCO’s citation to *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990), is unavailing. (Mot. pp. 12-13). In *Chan*, the court *sua sponte* used permissive joinder to add parties to a breach of contract action because it believed they were used by an existing party to deprive the opposing party of sales commissions. 302 S.C. at 291, 395 S.E.2d at 735. On rehearing, the Court explained that adding “these companies as parties provided the opportunity to the Thompsons to prove their claim” but, because “they were not parties to the contracts a judgment for breach of contract cannot be rendered against them.” *Id.* at 292, 395 S.E.2d at 735-36. Those facts are distinguishable from this case. Here, Lowcountry named SC OPCO as a defendant and directly asserted a breach of contract claim against it. The damages awarded are supported by the law and facts of this case.

VI. The Court correctly denied SC OPCO’s Rule 60(b), SCRPC argument.

SC OPCO challenges the Court’s denial of its Rule 60(b) motion, arguing its findings as to each of the factors are incorrect. The Court disagrees and stands by its ruling.

SC OPCO first argues there are four grounds for good cause under Rule 60(b)—“mistake, inadvertence, surprise, or excusable neglect”—and accuses the Court of considering only mistake. (Mot. pp. 13-14). This accusation is unfair. SC OPCO’s motion states that the same facts support a finding on all four grounds, but it focused on only an alleged mistake of fact.² (Mot. to set aside

² “This was an honest **mistake** of fact.” (Mot. p. 7) (emphasis added). “. . . all led SC OPCO to **mistakenly** believe” (Mot. p. 7) (emphasis added). “SC OPCO submits it made an honest **mistake** of fact” (Mot. p. 7) (emphasis added). “SC OPCO’s **mistake** was a good faith error” (Mot. p. 8) (emphasis added). “That’s a **mistake** of fact, and we contend that . . . satisfies the

default pp. 7-8). Notably, SC OPCO does not even now articulate why its conduct could meet the three other grounds. Regardless, I find the sole fact that SC OPCO admits it received service of process and chose not to respond prohibits a finding of inadvertence, surprise, or excusable neglect.

As to mistake of fact, SC OPCO argues the Court did not consider or wrongly rejected its argument that Lowcountry sent a correspondence to the facility that was not addressed to SC OPCO and did not file a showing of service of process on Ridgeland Nursing Center. (Mot. pp. 14-15). These arguments are irrelevant. The alleged mistake of fact is failing to file an answer. SC OPCO received actual service of a complaint with its name on it. Nothing about correspondence or service on another party affected SC OPCO's ability to answer and appear.

As to timing, SC OPCO argues it timely sought relief based on when it learned of the default judgment. (Mot. p. 15). It does not provide law stating that the only relevant time period is from when a party learns of judgment until when it files a Rule 60(b) motion. More importantly, SC OPCO does not refute the law that a "party has a duty to monitor the progress of his case." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "When a SCRPC 60(b) motion is made within one year of the original judgment, whether the motion was made within a reasonable time after discovery of the mistake is within the sound discretion of the trial judge." *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992). Because SC OPCO already knew about the lawsuit and damages hearing, and its obligation to monitor its case, the Court correctly found its motion untimely.

As to a meritorious defense, SC OPCO challenges the Court's rulings as to the contract termination fee and attorney's fees but does not challenge that it has no meritorious defense to payment of the invoices. (Mot. pp. 15-16). The absence of a meritorious defense to payment of invoices alone supports the rulings on mistake of fact and a meritorious defense.

burden under – under Rule 60(b) . . . and is the basis, really, the heart of the motion." (Tr. of hearing pp. 5-6) (emphasis added).

As to prejudice, SC OPCO challenges this finding for two reasons—the statement of the length of the case and the reference to other creditors. (Mot. p. 16). Both are supported by the record.

First, the dispute between Lowcountry and SC OPCO for unpaid invoices began in March 2022, when SC OPCO stopped paying for services. Therefore, it has been ongoing for a year-and-a-half. Regardless, that statement was made in the ruling on a meritorious defense to attorney's fees and not related to prejudice.

Second, the existence of another judgment is relevant to prejudice. TCI Business Capital got a default judgment against SC OPCO in February 2023 and has already initiated collection proceedings and received a nulla bona. TCI's collection efforts make it less likely that money may be available for Lowcountry to collect. Even without TCI's collection efforts, the Court listed numerous other, independent reasons for finding prejudice. (Order p. 10).

VII. The attorney's fee award is reasonable and supported by the law.

SC OPCO continues to argue that it should not have to pay attorney's fees under the contract. That is a liability argument that it is not bound to the contract, and that argument is barred by the default and waived by SC OPCO's choice not to participate in the damages hearing. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012); *Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994).

Even considering the merits, the Court disagrees with SC OPCO's five arguments.

First, SC OPCO argues that Lowcountry did not list an amount of attorney's fees requested in the Complaint or the affidavit for entry of default. (Mot. p. 17). That is not a requirement. Under Rule 55(b)(3), SCRCP, "[i]f a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b) (2) of this rule shall be required unless" the party files a motion with an affidavit of fees. Rule 55(b)(3), SCRCP. In this case, the Court held a hearing to address attorney's fees. SC OPCO got notice of that hearing but chose not to attend.

SC OPCO cites to Rule 54(c), SCRCP, but omits key words. (Mot. pp. 16-17). The sentence, in full, states: “A judgment by default shall not be different *in kind from or* exceed in amount that prayed for in the demand for judgment.” Rule 54(c), SCRCP (emphasis added). Here, the “kind” of damages requested in the Complaint included attorney’s fees, satisfying Rule 54(c).

Second, SC OPCO argues it is not bound to the attorney’s fee provision because it did not have a contract with Lowcountry. As ruled above and in the prior order, SC OPCO is bound to the contract. If it disagreed with the Complaint contract allegations, it should have filed an answer.

Third, SC OPCO says the work of Plaintiff’s counsel after the default judgment does not “justify[] the reasonableness of the fee awarded.” (Mot. pp. 17-18). All of the work that Lowcountry’s counsel does to seek recovery for it is justification for the reasonableness of the fee. There is no law that says an attorney’s fee for a default judgment stops at the moment of the judgment.

Fourth, SC OPCO argues the contingency fee agreement should not be controlling or exclusively relied upon as a basis for the fee award. (Mot. pp. 18-19). This Court did not treat it as such. Instead, because the Court addressed the *Glasscock* factors “without regard to the contingency fee arrangement” (Order p. 10), SC OPCO’s argument on this point is moot.

Fifth, SC OPCO argues there is insufficient evidence to support the attorney’s fees award. (Mot. pp. 18-20). When “determining a reasonable attorney’s fee,” the Court considers: “(1) the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services.” *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).³ The Court analyzed each factor. (Order p. 10). SC OPCO says its analysis is “conclusory” and without “reference to any underlying evidentiary basis.” (Mot. p. 19). The Court disagrees. The

³ SC OPCO criticizes the Court’s use of the *Glasscock* factors because it says those are used to decide whether to award an attorney’s fee and not the amount of the fee. (Mot. p. 20). This is unpreserved. Regardless, the “amount” factors that SC OPCO cites to do not warrant reconsideration because they are either inapplicable as dealing with an hourly rate or already included in the *Glasscock* factors.

attorney's fees evidence was addressed at the damages hearing that SC OPCO chose not to attend. There was evidence of all of the *Glasscock* factors. SC OPCO's disagreement with the analysis is not a basis for reconsideration, especially when it provides no conflicting evidence.

Finally, SC OPCO complains the attorney's fees exceeds the amount of the invoices. Notably, "[t]he amount of recovery and the contingency of compensation are only two of the six factors to be considered by the trial court in determining an appropriate attorney's fee." *Rice v. Multimedia, Inc.*, 318 S.C. 95, 101, 456 S.E.2d 381, 385 (1995). Regardless, that is not dispositive of an award of attorney's fees. *Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 385, 377 S.E.2d 296, 297 (1989) (noting that "other jurisdictions have awarded attorney fees which exceeded the verdict obtained" and affirming a \$26,000.00 attorney's fee for a \$16,151.00 judgment). "[T]here is no requirement that an attorney's fee be less than or comparable to a party's monetary judgment." *Taylor by Taylor v. Medenica*, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998) (citing *Baron* as approving "an award of attorney's fees where the fee substantially exceeded the actual recovery"). The attorney's fee award is \$38,419.45, and the remainder of the judgment is over \$115,000.00. (Judgment pp. 5-6). The attorney's fee exceeds the judgment amount.

CONCLUSION

After considering SC OPCO's arguments, I see no reason in the law or facts to amend or reconsider the prior order. Lowcountry did everything that it could do to get SC OPCO to timely respond, and SC OPCO ignored all of it. If there was ever a case for default judgment, this is it. The damages award corresponds to the contract terms and complies with the law.

For these reasons, SC OPCO's motion is **DENIED**.

December 4, 2023
Ridgeland, SC



C. Stephen Bennett
Special Referee

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-_____
BULLARD & SON, INC. D/B/A	)	
LOWCOUNTRY MEDICAL LINENS,	)	
	)	
Plaintiff,	)	<u>SUMMONS</u>
	)	<i>(Jury Trial Demanded)</i>
vs.	)	
	)	
RIDGELAND NURSING CENTER, INC.,	)	
RIDGELAND NC, LLC, AND SC OPCO,	)	
LLC,	)	
	)	
Defendants.	)	

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, Barnes Law Firm, LLC, at 13 Mulberry Street East, P.O. Box 897, Hampton, SC 29924, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

BARNES LAW FIRM, LLC

/s/William F. Barnes, III
 William F. Barnes, III, SC Bar #78220
 13 Mulberry Street East
 P.O. Box 897
 Hampton, SC 29924
 Phone: (803) 943-4529
wbarnes@barneslawfirm.com

ATTORNEY FOR THE PLAINTIFF

January 5, 2023
 Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-_____
BULLARD & SON, INC. D/B/A	)	
LOWCOUNTRY MEDICAL LINENS,	)	
	)	
Plaintiff,	)	<u>COMPLAINT</u>
	)	<i>(Jury Trial Demanded)</i>
vs.	)	
	)	
RIDGELAND NURSING CENTER, INC.,	)	
RIDGELAND NC, LLC, AND SC OPCO,	)	
LLC,	)	
	)	
Defendants.	)	

The Plaintiff alleges:

1. The Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens (“Lowcountry”), is a corporation that is organized and existing under the laws of South Carolina. Lowcountry Medical Linens maintains its principal place of business in Hampton County, South Carolina.
2. The Defendant, Ridgeland Nursing Center, Inc., is a corporation organized under the law of a state other than South Carolina but owns property and transacts business in Jasper County, South Carolina through the Ridgeland Nursing Center.
3. The Defendant, Ridgeland NC, LLC, is a domestic limited liability corporation that owns property and transacts business in Jasper County, South Carolina through the Ridgeland Nursing Center.
4. The Defendant, SC OPCO, LLC, is a foreign limited liability corporation that owns property and transacts business in Jasper County, South Carolina through the Ridgeland Nursing Center.

5. Venue is proper in Jasper County, South Carolina pursuant to S.C. Code Ann. §15-7-30 as it is the county where the most substantial part of the act or omission giving rise to the cause of action occurred.

FIRST CAUSE OF ACTION
(Breach of Contract against All Defendants)

6. Plaintiff is engaged in the business of providing cleaned medical linen rentals.
7. Defendants operate a nursing center in Ridgeland, South Carolina.
8. On March 3, 2020, Ridgeland Nursing Center and Lowcountry Medical Linens entered into a valid, binding contract (“Contract”) for various rental items. (Ex. A).
9. The Contract started on April 1, 2020 and remains in effect for sixty (60) months. (Ex. A).
10. Ridgeland Nursing Center agreed in the Contract that “[a]ny invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum).” (Ex. A).
11. Ridgeland Nursing Center agreed in the Contract that it would “be responsible for all legal fees to collect any unpaid balances.” (Ex. A).
12. The Contract provides that if Ridgeland Nursing Center terminated the Contract prior to the agreement term, Ridgeland Nursing Center agreed to pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement. (Ex. A).
13. The Contract inured to the benefit of the any successors or assigns. (Ex. A).
14. Starting on the Contract term of April 1, 2020, Lowcountry Medical Linens provided services and linens to Ridgeland Nursing Center.
15. Deliveries were made, and invoices were paid by Ridgeland Nursing Center.
16. Between February 28, 2022 and June 22, 2022, Plaintiff provided invoices for services provided to Ridgeland Nursing Center for rented medical linen supplies totaling \$20,311.36:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
1287515	02/28/2022	\$336.90
1287628	03/02/2022	\$574.39
1287783	03/04/2022	\$433.61
1287838	03/07/2022	\$335.15
1287966	03/09/2022	\$329.58
1288122	03/11/2022	\$462.60
1288182	03/14/2022	\$343.71
1288300	03/16/2022	\$337.27
1288461	03/18/2022	\$476.48
1288515	03/21/2022	\$343.54
1288643	03/23/2022	\$363.63
1288797	03/25/2022	\$474.18
1288853	03/28/2022	\$339.34
1288972	03/30/2022	\$388.36
1289130	04/01/2022	\$477.93
1289187	04/04/2022	\$505.70
1289321	04/06/2022	\$337.27
1289471	04/06/2022	\$509.13
1289529	04/11/2022	\$337.99
1289645	04/13/2022	\$337.27
1289799	04/15/2022	\$455.37
1289864	04/18/2022	\$350.57
1290015	04/20/2022	\$337.27
1290163	04/22/2022	\$480.31
1290218	04/25/2022	\$346.25
1290333	04/27/2022	\$337.27
1290486	04/29/2022	\$516.09
1290538	05/02/2022	\$352.54
1290666	05/04/2022	\$527.93
1290841	05/06/2022	\$455.37
1290897	05/09/2022	\$309.40
1291043	05/11/2022	\$375.53

1291166	05/13/2022	\$484.48
1291221	05/16/2022	\$308.49
1291346	05/18/2022	\$364.57
1291491	05/20/2022	\$457.55
1291546	05/23/2022	\$314.08
1291691	05/25/2022	\$346.21
1291836	05/27/2022	\$478.77
1291862	05/30/2022	\$380.98
1291988	06/01/2022	\$370.40
1292137	06/03/2022	\$723.07
1292193	06/06/2022	\$324.37
1292312	06/08/2022	\$342.43
1292464	06/10/2022	\$479.89
1292513	06/13/2022	\$405.94
1292642	06/15/2022	\$389.93
1292791	06/17/2022	\$548.61
1292846	06/20/2022	\$348.80
1292964	06/22/2022	\$354.86

Total: \$20,311.36

17. Despite receiving the services and linens provided by Lowcountry Medical Linens, Defendants have refused to pay the invoices thereby breaching the terms of the Contract.

18. As a direct and proximate result of the Defendants' breach, Lowcountry Medical Linens has suffered damages for which Ridgeland Nursing Center is liable to include but not limited to: \$20,311.36 in unpaid invoices through June 22, 2022; \$1,243.83 in lost, unreturned inventory from the June 27, 2022 invoice; \$2,266.59 in late charges through December 31, 2022 that continues to accrue interest at 18% per annum per the Contract; attorney fees for having to bring this action; and \$90,353.85 for Ridgeland Nursing Center terminating the Contract prior to the agreed upon term.

SECOND CAUSE OF ACTION
(Unjust Enrichment/Quantum Meruit as to All Defendants)

19. The above allegations are incorporated as if repeated verbatim.

20. Through the services and linens provided in the above referenced invoices, Lowcountry Medical Linens conferred a benefit upon Ridgeland Nursing Center.

21. Ridgeland Nursing Center realized the benefit of the services and linens provided by Lowcountry Medical Linens.

22. Allowing Ridgeland Nursing Center to retain the benefit of the services and linens provided without paying its value makes it unjust.

23. Lowcountry Medical Linens is entitled to damages due to Ridgeland Nursing Center failing to pay the Invoices referenced above.

WHEREFORE, Plaintiff prays for judgment against the defendant for actual damages, together with punitive damages in an appropriate amount, for the costs in bringing this action, attorneys' fees, and for such other and further relief as the Court may deem just and proper.

BARNES LAW FIRM, LLC

/s/William F. Barnes, III
William F. Barnes, III, SC Bar #78220
13 Mulberry Street East
P.O. Box 897
Hampton, SC 29924
Phone: (803) 943-4529
wbarnes@barneslawfirmllc.com

ATTORNEY FOR THE PLAINTIFF

January 5, 2023
Hampton, South Carolina

Lowcountry Medical Linens

A DIVISION OF BRUNSON LAUNDRY
KEEPING THE LOWCOUNTRY CLEAN SINCE 1946



SERVICE AGREEMENT

NEW X RENEWAL NOG
Phone Number # (843) 726-5581 E-Mail: Start Date 4/1/2020
Customer's Name Ridgeland Nursing Center
Delivery Address 1516 Grays Highway City Ridgeland County Jasper State SC Zip 29936
Billing Address City County State Zip

UNIT COST			
Twin Sheet: <u>.62</u>	Bath Towel: <u>.32</u>	Thermal Spread: <u>1.20</u>	Under Pad <u>.73</u>
Draw Sheet: <u> </u>	Hand Towel: <u>.25</u>	Bath Blanket: <u> </u>	Patient Gown: <u> </u>
Fitted Sheet: <u>.64</u>	Wash Cloth: <u>.12</u>	~~XXX Gown~~ Bib Apron <u>.46</u>	Deluxe Gown: <u> </u>
Pillow Case: <u>.24</u>	~~OR~~ Towel: <u>Kitchen .24</u>	3XL IV Gown: <u> </u>	Magna Gown: <u> </u>
Mats: <u>4 X 6 carpet 5.02</u>	Mops: <u>1.72</u>	Deluxe Lab Coat: <u> </u>	Rental Scrubs: <u> </u>
<u>3 X 5 Carpet 4.02</u>	Mop Pads <u>.62</u>	Table Cloth <u>.72</u>	NOG Scrubs: <u> </u>
Inventory level control: <u>N/A % of invoice</u>	Compliance Fee: <u>4.50</u>	Other: <u>Micro Fiber Towel .23</u>	4 X 6 Super scrape <u>3.92</u>

The Customer orders from Lowcountry Medical Linens the above rental items during the terms of this agreement and conditions set forth herein.

The Customer shall advise Lowcountry Medical Linens (further known as "the Supplier") of any change in the level of service requirements. Invoice quantity is based on Par levels.

Any custom or special items must be purchased by the Customer at termination of its use at a depreciated cost. All rental merchandise will be cleaned and maintained by the Supplier. The Supplier will adjust the level of service items by written or verbal request from the customer. Any additional services or products requested by the Customer shall be included in the items of this agreement and will be installed at the current standard price then in effect.

Due to administrative cost, we have a minimum \$20.00 weekly order amount and a \$45.00 fee for extra deliveries between services.

All rental items are the property of the Supplier and the Customer agrees to reimburse Lowcountry Medical Linens for any lost or misused items at the Supplier's replacement cost or choose our inventory level control system.

The Customer agrees to pay all invoices within thirty (30) days of invoice receipt. Any invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum). The Customer will be responsible for all legal fees to collect any unpaid balances.

The Supplier has the right to assign this agreement, part or entire, without customer approval. The Supplier can terminate this agreement after a thirty (30) day notice to Customer.

This agreement shall remain in effect for 60 months from the start date and shall be automatically renewed for concurrent two year terms thereafter, unless notified in writing sixty (60) days prior to the end of this agreement.

The Customer can terminate this agreement with thirty (30) days written notice in the event of a service problem if this problem cannot be resolved to the customer's satisfaction.

The Supplier agrees that any cost increases will be based on the Consumer Price Index for the Southern Region (CPI-U) for the previous 12 month period.

Our rate schedule is based on 52 weeks per year, and has no provision for office closings such as vacation, holidays or a missed service that occurred because our representative did not have access to perform his or her duties.

The Customer certifies that the Supplier is not infringing on any current contract for linen or lab coat service from another supplier.

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. This agreement is in effect and shall enure to the benefit of any successors or assignees.

Lowcountry Medical Linens Perry N. Bullard
Date 3/3/2020

Customer Sheri P. Boyles, ADM
Date 3/3/2020

PO Box 549 20 South Main St. Brunson, SC 29911 Phone 803-632-2558 Fax 803-632-2559

AFFIDAVIT OF SERVICE

State of South Carolina

County of Jasper

Common Pleas Court

Bullard & Son, inc., et al, Plaintiff(s)

vs.

Case No: 2023CP2700005

Ridgeland Nursing Center, Inc., et al, Defendant(s)

For:

BARNES LAW FIRM
P.O. Box 897
Hampton, SC 29924

To be served on: SC OPCO, LLC

Lester L. Franzen, undersigned, being duly sworn, deposes and says:

that on January 06, 2023 at 10:25 am at 2 Office Park Ct., Ste. 103, Columbia, SC

the undersigned served the documents described as:

Letter

Summons and Complaint; Exhibit A

A true and correct copy of the aforesaid document(s) was served on:

SC OPCO, LLC

By delivering them into the hands of an officer or managing agent whose name and title is

Lisa Culler, Authorized Agent

The person receiving documents is described as follows:

Sex F ; Race White ; Hair Color Gray ; Facial Hair N/A
Approx. Age 55 ; Approx. Height 5'08" ; Approx. Weight 225

☒ To the best of my knowledge and belief, said defendant was not engaged in the US Military at the time of service.

Subscribed and sworn to before me this

6th day of January, 2023

I certify that I am over the age of 18, have no interest in the above action.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Ashley Jeffcoat
NOTARY PUBLIC

My Commission Expires: August 20, 2029

Lester L. Franzen
Lester L. Franzen

Process Server
Southern Pride Process, LLC
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

SPP File: 134414-1

Client File: _____



ELECTRONICALLY FILED - 2023 Jan 09 1:39 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005

AFFIDAVIT OF SERVICE

State of South Carolina

County of Jasper

Common Pleas Court

Bullard & Son, inc., et al, Plaintiff(s)

vs.

Case No: 2023CP2700005

Ridgeland Nursing Center, Inc., et al, Defendant(s)

For:

BARNES LAW FIRM

P.O. Box 897

Hampton, SC 29924

To be served on: Ridgeland NC, LLC

Ilene Shiansky, undersigned, being duly sworn, deposes and says:

that on January 11, 2023 at 12:30 pm at 1516 Grays Hwy, Ridgeland, SC

the undersigned served the documents described as:

LetterSummons and Complaint; Exhibit A

A true and correct copy of the aforesaid document(s) was served on:

Ridgeland NC, LLC

By delivering them into the hands of an officer or managing agent whose name and title is

Janelle Green, Administrator

The person receiving documents is described as follows:

Sex	<u>F</u>	Race	<u>White</u>	Hair Color	<u>Blonde</u>	Facial Hair	<u>N/A</u>
Approx. Age	<u>30</u>	Approx. Height	<u>5'04"</u>	Approx. Weight	<u>125</u>		

☒ To the best of my knowledge and belief, said defendant was not engaged in the US Military at the time of service.

Subscribed and sworn to before me this

15 day of January, 2023CMBLack

NOTARY PUBLIC

My Commission Expires: 9/16/2030I certify that I am over the age of 18, have no interest in the above action.
Undersigned declares under penalty of perjury that the foregoing is true and correct.Ilene Shiansky

Ilene Shiansky

Process Server

Southern Pride Process, LLC

(803) 386-8559

PO Box 7125

Columbia, SC 29202-7125

SPP File: 134414-2

Client File: _____



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	WILLIAM F. BARNES, III
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	
	)	

Personally appeared before me, William F. Barnes, III, having first been duly sworn, depose and say that the following is true and correct:

1. I have personal knowledge of the facts set forth in this Affidavit. I am a citizen of the State of South Carolina and am competent to swear to the matters set forth below and do so of my own free will.
2. I am the attorney for the Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens, in the above-captioned action.
3. The Summons and Complaint in this action were filed in the Jasper County Court of Common Pleas on January 05, 2023.
4. The Defendant, SC OPCO, LLC, was served by process server upon Lisa Culler, Authorized Agent on behalf of the Registered Agent for SC OPCO, LLC, with the Summons and Complaint on January 06, 2023, as evidenced by Exhibit A.
5. No Answer, Demurrer or Notice of Appearance has been served on me or on behalf of the Defendant, SC OPCO, LLC, as required by the Summons in this action.
6. More than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the day of such service.

WFB
/

7. I am familiar with the provisions of 50 U.S.C.A. App §520, Soldiers and Sailors Civil Relief Act of 1940 and represent to the Court that from the file in this matter, and upon information and belief, the Defendant, SC OPCO, LLC, is not in the military service of the United States and is not entitled to the protection of the Soldiers and Sailors Civil Relief Act of 1940, nor any amendments thereto.

8. I declare under penalty of perjury, under the laws of the United States of America and of the State of South Carolina, that the above is true and correct.

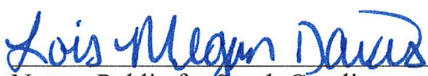
AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT.



William F. Barnes, III

Sworn to before me this

14 day of February 2023.



Notary Public for South Carolina

My Commission Expires: 7/29/2031



Common Pleas

Case Caption: Bullard & Son Inc VS Ridgeland Nursing Center Inc , defendant, et al
Case Number: 2023CP2700005
Type: Affidavit/Default

So Ordered

s/Margaret Bostick Jasper County Clerk of Court

AFFIDAVIT OF SERVICE



Common Pleas Court

State of South Carolina

County of Jasper

Bullard & Son, inc., et al, Plaintiff(s)

vs.

Case No: 2023CP2700005

Ridgeland Nursing Center, Inc., et al, Defendant(s)

For:

BARNES LAW FIRM
P.O. Box 897
Hampton, SC 29924

To be served on: SC OPCO, LLC

Lester L. Franzen, undersigned, being duly sworn, deposes and says:

that on January 06, 2023 at 10:25 am at 2 Office Park Ct., Ste. 103, Columbia, SC

the undersigned served the documents described as:

Letter

Summons and Complaint; Exhibit A

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SC OPCO, LLC

By delivering them into the hands of an officer or managing agent whose name and title is

Lisa Culler, Authorized Agent

The person receiving documents is described as follows:

Sex F ; Race White ; Hair Color Gray ; Facial Hair N/A
Approx. Age 55 ; Approx. Height 5'08" ; Approx. Weight 225

☒ To the best of my knowledge and belief, said defendant was not engaged in the US Military at the time of service.

Subscribed and sworn to before me this

6th day of January, 2023

I certify that I am over the age of 18, have no interest in the above action.

Undersigned declares under penalty of perjury that the foregoing is true and correct.

Ashley Jeffcoat
NOTARY PUBLIC

My Commission Expires: August 20, 2029

Lester L. Franzen
Lester L. Franzen

Process Server
Southern Pride Process, LLC
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

SPP File: 134414-1

Client File: _____



ELECTRONICALLY FILED - 2023 Jan 09 1:39 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005
ELECTRONICALLY FILED - 2023 Feb 14 11:09 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	WILLIAM F. BARNES, III
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	
	)	

Personally appeared before me, William F. Barnes, III, having first been duly sworn, depose and say that the following is true and correct:

1. I have personal knowledge of the facts set forth in this Affidavit. I am a citizen of the State of South Carolina and am competent to swear to the matters set forth below and do so of my own free will.

2. I am the attorney for the Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens, in the above-captioned action.

3. The Summons and Complaint in this action were filed in the Jasper County Court of Common Pleas on January 5, 2023.

4. The Defendant, Ridgeland NC, LLC, was served by process server upon Janelle Green, Administrator of Ridgeland NC, LLC, with the Summons and Complaint on January 11, 2023, as evidenced by Exhibit A.

5. No Answer, Demurrer or Notice of Appearance has been served on me or on behalf of the Defendant, Ridgeland NC, LLC, as required by the Summons in this action.

6. More than thirty (30) days have elapsed since the service of the Summons and Complaint, exclusive of the day of such service.

WFB
1

7. I am familiar with the provisions of 50 U.S.C.A. App §520, Soldiers and Sailors Civil Relief Act of 1940 and represent to the Court that from the file in this matter, and upon information and belief, the Defendant, Ridgeland NC, LLC, is not in the military service of the United States and is not entitled to the protection of the Soldiers and Sailors Civil Relief Act of 1940, nor any amendments thereto.

8. I declare under penalty of perjury, under the laws of the United States of America and of the State of South Carolina, that the above is true and correct.

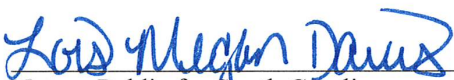
AS TO ANYTHING FURTHER, THE AFFIANT SAITH NOT.



William F. Barnes, III

Sworn to before me this

14 day of February 2023.



Notary Public for South Carolina

My Commission Expires: 7/29/2031

WFB
2



Common Pleas

Case Caption: Bullard & Son Inc VS Ridgeland Nursing Center Inc , defendant, et al
Case Number: 2023CP2700005
Type: Affidavit/Default

So Ordered

s/Margaret Bostick Jasper County Clerk of Court

Electronically signed on 2023-02-14 12:47:35 page 3 of 3

AFFIDAVIT OF SERVICE



State of South Carolina

County of Jasper

Common Pleas Court

Bullard & Son, inc., et al, Plaintiff(s)

vs.

Case No: 2023CP2700005

Ridgeland Nursing Center, Inc., et al, Defendant(s)

For:

BARNES LAW FIRM

P.O. Box 897

Hampton, SC 29924

To be served on: Ridgeland NC, LLC

Ilene Shiansky, undersigned, being duly sworn, deposes and says:

that on January 11, 2023 at 12:30 pm at 1516 Grays Hwy, Ridgeland, SC

the undersigned served the documents described as:

Letter

Summons and Complaint; Exhibit A

A true and correct copy of the aforesaid document(s) was served on:

Ridgeland NC, LLC

By delivering them into the hands of an officer or managing agent whose name and title is

Janelle Green, Administrator

The person receiving documents is described as follows:

Sex F ; Race White ; Hair Color Blonde ; Facial Hair N/A
Approx. Age 30 ; Approx. Height 5'04" ; Approx. Weight 125

☒ To the best of my knowledge and belief, said defendant was not engaged in the US Military at the time of service.

Subscribed and sworn to before me this

15 day of January, 2023

CMBLack

NOTARY PUBLIC

My Commission Expires: 9/16/2030

I certify that I am over the age of 18, have no interest in the above action.
Undersigned declares under penalty of perjury that the foregoing is true and correct.

Ilene Shiansky
Ilene Shiansky

Process Server
Southern Pride Process, LLC
(803) 386-8559
PO Box 7125
Columbia, SC 29202-7125

SPP File: 134414-2

Client File: _____



STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2023-CP-27-00005

Plaintiff,

**DEFENDANT SC OPCO, LLC'S NOTICE
OF MOTIONS AND MOTIONS (1) TO SET
ASIDE DEFAULT; AND (2) FOR NEW
TRIAL**

vs.

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

Defendants.

TO: THE PLAINTIFF ABOVE-NAMED AND ITS COUNSEL

YOU WILL PLEASE TAKE NOTICE that Defendant SC OPCO LLC ("SC OPCO"), through its undersigned counsel, will respectfully move the Court pursuant to Rules 55(c), 60(b), 59(a) and 6(b) of the South Carolina Rules of Civil Procedure ("SCRCPP") to set aside the entry of default and default judgment entered against it, for a new trial, and for an enlargement of time to file a responsive pleading. On May 16, 2023, the undersigned sent an e-mail to Plaintiff's counsel regarding counsel's engagement by SC OPCO, and Plaintiff's counsel replied to that e-mail the following day attaching a copy of the Judgment entered against SC OPCO. Plaintiff's counsel's e-mail response, received on May 17, 2023, at 2:59 p.m., was SC OPCO's first written notice of the Judgment. (Attached as **Exhibit A**). Accordingly, this Motion is timely because the 10-day period under Rule 59(b) did not start running until May 17, 2023.

In support of its Motions, SC OPCO makes the following showing:

INTRODUCTION

SC OPCO is a limited liability company organized under the laws of the State of New Jersey that owns a skilled nursing facility in Jasper County, South Carolina, doing business as

Ridgeland Nursing & Rehabilitation Center (the “Facility”). *See Affidavit of Joe Neuman*, ¶2 (Attached as **Exhibit B**). SC OPCO purchased the Facility on November 1, 2021 from Ridgeland Nursing Center, Inc. (“Ridgeland Nursing Center”), a Georgia corporation. *Id.* SC OPCO purchased only certain assets owned by Ridgeland Nursing Center; it did not assume any liabilities or contracts entered into by Ridgeland Nursing Center. *Id.* ¶4. There is no affiliation between SC OPCO and Ridgeland Nursing Center. *Id.* ¶2. As will be further addressed herein, SC OPCO respectfully submits that more than sufficient cause exists to (1) set aside the entry of default and default judgment, (2) enlarge the time for SC OPCO to file a responsive pleading addressing the merits of the claims made in this case, and (3) order a new trial on the merits of this matter.

PLAINTIFF’S COMPLAINT AND PROCEDURAL POSTURE

Plaintiff Bullard & Son, Inc. d/b/a Lowcountry Medical Linens (“Bullard”) filed its Complaint in this action on January 5, 2023, wherein it sought a judgment against Ridgeland Nursing Center, Ridgeland NC, LLC, and SC OPCO, and asserted causes of action for breach of contract and unjust enrichment/*quantum meruit*. Compl. ¶¶ 6-23. Bullard attached a contract as Exhibit “A” to the Complaint, which appears to evidence a contract between Bullard and Ridgeland Nursing Center (the “Contract”) that was executed on March 3, 2020, with a start date of April 1, 2020. *Id.* ¶¶8-9; Ex. A. SC OPCO did not purchase the Facility until November 1, 2021. *Aff. of J. Neuman*, ¶2. Most notably, it is clear from the face of the Contract that SC OPCO was not a party to the Contract. Compl. ¶¶8-9; Ex. A.

In the Complaint, Bullard further alleges the terms of its Contract with Ridgeland Nursing Center, and that certain invoices delivered to Ridgeland Nursing Center between February 28, 2022 and June 22, 2022 went unpaid. *Id.* ¶¶10-17. For the alleged breach of the Contract by Ridgeland Nursing Center, Bullard sought \$20,311.36 in unpaid invoices; \$1,243.83 in lost,

unreturned inventory; \$2,266.59 in late charges; attorneys' fees for bringing the action; and \$90,353.85 for Ridgeland Nursing Center terminating the contract prior to end of the Contract's term. *Id.* ¶18. Bullard relied on the same factual allegations to assert its second cause of action for unjust enrichment/*quantum meruit*. *Id.* ¶¶19-23. Both causes of action are alleged "as to All Defendants," although only Ridgeland Nursing Center is discussed in the allegations of the Complaint.¹ *See* Compl., pp. 2 & 4.

It appears from the Public Index in this case that the only attempt to serve SC OPCO with process was by personal delivery on January 6, 2023, to a Lisa Culler, asserted to be the "authorized agent" for Cogency Global, Inc., the Registered Agent for SC OPCO. **Exhibit C** (Aff. of Service as to SC OPCO). Thirty-nine days later, on February 14, 2023, Bullard filed the Affidavit of William F. Barnes, III, its counsel of record, attesting to service of process and SC OPCO's failure to respond. This case was then referred to the Honorable C. Stephen Bennett, Esquire, on February 18, 2023, and the Clerk of Court entered an Entry and Order of Default on March 1, 2023.

The Judgment ordered on May 12, 2023, states that a hearing was held on April 25, 2023, wherein Perry N. Bullard testified on behalf of Bullard. *See* Judgment p. 1. No notice of this hearing was filed with the Court², and there are no certificates of service filed in the Public Index by Plaintiff related to service of any of the filings after the service of process was filed on January 9, 2023. Despite the face of the Complaint demonstrating the alleged contract was entered with Defendant Ridgeland Nursing Center (and not either of the other named Defendants, the Court

¹ In contrast, the prayer for relief in the Complaint only requests "judgment against the defendant" in the singular. Compl. at p. 5.

² On page four of the Judgment, there is a finding that Bullard sent SC OPCO a Notice of Damages Hearing by first class mail in compliance with Rule 55, SCRCP, and that document is referred to as Exhibit 1; however, that document does not appear to be filed with the Court.

awarded Bullard judgment as requested only against SC OPCO and Ridgeland NC, LLC in the total amount of \$154,178.33, consisting of \$20,311.36 in unpaid invoices; \$1,243.83 for unreturned products; \$3,349.30 in late fees; \$90,353.85 in early termination fees; and \$38,919.99 in attorneys' fees and costs. Judgment pp. 6-7. There is no evidence on the Public Index that Bullard served a copy of the Judgment on SC OPCO prior to the e-mail exchange between counsel referenced above on May 17, 2023, nor is there any explanation for the apparent abandonment of the case against Ridgeland Nursing Center.

As will be demonstrated hereinbelow, prior to and during the time period of this litigation, multiple letters were received at the Facility located at 1516 Grays Highway, Ridgeland, South Carolina, that led to SC OPCO's confusion and good-faith mistake of fact regarding Bullard's lawsuit. Aff. of J. Neuman ¶¶8.

On or about January 11, 2023, the Facility received a letter from William F. Barnes, III, Esq. addressed to Ray Williams, Registered Agent for Ridgeland Nursing Center, Inc., 1105 Bay Street, Beaufort, SC 29902 (the "January 2023 Letter"). *Id.* ¶9. The letter enclosed a copy of the Summons and Complaint in this matter; however, the correspondence was directed to Ridgeland Nursing Center, Inc., with no reference to SC OPCO. *Id.* At the time, this made sense to SC OPCO because if Bullard had a contract it sought to enforce, the contract was with Ridgeland Nursing Center, Inc., not SC OPCO. *Id.* SC OPCO did not receive a similar letter from Mr. Barnes directed to its attention. *Id.* Accordingly, SC OPCO did not realize it was expected to take action in response to the January 2023 Letter. *Id.*

Thereafter, on or about April 4, 2023, the Facility received a second letter from Mr. Barnes 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”). *Id.* ¶10. The letter enclosed a copy of a Notice of Hearing in this matter set for April 25, 2023; however, this time the correspondence was directed to Ridgeland NC, LLC, but still not to SC OPCO. *Id.* This again made sense to SC OPCO because SC OPCO did not have a contract with Bullard and was not aware of any terms of such contract or what events would cause a breach. *Id.*

As a result of the foregoing communications directed by Bullard to the Facility, 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. *Id.* ¶8. No letters, pleadings or notices directed to SC OPCO regarding this matter were delivered to the Facility. *Id.* ¶11.

LEGAL STANDARD

1. To Set Aside Default

“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 and Casualty 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)). Rule 55, SCRCF, addresses setting aside a default. “The standard for granting relief from an entry of default under Rule 55(c) is mere “good cause,” and requires a party seeking relief from an entry of default “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., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Once entered, Rule 55(c) provides that default judgment may be set aside “in accordance with Rule 60(b).” Rule 55(c), SCRCF.

It is SC OPCO’s position that the Rule 55(c) standard, not the Rule 60(b) standard, applies

since the Judgment is not yet final; however, SC OPCO can meet both standards based on the arguments set forth herein. “Once a party has put forth a satisfactory explanation for the default, the trial 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. *Sundown Operating Co.*, 383 S.C. at 607-08, 681 S.E.2d at 888 (2009) (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989)) (internal citations omitted).

“While it is important that the statutes and rules of court which are designed to promote the speedy and orderly determination of causes should be complied with, it must not be forgotten that their purpose is to aid the administration of justice; and they should not be applied so as to defeat it. Of course, a party who is willfully or inexcusably in default, or one who gets himself into that predicament by resorting to technical and dilatory practice or motions without merit and for the purpose of hindering and delaying the opposite party in bringing the cause to a hearing on the merits, deserves no consideration from the court.” *Savage v. Cannon*, 204 S.C. 473, 30 S.E.2d 70, 71 (quoting *Johnson v. Finger*, 102 S.C. 354, 86 S.E. 673 (1915)).

2. For a New Trial

Rule 59(a), SCRCF, governs a motion for a new trial, and states as follows:

A new trial may be granted to all or any of the parties and on all or part of the issues (1) in an action in which there has been a trial by jury, for any of the reasons for which new trials have heretofore been granted in actions at law in the courts of the State; and (2) in an action tried without a jury, for any of the reasons for which rehearings have heretofore been granted in the courts of the State. On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.

“It is absolutely necessary to *justice*, that there should, upon many occasions, be

opportunities of *reconsidering* the cause by a new trial.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 23, 602 S.E.2d 772, 779 (2004) (quoting 11 Wright, Miller & Kane § 2801) (emphasis in original).

ARGUMENT

1. “Good Cause” Exists to Set Aside the Default

It is undisputed from Bullard’s allegations and the single exhibit attached to its Complaint that Bullard did not contract with SC OPCO. Compl. ¶8 & Ex. A. When SC OPCO received a copy of the Complaint from its Registered Agent, it believed in good faith that that its response was not necessary because Bullard did not, and could not, plead that it entered into a contract with SC OPCO. Aff. J. Neuman ¶5-6. This was an honest mistake of fact. Moreover, SC OPCO knew that it did not assume any liabilities of Ridgeland Nursing Center or purchase, or take assignment of, any contracts, including Bullard’s Contract. *Id.* ¶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 from the Complaint. *Id.* ¶7.

Moreover, the receipt of: (1) the January 2023 Letter addressed to Ridgeland Nursing, Inc. enclosing the Summons and Complaint; and (2) the April 2023 letter addressed to Ridgeland NC, LLC enclosing the Notice of Hearing, all 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. *Id.* ¶8. No correspondence directed to SC OPCO was received at the Facility. *Id.* ¶11.

Accordingly, SC OPCO submits it made an honest mistake of fact – that it had no contract

with Bullard so it need not answer. Mistakes of fact have been found to constitute “good cause” to set aside defaults. *See Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) (“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.”). SC OPCO submits that if the Court were to find that the proper standard for setting aside a default judgment is the Rule 60(b) standard, not the Rule 55(c) standard, the same facts set forth above support vacating the default judgment based on SC OPCO’s “mistake, inadvertence, surprise, or excusable neglect.” *See* Rule 60(b)(1), SCRCPP. The four grounds for relief in Rule 60(b)(1) are separate and independent, such that demonstrating any one basis is sufficient to satisfy the Rule. *See Columbia Pools, Inc. v. Galvin*, 288 S.C. at 61, 339 S.E.2d at 525 (discussing identical language in statutory provision subsequently replaced by Rule 60 and reversing trial court decision based on the absence of excusable neglect). SC OPCO’s mistake was a good faith error that warrants setting aside judgment given that all of the other factors also warrant such relief. *See Mitronics v. S.C. Dep’t of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001).

2. The Timing of this Motion

SC OPCO did not discover that Bullard’s lawsuit progressed to the point of the Entry and Order of Default until May 10, 2023, when its counsel while investigating the Public Index related to another matter, happened upon this case. *Aff. J. Neuman* ¶12. After SC OPCO engaged the undersigned to assist with this matter, the undersigned contacted Bullard’s counsel on May 16, 2023, to advise him that SC OPCO now has counsel in the case and investigation is commencing immediately. At that point, SC OPCO had no knowledge of a Judgment, no Judgment had been

entered on the Public Index, and a copy of the Judgment had not been served on SC OPCO.³ *Id.* ¶13. In reply to that email message, Bullard’s counsel sent the undersigned a copy of the Judgment on May 17, 2023. *See* Ex. A. SC OPCO filed this Motion less than ten (10) days later. Based on the foregoing, SC OPCO submits this Motion is timely and is certainly not dilatory or delinquent. Given South Carolina public policy favors resolving cases on their merits, setting aside the default judgment is appropriate under the timeframe applicable to this litigation. *See Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013).

3. Meritorious Defenses

“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).

A. Bullard Did Not Plead a Contract Between it and SC OPCO, and No Contract Exists.

In its Complaint, Bullard alleges the Contract as being entered into by and between it and Ridgeland Nursing Center on March 3, 2020, some twenty months before SC OPCO purchased the Facility from Ridgeland Nursing Center. Compl. ¶8 & Aff. of J. Neuman ¶2. Accordingly, it is undisputed that Bullard has no privity of contract with 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.*

³ The Public Index reflects a “date entered” for the judgment against SC OPCO as May 16, 2023. As corroborated by Bullard’s counsel in his e-mail response of May 17, 2023, the Judgment was still not showing on the Public Index as of that date. *See* Ex. A.

Co., Inc. v. Banks Const. Co., 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994). “South Carolina 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, 553 (Ct. App. 2003). For these reasons, SC OPCO cannot be liable to Bullard for its claimed damages derived directly from the Contract terms for \$20,311.36 in unpaid invoices; \$1,243.83 for unreturned products; \$3,349.30 in late fees; \$90,353.85 in early termination fees; and \$38,919.99 in attorneys’ fees and costs. On this basis alone, SC OPCO has demonstrated a meritorious defense to Bullard’s complaint.

It appears Bullard would hang its hat as to SC OPCO on a term in the Contract that it “shall inure to the benefit of any successors or assignees.” Ex. A to Compl. SC OPCO neither succeeded Ridgeland Nursing Center nor took assignment of the Contract. Aff. of J. Neuman ¶4. SC OPCO bought the Facility, not the liabilities of its prior owner nor the assignment of any contracts. *Id.* Even if SC OPCO were deemed a successor to Ridgeland Nursing Center, “ordinarily, a successor corporation is not liable for the obligations from its predecessor.” *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 263, 818 S.E.2d 447, 451 (2018). This presumption can be rebutted where the successor agreed to assume the debt, but SC OPCO did not agree to assume Ridgeland Nursing Center’s debts or obligations. *See id.*; Aff. of J. Neuman ¶4. Accordingly, the unilateral inclusion of boilerplate “successors and assigns” language in the Contract is not enough, without more, to automatically pin the Contract terms on SC OPCO.

Bullard’s second, and final, claim for unjust enrichment/*quantum meruit* is still being investigated by SC OPCO; however, that claim could only entitle Bullard to any damages for the fair and equitable value of linens and services actually provided. The unjust enrichment claim

would not enable Bullard to obtain judgment for the disproportionately large Contract-specific damages including \$90,353.85 for the early termination fee, \$38,919.99 in attorneys' fees and costs (discussed in greater detail below); and \$3,349.30 in late charges. *See Williams Carpet Contractors, Inc. v. Skelly*, 400 S.C. 320, 328-29, 734 S.E.2d 177, 181-82 (Ct. App. 2012).

B. \$38,919.99 in Attorneys' Fees and Costs Allowed in this Action Are Not Reasonable

Even if Bullard was able to prove that SC OPCO is liable under the Contract, which SC OPCO vehemently denies for the foregoing reasons, the \$38,919.99 in attorneys' fees and costs allowed by the Court as part of the Judgment are not reasonable in this case. *See* Judgment p. 6. The Court found that Bullard hired counsel to represent it on a 33 1/3% contingent fee arrangement. *Id.* It appears this finding led to the Court awarding Bullard attorneys' fees of 1/3 of \$115,258.36, instead of the actual attorneys' fees incurred by Bullard's counsel based on the six factors prescribed by *Glasscock v. Glasscock*: "(1) the nature, extent and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services." 304 S.C. 158, 161, 403 S.E.2d 313, 314 (1991).

"While 'contingency of compensation' is an appropriate factor considered in awarding attorneys' fees, the contingency to be considered is whether the party on whose behalf the services were rendered will be able to pay the attorney's fee if an award is not made. Further, the factor 'beneficial results obtained' merely aids in determining whether an award is appropriate when considering whether the services of a lawyer facilitated a favorable result. *Neither of these factors endorses use of a percentage fee.*" *Id.* (emphasis added). Accordingly, SC OPCO submits that the Court's award to Bullard of \$38,919.99 in attorneys' fees and costs were not "reasonable" under South Carolina law, and such issue, along with whether Bullard are entitled to any damages

whatsoever against SC OPCO, should be subject to a new trial.

4. No Prejudice to Bullard

As noted earlier, South Carolina courts have made clear that judgment by default is disfavored. *See Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 589 (Ct. App. 2013). In fact, it was observed by the South Carolina Supreme Court many decades ago a desire for justice be promoted and courts should strive for disposition of cases on the merits. *Rochester v. Holiday Magic, Inc.*, 253 S.C. 147, 152, 169 S.E.2d 387, 390 (1969). Here, only four months elapsed between the filing of Bullard's Complaint against SC OPCO and the entry of default judgment. If the judgment is set aside, the only consequence is that Bullard will be obligated to prove it is entitled to the relief sought in its complaint against SC OPCO. As aptly stated by the Fourth Circuit in *Colleton Preparatory Academy, Inc. v. Hoover Universal, Inc.*, "as obvious as it may be, it bears mention that no cognizable prejudice inheres in requiring a plaintiff to prove a defendant's liability, a burden every plaintiff assumes in every civil action filed in every . . . court." 616 F.3d 413, 419 (4th Cir. 2010).

5. Extension of Response Time

Pursuant to Rule 6(b), SCRCP, SC OPCO respectfully requests an enlargement of time to respond to Bullard's complaint. If acceptable, SC OPCO requests 14 days from the date of the Court's decision on this Motion.

CONCLUSION

Based on the foregoing and the attachments hereto, SC OPCO respectfully requests that the Court (1) set aside the default entered against it and vacate the Judgment; (2) order a new trial be had on the merits; and (3) enlarge the time for SC OPCO to file its responsive pleading.

Respectfully submitted,

s/Kyle A. Brannon

Jennifer J. Hollingsworth

Kyle A. Brannon

MAYNARD NEXSEN PC

1230 Main Street, Suite 700 (29201)

PO Box 2426

Columbia, SC 29202

803.771.8900

Attorneys for Defendant

SC OPCO LLC d/b/a Ridgeland Nursing &

Rehabilitation Center

May 25, 2023

Columbia, South Carolina

Kyle A. Brannon

EXHIBIT

A

From: William Barnes <wbarnes@barneslawfirmssc.com>
Sent: Wednesday, May 17, 2023 2:59 PM
To: Jennifer J. Hollingsworth
Cc: Megan Davis
Subject: RE: Bullard & Sons, Inc. d/b/a Lowcountry Medical Linens vs. SC OPCO LLC / C/A 2023-CP-27-0005 [IWOV-NPDocuments.FID8292681]
Attachments: Judgment - signed by Spec Referee CSB.pdf; Form 4 - signed by CSB.pdf

Jennifer – I hope you are doing well. I wanted to make you aware that a damages hearing was held in Ridgeland in late April. Mr. Bennett sent the attached Judgment and Form 4C to the Jasper Clerk's Office for filing this past Friday. I believe there is a civil term in Jasper this week which may explain why it is not appearing on the public index yet.

William

From: Jennifer J. Hollingsworth <JHollingsworth@maynardnexsen.com>
Sent: Tuesday, May 16, 2023 12:53 PM
To: William Barnes <wbarnes@barneslawfirmssc.com>
Subject: Bullard & Sons, Inc. d/b/a Lowcountry Medical Linens vs. SC OPCO LLC / C/A 2023-CP-27-0005 [IWOV-NPDocuments.FID8292681]

Good afternoon, Mr. Barnes,

My law firm has been retained to represent SC OPCO LLC in the litigation brought by Bullard & Sons, Inc. d/b/a Lowcountry Medical Linens in Jasper County Court of Common Pleas, and I understand that you represent the Plaintiff, Bullard & Sons. While we will prepare a notice of appearance and file as quickly as we can, I wanted you to have my contact information right away. I look forward to working with you.

My best regards,
Jennifer Hollingsworth

Jennifer J. Hollingsworth
Shareholder | Health Care & Life Sciences
P: (803) 540-2112
JHollingsworth@maynardnexsen.com

1230 Main Street
Suite 700
Columbia, South Carolina 29201



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ELECTRONICALLY FILED - 2023 May 25 6:06 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
	)	
Plaintiff,	)	
	)	JUDGMENT
vs.	)	
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
	)	
Defendants.	)	

This matter came before me for a hearing on Tuesday, April 25, 2023, pursuant to the February 18, 2023 Order of Reference to a Special Referee. At the hearing, the Plaintiff, through Perry N. Bullard ("Lowcountry Medical Linens"), appeared with his counsel, William F. Barnes, III. The hearing began after 10:00 a.m. at Bennett Law Firm, P.A., 162 Second Avenue, Ridgeland, SC 29936. No one appeared for Defendant, Ridgeland NC, LLC or SC OPCO, LLC (collectively "Defendants"). After reviewing the exhibits presented and hearing testimony, I make the following findings of fact and conclusion of law.

FACTS

This action arises out of a breach of contract between Plaintiff and Defendants. Defendants transact business in Jasper County and operate the Ridgeland Nursing Center. (Compl.). On March 3, 2020, Ridgeland Nursing Center and Lowcountry Medical Linens entered into a valid, binding contract ("Contract") for various rental items. (Compl. ¶ 8). The Contract started on April 1, 2020, for a term of sixty (60) months. (Compl. ¶ 9). Ridgeland Nursing Center agreed in the Contract that "[a]ny invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum)." (Compl. ¶ 10). Ridgeland Nursing Center agreed in the Contract that it would "be responsible for all

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legal fees to collect any unpaid balances.” (Compl. ¶ 11). The Contract provides that if Ridgeland Nursing Center terminated the Contract prior to the agreement term, Ridgeland Nursing Center agreed to pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement. (Compl. ¶ 12). The Contract inures to the benefit of any successors or assigns. (Compl. ¶ 13).

Starting on the Contract term of April 1, 2020, Lowcountry Medical Linens provided services and linens to Ridgeland Nursing Center. (Compl. ¶ 14). Lowcountry Medical Linens made deliveries, and invoices were paid by Ridgeland Nursing Center. (Compl. ¶ 15). Between February 28, 2022 and June 22, 2022, Lowcountry Medical Linens provided invoices for services provided to Ridgeland Nursing Center for rented medical linen supplies totaling \$20,311.36:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
1287515	02/28/2022	\$336.90
1287628	03/02/2022	\$574.39
1287783	03/04/2022	\$433.61
1287838	03/07/2022	\$335.15
1287966	03/09/2022	\$329.58
1288122	03/11/2022	\$462.60
1288182	03/14/2022	\$343.71
1288300	03/16/2022	\$337.27
1288461	03/18/2022	\$476.48
1288515	03/21/2022	\$343.54
1288643	03/23/2022	\$363.63
1288797	03/25/2022	\$474.18
1288853	03/28/2022	\$339.34
1288972	03/30/2022	\$388.36
1289130	04/01/2022	\$477.93
1289187	04/04/2022	\$505.70
1289321	04/06/2022	\$337.27
1289471	04/06/2022	\$509.13

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1289529	04/11/2022	\$337.99
1289645	04/13/2022	\$337.27
1289799	04/15/2022	\$455.37
1289864	04/18/2022	\$350.57
1290015	04/20/2022	\$337.27
1290163	04/22/2022	\$480.31
1290218	04/25/2022	\$346.25
1290333	04/27/2022	\$337.27
1290486	04/29/2022	\$516.09
1290538	05/02/2022	\$352.54
1290666	05/04/2022	\$527.93
1290841	05/06/2022	\$455.37
1290897	05/09/2022	\$309.40
1291043	05/11/2022	\$375.53
1291166	05/13/2022	\$484.48
1291221	05/16/2022	\$308.49
1291346	05/18/2022	\$364.57
1291491	05/20/2022	\$457.55
1291546	05/23/2022	\$314.08
1291691	05/25/2022	\$346.21
1291836	05/27/2022	\$478.77
1291862	05/30/2022	\$380.98
1291988	06/01/2022	\$370.40
1292137	06/03/2022	\$723.07
1292193	06/06/2022	\$324.37
1292312	06/08/2022	\$342.43
1292464	06/10/2022	\$479.89
1292513	06/13/2022	\$405.94
1292642	06/15/2022	\$389.93
1292791	06/17/2022	\$548.61
1292846	06/20/2022	\$348.80
1292964	06/22/2022	\$354.86

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Total: \$20,311.36

(Compl. ¶ 16). Despite receiving the services and linens provided by Lowcountry Medical Linens, Defendants have refused to pay the invoices, thereby breaching the Contract. (Compl. ¶ 17).

On January 5, 2023, Lowcountry Medical Linens filed suit against Defendants. (Compl.). On January 6, 2023, the Summons and Complaint were properly served on Defendant SC OPCO, LLC, through its Registered Agent at 2 Office Park Ct., Suite, 103, Columbia, South Carolina (SC OPCO Aff. of Svc.). SC OPCO failed to answer or appear and is in default. (Entry of Default).

On January 11, 2023, the Summons and Complaint were properly served on Defendant Ridgeland NC, LLC through Janelle Green, Administrator, at the Ridgeland Nursing Center, 1516 Grays Highway, Ridgeland, South Carolina. (Ridgeland NC Aff. of Svc.). Ridgeland NC, LLC failed to answer or appear and is in default. (Entry of Default). After SC OPCO, LLC and Ridgeland NC, LLC failed to timely answer or otherwise respond, the Court entered default against both defendants on March 1, 2023. (Entries of Default).

Neither Defendant appeared nor filed an answer or other responsive pleading in this action in accordance with Rule 12, SCRCF. On February 18, 2023, this matter was referred to the undersigned pursuant to Rule 53, SCRCF, “for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff’s Complaint. . . .” (Order of Reference).

On March 30, 2023, Lowcountry Medical Linens sent Ridgeland NC, LLC and SC OPCO, LLC, a Notice of Damages Hearing by first class mail in compliance with Rule 55, SCRCF. (Ex. 1).

CONCLUSIONS OF LAW

“It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability.” *Roche v. Young Bros.*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). Defendants are deemed to have admitted the truth of Plaintiff’s allegations and to have conceded liability for its damages.

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Both Defendants were properly served in accordance with Rule 4, SCRCP, and received proper notice of the hearing pursuant to Rule 55, SCRCP. However, despite receiving proper notice of the damages hearing, neither Defendant appeared at the hearing. At the hearing, Plaintiff presented numerous exhibits and I heard testimony from Perry Bullard.

The Court holds that Lowcountry Medical Linens and Defendants entered into valid, binding contract on March 3, 2020 for various rental items. The Contract is binding upon any successor or assign that operates the Ridgeland Nursing Center during its duration. The sixty-month contract started on April 1, 2020, and was to expire on March 31, 2025. The parties initially performed their respective obligations under the Contract with Lowcountry Medical Linens providing rental items and Ridgeland Nursing Center paying invoices for those items. Ridgeland Nursing Center agreed that “[a]ny invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum)” and that it would “be responsible for all legal fees to collect any unpaid balances.” The Contract further provides that, if Ridgeland Nursing Center terminated the Contract prior to expiration of the 5-year term, it would pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement.

“The elements for breach of contract are the existence of the contract, its breach, and the damages caused by such breach.” *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E.2d 200, 202 (Ct. App. 2009). Defendants, Ridgeland NC, LLC and SC OPCO, LLC, breached the Contract by refusing to pay invoices for rental items Defendants received that were provided by Plaintiff. Defendants are liable to Plaintiff for the unpaid invoices provided by Lowcountry Medical Linens from February 28, 2022 and June 22, 2022 that totals \$20,311.36. Defendants are also liable to Plaintiff for the June 27, 2022 invoice totaling \$1,243.83, which is for product provided to Ridgeland Nursing Center that was not returned to Plaintiff.

Defendants are also liable to Plaintiff for the 1.5% late charge (18% per annum) and the depreciated rate for early termination, both terms in the Contract. As of March 31, 2023, the 1.5%

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late charge totals \$3,349.30. (Ex. 2). Exhibit 3 contained a summary provided by Mr. Bullard for the early termination total. Defendants are liable to Plaintiff for 50% of the early termination weekly amount (\$623.13) times the number of weeks (145 weeks) left in the agreement, which equals \$90,353.85.

Ridgeland Nursing Center also agreed in the Contract to be responsible for all legal fees to collect any unpaid balances. Plaintiff hired counsel to represent it on a 33 1/3% contingent fee arrangement, which totals \$38,419.45. The case costs Plaintiff incurred bringing this action total \$500.54. (Ex. 4).

CONCLUSION

I find Plaintiff is entitled to a total judgment for actual damages against SC OPCO, LLC and Ridgeland NC, LLC for the breach of contract action in the amount of one hundred fifty-four thousand one hundred seventy-eight dollars and 33/100 (\$154,178.33). Even though punitive damages were sought in the Complaint, the Court does not award anything for punitive damages.

AND IT IS SO ORDERED.

May 12, 2023
Ridgeland, South Carolina


C. Stephen Bennett
Special Referee

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-27-00005

Bullard & Son, Inc. d/b/a Lowcountry Medical Linens,
PLAINTIFF(S)

Ridgeland Nursing Center, Inc., Ridgeland NC,
LLC, and SC OPCO, LLC,
DEFENDANT(S)

Submitted by: William F. Barnes, III

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Bullard & Son, Inc. d/b/a Lowcountry Medical Linens	SC OPCO, LLC & Ridgeland NC, LLC	\$154,178.33
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

SCRCP Form 4C

Special Referee
C. Stephen Bennett

Judge Code

SC Bar 64087

Date

Page 1

ELECTRONICALLY FILED - 2023 May 25 6:06 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS

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

Civil Action No. 2023-CP-27-00005

Plaintiff,

AFFIDAVIT OF JOE NEUMAN

vs.

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

Defendants.

PERSONALLY APPEARED BEFORE ME Joe Neuman, who first being duly sworn,
deposes and states the following:

1. My name is Joe Neuman and I am a citizen and resident of the State of New Jersey.
I make this Affidavit based upon my personal knowledge, and I am duly authorized by SC OPCO
LLC ("SC OPCO") to make this Affidavit.

2. SC OPCO is a limited liability company organized under the laws of the State of
New Jersey that was formed on or about May 11, 2021. On November 1, 2021, SC OPCO
purchased the assets of Ridgeland Nursing & Rehabilitation Center ("Ridgeland Nursing &
Rehab"), a skilled nursing facility operating in Jasper County, South Carolina, located at 1516
Grays Highway, Ridgeland, South Carolina, from Ridgeland Nursing Center, Inc., which I am
informed is a Georgia corporation. There is no affiliation between SC OPCO and Ridgeland
Nursing Center, Inc.

3. I oversee the business activities of SC OPCO and as such have primary
responsibility for the business operations of Ridgeland Nursing & Rehab, including negotiating
contracts with vendors, as well as approving invoices for services, and authorizing payments to

EXHIBIT

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third parties. I am also personally familiar with the transaction that resulted in SC OPCO's purchase of Ridgeland Nursing & Rehab on November 1, 2021.

4. In the transaction with Ridgeland Nursing Center, Inc., 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 into by the former owner. I have no knowledge of the terms of any contracts that may have existed between the Plaintiff and the predecessor owner(s) of Ridgeland Nursing & Rehab.

5. SC OPCO has never negotiated a contract with the Plaintiff 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.

6. When SC OPCO received a copy of the Complaint from its Registered Agent, it believed in good faith that its response was not necessary because Bullard did not, and could not, plead that it entered into a contract with SC OPCO. Because SC OPCO had no knowledge of the Plaintiff and because there was no contract that existed between the Plaintiff and SC OPCO, SC OPCO mistakenly believed that the lawsuit was against the prior owner, Ridgeland Nursing Center, Inc., and did not realize the lawsuit also claimed SC OPCO LLC was liable to the Plaintiff.

7. 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 from the Complaint.

8. Prior to and during the time period of this litigation, multiple letters were received at the facility located at 1516 Grays Highway, Ridgeland, South Carolina, that led to SC OPCO's confusion and good-faith mistake of fact regarding Bullard's lawsuit.

9. On or about January 11, 2023, the facility received a letter from William F. Barnes, III, Esq. addressed to Ray Williams, Registered Agent for Ridgeland Nursing Center, Inc., 1105 Bay Street, Beaufort, SC 29902 (the "January 2023 Letter"). The January 2023 Letter enclosed a copy of the Summons and Complaint in this matter; however, the correspondence was directed to Ridgeland Nursing Center, Inc., with no reference to SC OPCO. This made sense to SC OPCO because if Bullard had a contract it sought to enforce, the contract was with Ridgeland Nursing Center, Inc., not SC OPCO. SC OPCO did not receive a similar letter from Mr. Barnes directed to its attention, and SC OPCO did not realize it was expected to take action in response to the January 2023 Letter.

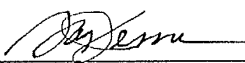
10. Thereafter, on or about April 4, 2023, the facility received a second letter from Mr. Barnes addressed to "Jerry Patton, Registered Agent, Sheri Boyles, Administrator, Janelle Green, Administrator, Ridgeland NC, LLC, 1516 Grays Hwy., Ridgeland, SC 29936" (the "April 2023 Letter"). The April 2023 Letter enclosed a copy of a Notice of Hearing in this matter set for April 25, 2023; however, this time the correspondence was directed to Ridgeland NC, LLC, but still not to SC OPCO. This again made sense to SC OPCO because SC OPCO did not have a contract with Bullard and was not aware of any terms of such contract or what events would cause a breach.

11. No letters, pleadings or notices directed to SC OPCO regarding this matter were delivered to the facility.

12. I learned about the entry of default from an attorney that SC OPCO engaged for a different matter, who found the information on the Public Index for Jasper County. I then authorized counsel to represent SC OPCO and prepare documents to request the default be forgiven.

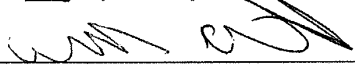
13. SC OPCO's counsel received a copy of the Judgment on May 17, 2023. Prior to that time, SC OPCO had no knowledge of a Judgment, and a copy of the Judgment had not been served on SC OPCO.

FURTHER AFFIANT SAYETH NOT.



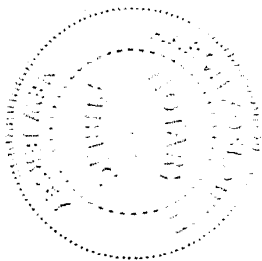
Joe Neuman

SWORN TO AND ATTESTED BEFORE ME
This 25 day of May, 2023.



Notary Public for New Jersey

Print Name: Aaron Koslowitz
Commission Expires: 03/03/2025



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
	)	
Plaintiff,	)	
	)	PLAINTIFF'S MEMORANDUM IN
vs.	)	OPPOSITION TO SC OPCO, LLC'S
	)	MOTION TO SET ASIDE DEFAULT
Ridgeland Nursing Center, Inc., Ridgeland	)	AND FOR NEW TRIAL
NC, LLC, and SC OPCO, LLC,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens (“Lowcountry”) submits this memorandum in opposition to Defendant, SC OPCO, LLC’s (“SC OPCO”) Motion to Set Aside the Entry of Default, Judgment for Default Damages, for a new trial, and for an enlargement of time to file a responsive pleading pursuant to Rules 55(c), 60(b), 59(a), and 6(b), SCRCp. SC OPCO, a New Jersey based limited liability corporation that operates a skilled nursing center in Jasper County, acknowledges proper service of the Summons and Complaint and receipt of the Notice of Damages Hearing but nonetheless chose not to timely respond or appear at the damages hearing. Now, despite its conscious decision not to respond, SC OPCO is asking the Court to vacate the judgment entered against it. For the reasons set forth below, SC OPCO Motion should be denied.

FACTS

On March 3, 2020, Ridgeland Nursing Center and Lowcountry Medical Linens entered into a valid, binding contract (“Contract”) for various rental items. (Compl. ¶ 8). The Contract does not specify a corporate name – just simply the Ridgeland Nursing Center. (Compl. Ex. A). The Contract started on April 1, 2020, for a term of sixty (60) months. (Compl. ¶ 9). Administrator Sheri Boyles signed the Contract for Ridgeland Nursing Center. (Compl. Ex. A). Ridgeland Nursing Center agreed

in the Contract that “[a]ny invoice in the over 30 day status will be subject to a 1.5% late charge (18% per annum).” (Compl. ¶ 10). Ridgeland Nursing Center agreed that it would “be responsible for *all legal fees* to collect any unpaid balances.” (Compl. ¶ 11) (emphasis added). The Contract provides that if Ridgeland Nursing Center terminated the Contract prior to the agreement term, Ridgeland Nursing Center agreed to pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement. (Compl. ¶ 12). The Contract inured to the benefit of any successors or assigns. (Compl. ¶ 13).

Starting on the Contract term of April 1, 2020, Lowcountry Medical Linens provided services and linens to Ridgeland Nursing Center. (Compl. ¶ 14). Lowcountry Medical Linens made deliveries, and invoices were paid by Ridgeland Nursing Center. (Compl. ¶ 15). Between February 28, 2022 and June 22, 2022, Lowcountry Medical Linens provided invoices for services provided to Ridgeland Nursing Center for rented medical linen supplies totaling \$20,311.36. (Compl. ¶ 16). Ridgeland Nursing Center even kept \$1,243.83 in product that was not returned to Lowcountry Medical Linens. (Judgment). Despite receiving the services and keeping the product provided by Lowcountry Medical Linens, Ridgeland Nursing Center refused to pay the invoices, thereby breaching the Contract. (Compl. ¶ 17).

On January 5, 2023, Lowcountry Medical Linens filed suit against Defendants. (Compl.). On January 6, 2023, the Summons and Complaint were properly served on Defendant SC OPCO, LLC, through its Registered Agent at 2 Office Park Ct., Suite, 103, Columbia, South Carolina (SC OPCO Aff. of Svc.). SC OPCO failed to answer or appear and default was entered. (Entry of Default).

On March 30, 2023, Lowcountry Medical Linens sent SC OPCO a Notice of Damages Hearing by first class mail in compliance with Rule 55, SCRCP. (Ex. 1). The Court held a hearing on April 25, 2023, and took testimony. (Judgment). The Court entered judgment against SC OPCO on May 12, 2023 (Judgment), and it was filed with the Clerk of Court the same day. Thirteen days

later on May 25, 2023, SC OPCO filed its Motion to Vacate the Judgment, For a New Trial, and For an Enlargement of Time to Answer.

ARGUMENT

SC OPCO's motion should be denied. In its memorandum, SC OPCO is not arguing it did not get served or that service was improper. Instead, SC OPCO acknowledges it got served but chose not to respond, despite now asking the Court to vacate its judgment.

I. SC OPCO Cannot Satisfy the Standard for Relief Under Rule 60(b).

SC OPCO argues for relief under both Rules 55(c) and 60(b). Since the judgment was already entered when SC OPCO filed its motion on May 25, 2023, SC OPCO must satisfy Rule 60(b) and not Rule 55(c)'s "good cause" standard. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) ("Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCF."). "The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." *Id.* 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.* (emphasis added). The intent of the rules is to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality. *Id.* "The ***movant in a Rule 60(b) motion has the burden of presenting evidence*** proving the facts essential to entitle her to relief." *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

SC OPCO cannot satisfy Rule 60(b)'s heightened standard because it was properly served and a mistake of law is not excusable neglect. The Summons and Complaint in this action were served on SC OPCO via its South Carolina Registered Agent, Cogency Global, Inc. on January 6, 2023. (Aff. of Service). SC OPCO acknowledges it actually received the Summons and Complaint from its Registered Agent. (Neuman Aff. ¶ 6 ("When SC OPCO received a copy of the Complaint from its Registered Agent . . .")). Service on SC OPCO's Registered Agent is proper under Rule 4, SCRCF.

SC OPCO argues that it “mistakenly believe[d]” it did not have to respond to a lawsuit. Even assuming this is true, it does not satisfy Rule 60(b). Initially, it seems farfetched that a sophisticated multi-state corporation that has a registered agent for service of process and a director of operations for its business as a skilled nursing facility subject to state and federal regulations would not understand that it should respond to service of process. (Ex. 2 – DHEC License as of July 3, 2023; Neuman Aff. ¶ 3). But even assuming the truth of SP OPCO’s assertion, it is legally insufficient to satisfy Rule 60(b). “[F]ailure to understand the legal process is not excusable neglect under Rule 60(b).” *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001); *see also Hillman v. Pinion*, 347 S.C. 253, 257, 554 S.E.2d 427, 429 (Ct. App. 2001) (“[B]ecause this is a mistake of law, not fact, we find this is not the type of mistake, surprise, inadvertence, and excusable neglect generally contemplated by Rule 60(b)(1).”). “It is always a matter of regret that a party should not have his day in court. However, . . . [where] the appellant was duly served with the summons and complaint, [i]t was his duty to answer the complaint. . . .” *Hill*, 345 S.C. at 310, 547 S.E.2d at 897 (*quoting Williams v. Ray*, 232 S.C. 373, 383-84, 102 S.E.2d 368, 373 (1958)). SC OPCO is a sophisticated entity familiar with the legal system that understands what a Summons and Complaint requires.

SC OPCO ignored the lawsuit because, despite receiving the benefit of Plaintiff’s services and keeping Plaintiff’s product, it did not want to pay the outstanding invoices. This is not the first lawsuit against SC OPCO for failing to pay invoices. TCI Business Capital sued SC OPCO on December 22, 2022 in Jasper County. C/A No. 22-CP-27-00610. (Ex. 3 - TCI Compl.) TCI’s Complaint alleges that SC OPCO failed to pay invoices for staffing services totaling \$142,135.15 between April 27, 2022 and June 30, 2022.¹ (Ex. 3 – TCI Compl.). SC OPCO was properly served through its same registered agent but did not respond and judgment by default was entered against it. (Ex. 4 – TCI

¹ These dates overlap Plaintiff’s unpaid invoices, which extend from February 28, 2022 until June 22, 2022.

Judgment; 5 – TCI Aff. of Serv.; Judgment). SC OPCO was aware it was receiving the benefit of services but willfully chose not to respond to these two lawsuits.

South Carolina cases have rejected similar arguments attempting to vacate a default judgment. In *Roche v. Young Bros.*, 318 S.C. 207, 212, 456 S.E.2d 897, 900 (1995), the South Carolina Supreme Court noted that “[l]osing a summons and complaint within the corporation is not a ground to set aside a default judgment.” In *Campbell v. City of N. Charleston*, 431 S.C. 454, 461, 848 S.E.2d 788, 792 (Ct. App. 2020), the Court of Appeals noted the lower court “did not abuse its discretion by finding the City’s failure to forward an internal email was not a good cause warranting the Court to set aside the entry of default.” South Carolina courts “have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant.” *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 280, 281 (Ct. App. 1987). If losing a complaint within a corporation or not forwarding an email is insufficient to get out of default, then consciously choosing not to respond is not. It follows that being properly served but choosing to not respond or attend the damages hearing, likewise, does not satisfy the 60(b) standard. SC OPCO’s motion should be denied in its entirety on this ground alone for not satisfying Rule 60(b)’s standard.

“A suit at law is not a children’s game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court.” *McCall v. IKON*, 363 S.C. 646, 652, 611 S.E.2d 315, 318 (Ct. App. 2005) (internal quotation marks omitted). The Summons unequivocally states: “YOU ARE HEREBY SUMMONED and *required to answer* the complaint herein, . . . and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.” (Summons) (emphasis added). SP OPCO operates a serious business and is not entitled for relief from the proper administration of justice simply because of its alleged mistake of law. The Court should deny the motion.

II. SC OPCO’s Delay in Appearing and Lack of Meritorious Defense Warrant Denial of the Motion

If the Court holds SC OPCO does not make a satisfactory showing to warrant vacating the judgment, it need not reach any of the remaining arguments. *See ITC Commer. Funding, Ltd. Liab. Co. v. Crerar*, 393 S.C. 487, 496, 713 S.E.2d 335, 339-40 (Ct. App. 2011) (“Having concluded the trial court did not abuse its discretion in finding the Appellant was not entitled to relief on any of the grounds specified in Rule 60(b), SCRCPP, we need not address whether the Appellant has a meritorious defense.”). Even if the remaining arguments are considered, SC OPCO’s motion should still be denied.

A. SC OPCO’s Four-and-a-Half-Month Delay Does Not Support Vacating the Judgment

Plaintiff filed this action against SC OPCO on January 5, 2023. (Compl.). SC OPCO was served on January 6, 2023. (Aff. of Serv.). Default was entered on March 1, 2023. (Entry of Default). Plaintiff provided notice to SC OPCO of the damages hearing via first class mail as required by Rule 55, SCRCPP, on March 30, 2023. (Ex. 1). The Court held the damages hearing on April 25, 2023. (Judgment). Over four-and-a-half months after getting served, on May 25, 2023, SC OPCO filed this motion, which was likely done not through SC OPCO’s actions but their counsel in a separate action advising it needed to address the judgment entered against it.

South Carolina’s appellate courts have held even less time insufficient to warrant vacating default. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 619, 682 S.E.2d 263, 267 (2009) (finding passage of over two months since entry of default insufficient to satisfy Rule 55(c)); *Hill v. Dotts*, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001) (noting defendant failed to act promptly in affirming denial of 60(b) motion where a month-and-a-half passed between service and 55(c) motion). SC OPCO’s delay in moving to vacate the judgment warrants denial of its motion. The motion should be denied on this ground.

B. SC OPCO Received Plaintiff’s Services and Therefore Does Not Have a Meritorious Defense

SC OPCO argues there is no contract between it and Plaintiff. Contrary to SC OPCO's arguments, the Complaint does allege a contract. The Complaint alleges that SC OPCO operates the Ridgeland Nursing Center. (Compl. ¶¶ 4; 7). Ridgeland Nursing Center and Lowcountry Medical Linens entered a valid, binding contract for various rental items. (Compl. ¶ 8).

Importantly, Sheri Boyles, Ridgeland Nursing Center's Administrator, signed the Contract with Lowcountry Medical Linens for the rental items. (Compl. Ex. A). Sheri Boyles is still listed as the Administrator on SC OPCO's DHEC license. (Ex. 2). The Contract Ms. Boyles agreed to contains a clause that "[t]his agreement is in effect and shall enure (sic) to the benefit of any successors or assignees." (Compl. Ex. A). Her knowledge of the contract is imputed to SC OPCO. *See Equitable Tr. Co. v. Columbia Nat'l Bank*, 145 S.C. 91, 114, 142 S.E. 811, 818 (1928) ("[I]f knowledge is acquired by an agent while not acting for the corporation, but afterwards he acts for the corporation in a matter in which it becomes his duty to communicate the fact his knowledge is imputed to the corporation.").

SC OPCO misses the point and attempts to misdirect the Court by arguing it did not purchase the liabilities of its prior owner and a successor corporation is not liable for the obligations from its predecessor. (Memo. p. 10). According to Joe Neuman's Affidavit, SC OPCO purchased Ridgeland Nursing Center on November 1, 2021. (Neuman Aff. ¶ 3). The unpaid invoices at issue range from February 28, 2022 and June 22, 2022 when SC OPCO was operating Ridgeland Nursing Center. (Compl. ¶ 16). Plaintiff's product was kept by SC OPCO. The unpaid invoices are the responsibility of SC OPCO. SC OPCO operated as if the Contract was still in effect by requesting medical linen supplies from Plaintiff and was and is still operating the facility with the same administrator that signed the Contract. By every measure, SC OPCO is a successor contemplated by the Contract. The extent SC OPCO will go to avoid liability when it received the services and kept product is inequitable at best and dishonest at worst. It is inequitable because they refuse to even acknowledge that they have to pay for services and product they actually received. It is dishonest because the same employee

that signed for a prior owner continues to work for this company and her knowledge is imputed to SC OPCO. Therefore, SC OPCO received these services with actual knowledge of the terms of the contract. “A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. . . . If it is manifested by conduct, it is said to be implied.” *Hackler v. Earl Wiegand Real Estate, Inc.*, 295 S.C. 396, 399, 368 S.E.2d 686, 687 (Ct. App. 1988). SC OPCO had knowledge of the contract terms through its employee and, further, it asked for and accepted performance of the contract by Plaintiff, thus forming a contract by its own conduct. SC OPCO does not have a meritorious defense when it received supplies from Plaintiff for its facility but willfully chooses not to pay.

III. Ridgeland Nursing Center Agreed to Pay for All Legal Fees, Which Includes Attorneys’ Fees

SC OPCO argues the attorneys’ fees and costs awarded in the judgment are not reasonable. In support of its argument, SC OPCO only relies on *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991). *Glasscock* is simply not applicable as it is not a breach of contract case but instead a family law action. Here, the Contract provides that Ridgeland Nursing Center would “***be responsible for all legal fees*** to collect any unpaid balances.” (Compl. ¶ 11) (emphasis added). At the hearing Perry Bullard testified he hired counsel to represent Plaintiff on a 33 1/3% contingency agreement. All legal fees are what Ridgeland Nursing Center agreed to be responsible for in the Contract and what the Judgment includes.

Even if the Court were to evaluate the attorney fee amount under the factors articulated in *Glasscock*, the attorneys’ fee is still reasonable. The nature, extent, and difficulty of the case support the award. This action required information gathering and research on Defendants prior to filing the lawsuit.

The time devoted to the case supports the attorney fee award. Research had to be done before this action was filed. The Complaint needed to be drafted and approved. Service was done on the

defendants. When no answer or other response was received, default paperwork was drafted. Preparation was required for the damages hearing, in addition to providing the notice, and finally, attendance at the damages hearing.

The professional standing of counsel supports the attorney fee award. Counsel has been practicing for approximately thirteen and a half years.

Mr. Bullard testified at the hearing that he hired counsel on a contingent fee arrangement of 33 1/3%. This supports the award.

Up to this point, a judgment has been obtained for Plaintiff, which also supports the award.

Lastly, a 33 1/3% contingency fee arrangement is customary for similar services. In *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998), the Court of Appeals, in evaluating an attorney fee award in a breach of contract action, affirmed a one-third attorney fee award. *Id.* at 161, 503 S.E.2d at 489. The attorney fee award is supported by the evidence and should be affirmed.

IV. BULLARD IS PREJUDICED IF THE JUDGMENT IS VACATED

SC OPCO argues there will be no prejudice to Bullard if the judgment is vacated. (Memo. p. 12). Despite receiving notice of the damages hearing, SC OPCO chose not to attend and contest damages. To the contrary there is prejudice as Plaintiff's agents took time to prepare for the damages hearing, traveled from Brunson to Ridgeland, an approximately fifty-minute trip one-way, and attended the damages hearing. Additionally, the Court went through the act of conducting the hearing and entering the judgment. Further, SP OPCO is the subject of multiple lawsuits for its failure to pay debts for the Ridgeland Nursing Center. Therefore, the date of Plaintiff's judgment is critical in collecting in a situation with multiple debtors. This factor weighs against vacating the judgment.

V. The Court Should Deny SC OPCO's Request for An Extension of Time

SC OPCO requests a fourteen-day enlargement of time from the date of the Court's decision on its motion. SC OPCO cannot satisfy the Rule 60(b) standard to warrant vacating the judgment.

The motion should be denied, and the judgment upheld. The request for an extension of time would therefore be moot.

CONCLUSION

For the reasons set forth above, SC OPCO's motion should be denied.

BARNES LAW FIRM, LLC

/s/ William F. Barnes, III

William F. Barnes, III

SC Bar #78220

13 Mulberry Street East

P.O. Box 897

Hampton, SC 29924

Phone: (803) 943-4529

wbarnes@barneslawfirmllc.com

ATTORNEY FOR THE PLAINTIFF

July 5, 2023
Hampton, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

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

Plaintiff,

vs.

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

) IN THE COURT OF COMMON PLEAS
) FOURTEENTH JUDICIAL CIRCUIT
)
) CIVIL ACTION NO.: 2023-CP-27-00005
)
)
)

NOTICE OF HEARING



PLEASE TAKE NOTICE the Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens, hereby provides notice that a hearing will be held before C. Stephen Bennett on Tuesday, April 25, 2023 at 10:00 a.m. The hearing will take place at the Bennett Law Firm, P.S. located at 162 Second Avenue, Ridgeland, South Carolina 29936. Mr. Bennett will serve as the Special Referee in this matter and take testimony and determine damages. You have a right to attend and participate in the hearing.

BARNES LAW FIRM, LLC

A handwritten signature in blue ink that reads "W.F. Barnes".

William F. Barnes, III, SC Bar #78220

13 Mulberry Street East

P.O. Box 897

Hampton, SC 29924

Phone: (803) 943-4529

wbarnes@barneslawfirmssc.com

ATTORNEY FOR THE PLAINTIFF

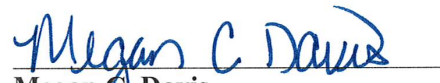
March 30, 2023
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	

This is to certify that I, **Megan C. Davis**, with the Barnes Law Firm, LLC, attorneys for the Plaintiff, have this date mailed via the U.S. Postal Service, a true and correct copy of the within ***Notice of Hearing*** with first class postage prepaid to the last known address of such parties below:

Cogency Global, Inc., Registered Agent
SC OPCO, LLC
2 Office Park Court, Suite 103
Columbia, SC 29223

BARNES LAW FIRM, LLC


Megan C. Davis

March 30th, 2023
Hampton, South Carolina



Nursing Home: RIDGELAND NURSING AND REHAB CENTER

License / Expiration: NCF-1066 / 11/30/2023

Address: 1516 GRAYS HWY
RIDGELAND, SC 29936

Facility #: [843-726-5581](tel:843-726-5581)

Administrator: [BOYLES, SHERI P.](#) PH#: [803-865-1999](tel:803-865-1999)

Facility Email: JGREEN@RIDGELANDNRC.COM

Fac. Cont. Email: SHERI_BOYLES@LCCA.COM

County / Ownership Type: Jasper / Limited Liability

Mailing Address: ,

Licensee: SC OPCO LLC

Alzheimer Care: N
Alzheimer Unit: N

Institutional Beds:
Total Licensed Beds: 88

[Regulation 61-17](#)

[Medicare.gov Nursing Home Profile](#)

...



ELECTRONICALLY FILED - 2022 Dec 22 2:28 PM - JASPER - COMMON PLEAS - CASE#2022CP2700610
ELECTRONICALLY FILED - 2023 Jul 05 3:22 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

TCI Business Capital, a division of Fidelity Bank,

Plaintiff,

v.

SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2022-CP-27-_____

SUMMONS

TO: DEFENDANT ABOVE NAMED:

YOU ARE HERBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you and to serve a copy of your Answer to the said Complaint on the subscriber, Jeffrey L. Payne, Esquire, at his office at P.O. Box 5478, Florence, South Carolina 29502, within thirty (30) days after service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint. If you fail to appear and defend, judgment by default will be rendered against you for the relief demanded in the Complaint.

Florence, South Carolina
December 22, 2022

TURNER, PADGET, GRAHAM & LANEY, P. A.

By: s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
1831 West Evans Street, Fourth Floor
Post Office Box 5478 (29502)
Florence, South Carolina 29501
Telephone: (843) 662-9008
Email: jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF
TCI BUSINESS CAPITAL

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

TCI Business Capital, a division of Fidelity Bank,

Plaintiff,

v.

SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2022-CP-27-_____

COMPLAINT
(Jury Trial Demanded)

Plaintiff TCI Business Capital, a division of Fidelity bank, states and alleges as follows:

THE PARTIES AND JURISDICTION

1. At all relevant times, TCI Business Capital (“TCI”) is a division of Fidelity Bank, a Minnesota State chartered bank with an office located at 7600 Parklawn Avenue, Suite 250, Edina, MN 55435.
2. Upon information and belief, at all relevant times, Defendant SC OPCO LLC (“Defendant”) was and still is a limited liability company formed under the laws of the State of New Jersey, with an office located at 1516 Grays Highway, Ridgeland, South Carolina 29936.
3. This Court is vested with jurisdiction of this matter and venue is proper in Jasper County.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

4. TCI is engaged in business of purchasing and collecting accounting accounts receivable from clients in exchange for payments based on a percentage of the accounts receivable, a practice commonly referred to as “factoring”.
5. Defendant operates a skilled nursing center in Ridgeland, South Carolina.
6. On or about August 20, 2020, TCI and Victress Healthcare Staffing Solutions, LLC (“Victress”) entered into a Factoring Agreement, whereby Victress agreed to sell invoices due

from Defendant for providing healthcare staffing services at the Defendant's skilled nursing center in Ridgeland, South Carolina.

7. By Notice of Sale and Assignment of Accounts dated August 20, 2020 ("Assignment and Notice"), Plaintiff and Victress notified the Defendant that it had assigned all of its present and future accounts with Defendant to TCI and that payments due thereunder were to be made directly to TCI.

8. The Assignment Notice was received by Defendant.

9. Prior to April 26, 2022, the Defendant repaid the Plaintiff for invoices that it purchased from Victress for staffing services supplied to the Defendant.

10. Between April 27, 2022 and June 30, 2022, Victress and the Defendant entered into agreements for Victress to supply staffing services to the Defendant. Victress complied with the agreements and issued the invoices ("Invoices") listed below to Defendant for the services. TCI purchased the Invoices from Victress which represented amounts due by the Defendant for staffing services supplied by Victress and Invoices were assigned to the Plaintiff.

<u>Invoice</u>	<u>Invoice Date</u>	<u>Amount</u>
1337	4/27/22	\$18,535.00
1338	5/2/22	\$17,900.00
1339	5/8/22	\$16,766.00
1340	5/8/22	\$1,347.60
1341	5/15/22	\$15,592.42
1342	5/24/22	\$17,357.63
1343	5/29/22	\$27,369.00
1346	6/5/22	\$21,124.00
1347	6/17/22	\$6,143.50
Grand Total:		\$142,135.15

11. Despite presenting the unpaid Invoices to the Defendant for payment on numerous occasions, the Defendant has failed and refused to pay them.

12. The Defendant has failed to pay the Invoices as it agreed and is in breach thereof. Consequently, the Plaintiff is entitled to recover a judgment against the Defendant for \$142,135.15, plus prejudgment interest and reasonable attorney's fees.

WHEREFORE, Plaintiff TCI prays for judgment against Defendant in the amount of \$142,135.15 plus prejudgment interest and reasonable attorney's fees and for such other and further relief as the court deems just and proper.

Florence, South Carolina

TURNER, PADGET, GRAHAM & LANEY, P. A.

December 22, 2022

By: s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
1831 West Evans Street, Fourth Floor
Post Office Box 5478 (29502)
Florence, South Carolina 29501
Telephone: (843) 662-9008
Email: jpayne@turnerpadget.com

ATTORNEYS FOR THE PLAINTIFF
TCI BUSINESS CAPITAL



ELECTRONICALLY FILED - 2023 Feb 10 2:33 PM - JASPER - COMMON PLEAS - CASE#2022CP2700610
ELECTRONICALLY FILED - 2023 Jul 05 3:22 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

JUDGMENT IN A CIVIL CASE
IN THE COURT OF COMMON PLEAS
CASE NO. 2022-CP-27-00610

TCI Business Capital, a division of Fidelity Bank,

SC OPCO LLC d/b/a Ridgeland Nursing &
Rehabilitation Center

PLAINTIFF

DEFENDANT

Submitted by: Jeffrey L. Payne, Esq. (SC Bar. 15136)
Turner Padgett Graham & Laney, P.A.
1831 W. Evans Street, Suite 400
Florence, SC 29501

Attorney for : ☒ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
TCI Business Capital, a division of Fidelity Bank	SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center	\$142,420.47
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

ELECTRONICALLY FILED - 2023 Feb 10 2:33 PM - JASPER - COMMON PLEAS - CASE#2022CP2700610
ELECTRONICALLY FILED - 2023 Jul 05 3:22 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk.

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Fileers or who are appearing pro se. See Rule 77(d), SCRCp.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

TCI Business Capital, a division of Fidelity
Bank,

Plaintiff,

v.

SC OPCO LLC d/b/a Ridgeland Nursing &
Rehabilitation Center,

Defendant.

IN THE COURT OF COMMON PLEAS
C/A # 2022-CP-27-00610

ORDER OF JUDGMENT

This matter comes before me upon motion of Turner, Padget, Graham & Laney, P.A., attorneys for the Plaintiff, herein seeking judgment against the Defendant SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center for damages arising out of the within civil action between the Plaintiff and the Defendant.

IT APPEARING from the Affidavit of Jeffrey L. Payne, attorney for the Plaintiff, that Defendant SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center has been duly served with a Summons and Complaint, and that more than thirty (30) days has elapsed during which no responsive pleading was filed by the Defendant SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center; and

IT FURTHER APPEARING that the damages sought in this action are liquidated and verified by the Plaintiff and therefore, no hearing is necessary pursuant to Rule 55(b)(1) of the *South Carolina Rules of Civil Procedure*; and

IT FURTHER APPEARING to this Court through pleadings seeking liquidated damages supported by a verified complaint and the evidence presented pursuant to Rule 55(b) of the *South Carolina Rules of Civil Procedure*, that the Plaintiff has suffered liquidated damages in the amount

of One Hundred Forty-Two Thousand One Hundred Thirty-Five and 15/100 (\$142,135.15) Dollars as verified in the Complaint;

IT FURTHER APPEARING that the Plaintiff is entitled to the recovery of its costs in the amount of Two Hundred Eighty-Five and 32/100 (\$285.32) Dollars; and

IT IS HEREBY ORDERED, ADJUDGED AND DECREED pursuant to the provisions of Rule 55 of the *South Carolina Rules of Civil Procedure*, that Defendant SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center is hereby in default. It is further,

ORDERED, ADJUDGED AND DECREED that the above-named Plaintiff, TCI Business Capital, a division of Fidelity Bank, is hereby granted judgment against the Defendant SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center in the amount of One Hundred Forty-Two Thousand Four Hundred Twenty and 47/100 (\$142,420.47) Dollars.

AND IT IS SO ORDERED.

Ridgeland, South Carolina

_____, 2023

s/ Electronic signature to follow
Circuit Court Judge



Jasper Common Pleas

Case Caption: Tci, Business Capital, A Division Of Fidelity Bank VS Sc Opco Llc ,
defendant, et al
Case Number: 2022CP2700610
Type: Order/Judgment by Default and Form 4

So Ordered

s/Carmen T Mullen 2142

Electronically signed on 2023-02-10 11:32:30 page 5 of 5

ELECTRONICALLY FILED - 2023 Feb 10 2:33 PM - JASPER - COMMON PLEAS - CASE#2022CP2700610
ELECTRONICALLY FILED - 2023 Jul 05 3:22 PM - JASPER - COMMON PLEAS - CASE#2023CP2700005



AFFIDAVIT OF SERVICE

Case: 2022CP2700610	Court: Jasper County Court of Common Pleas	County: Jasper, SC	Job: 8153902
Plaintiff / Petitioner: TCI Business Capital, a division of Fidelity Bank		Defendant / Respondent: SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center	
Received by: T R Kennedy Consultation & Investigation Services, LLC		For: Legal Professionals, LLC	
To be served upon: SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center			

I, Ted Kennedy, being duly sworn, depose and say: I am over the age of 18 years and not a party to this action, and that within the boundaries of the state where service was effected, I was authorized by law to make service of the documents and informed said person of the contents herein

Recipient Name / Address: Lisa Culler, Office Manager for Registered Agent Cogency Global Inc., for SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center, 2 Office Park Ct, Columbia, SC 29223

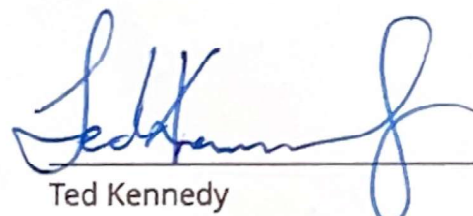
Manner of Service: Registered Agent, Dec 29, 2022, 11:36 am EST

Documents: Summons and Complaint (Jury Trial Demanded), and entity profile for the registered agent from the SC Secretary of State (Received Dec 28, 2022 at 2:50pm EST), entity profile for the registered agent from the SC Secretary of State (Received Dec 28, 2022 at 2:50pm EST)

Additional Comments:

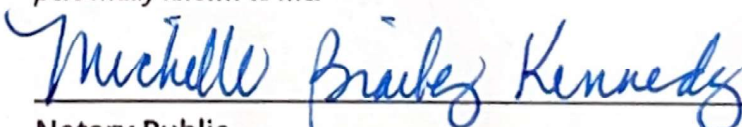
1) Successful Attempt: Dec 29, 2022, 11:36 am EST at 2 Office Park Ct, Columbia, SC 29223 received by Lisa Culler, Office Manager for Registered Agent Cogency Global Inc., for SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center. Ethnicity: Caucasian; Gender: Female; Hair: Gray; Other: Caucasian female, gray hair, glasses, between 5ft 4 and 5 ft 6 inches. Approximately 60 years of age. Identified herself as Lisa Culler , Office Manager ;

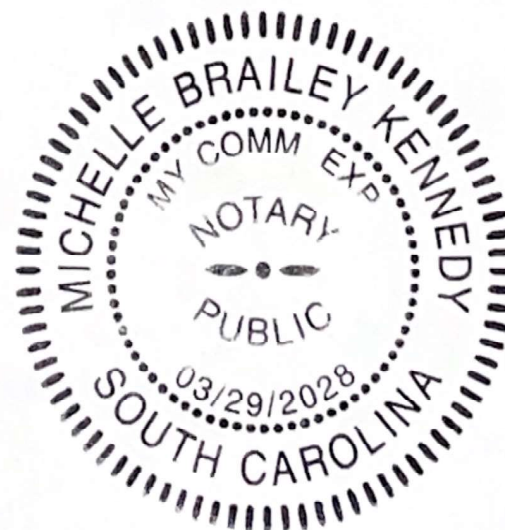
I met with Lisa Culler, Office Manager. for Registered Agent Cogency Global, Inc., for SC OPCO LLC accepted service of the documents.

 December 29, 2022
Ted Kennedy Date

T R Kennedy Consultation & Investigation Services, LLC
P.O. Box 24525
Columbia, SC 29224
(803)471-5176

Subscribed and sworn to before me by the affiant who is personally known to me.


Notary Public
December 29, 2022 03-29-2028
Date Commission Expires



BENNETT LAW FIRM, P.A.
POST OFFICE BOX 1929
RIDGELAND, SOUTH CAROLINA 29936
PHONE: (843) 726-9520/FAX: (843) 726-3140
E-mail: csb@bennettlawfirm.com

C. Stephen Bennett

*

Admitted in S.C. & Ga.

Via Email Only
August 22, 2023

Kyle A. Brannon, Esquire
Maynard Nexsen, PC
Post Office Box 2426
Columbia, South Carolina 29202

William F. Barnes, III, Esq.
Barnes Law Firm, LLC
Post Office Box 897
Hampton, South Carolina 29924

Re: Bullard & Son, Inc., d/b/a Lowcountry Medical Linens, Plaintiff, vs.
Ridgeland Nursing Center, Inc., Ridgeland NC, LLC and SC OPCO, LLC
Defendants. (C/A No.: 2023-CP-27-00005)

Dear Kyle & William:

I am writing to advise you of my decision regarding the Defendant SC OPCO, LLC's Motion To Set Aside Default and Motion for a New Trial.

I have reviewed my prior Order (Judgment) of Damages; the transcript of the motion hearing; Rules 55, 59, & 60 of the rules; and the case law referenced and/or submitted to me by you both for my consideration. This was an excellent job very well done by both attorneys and I highly commend them for their professionalism.

However, in ruling, I cannot get beyond the fact that the Defendant SC OPCO's agents, officers, servants, and/or employees appeared to make an absolute conscious decision to repeatedly and blatantly ignore a validly served Summons and Complaint in this matter, and, to compound their self-made legal quagmire, they failed to contact me or appear at the April 25th, 2023 Default Damages Hearing held by me after due and timely notice of the hearing was given to the Defendants by Plaintiff's attorney.

Here, I am certainly not convinced that we are dealing with unsophisticated parties, but that we are dealing with a sophisticated Defendant (SC OPCO, LLC) which did not pay for goods and services rendered to it for an extended period of time by the Plaintiffs.

Under Rule 60, there is no evidence of mistake, inadvertence, surprise, or excusable neglect. It is clear that SC OPCO consciously chose to ignore the repeated invoicing by the Plaintiffs and then consciously chose to ignore the pleadings served on it and the damages hearing.

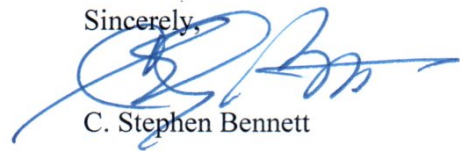
I do not believe that the Defendant SC OPCO, LLC should receive any relief with issues regarding my prior Damages Order as it relates to the amount I awarded for the Plaintiff's attorney's fees, since from evidence at the Damages Hearing, I am confident that a great deal of preparation and research went into filing suit against these various Defendants, as business entities, and that this was required of the Plaintiff's attorney, to figure out who to sue, how to serve the Defendants, and clear documentation of the monetary amount of damages due to the Plaintiff.

While both of you did an excellent job in this case, and particularly on the motion hearing, I am rendering my decision to deny the Defendant's motions and I request that the Plaintiff's attorney prepare an Order of Dismissal of Defendant's Motion To Set Aside Default & Motion for a New Trial, consistent with the Plaintiff's Memorandum in Opposition to Defendant's Motion, and my comments in this letter. Please send a copy of the proposed order to opposing counsel.

Again, thank you both.

CSB/brk:

Sincerely,



C. Stephen Bennett

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE CIRCUIT COURT

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

Case No. 2023-CP-27-00005

Plaintiff,

**MOTION TO ALTER OR AMEND
ORDER DENYING MOTION TO SET
ASIDE DEFAULT JUDGMENT AND
MOTION FOR NEW TRIAL**

vs.

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

Defendants.

Pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure (“SCRCP”), Defendant SC OPCO, LLC (hereinafter “SC OPCO”) respectfully requests reconsideration of the Order Denying Defendant SC OPCO’s Motion to Set Aside Default Judgment and Motion for New Trial issued by the Honorable C. Stephen Bennett, Special Referee for Jasper County, on September 13, 2023,¹ so that such Order can be altered and/or amended in the particulars discussed hereinbelow.²

I. PROCEDURAL POSTURE

The underlying Complaint was filed by Plaintiff on January 5, 2023, asserting two causes

¹ Referenced as the “Order” herein, a copy of which is **Exhibit A** hereto.

² In moving for reconsideration, SC OPCO addresses and seeks correction of issues and matters which the Court misapprehended or failed to address adequately in its Order. *See Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 21-22, 602 S.E.2d 772, 778-79 (2004) (“[I]t is proper to view a Rule 59(e) motion not only as a vehicle to request the trial court ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments. . . . There is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.”). SC OPCO preserves the right, however, to appeal on all available grounds and therefore does not raise all of those issues which were considered or addressed in the Order but which SC OPCO contends were decided incorrectly. In that regard, SC OPCO reasserts and preserves all arguments in favor of granting its Motion to Set Aside Default Judgment and Motion for New Trial.

of action (breach of contract and unjust enrichment/quantum meruit) against three individual defendants.³ Compl. at 1. By Affidavits filed February 14, 2023, Plaintiff sought entry of default against Defendants SC OPCO, LLC, and Ridgeland NC, LLC. There is no evidence of service on Defendant Ridgeland Nursing Center, Inc., on the Jasper County Public Index, and there is no evidence Plaintiff sought entry of default against Ridgeland Nursing Center, Inc.

Plaintiff's proposed Order of Reference to Special Referee was entered February 18, 2023, and Plaintiff's proposed Order of Default was entered March 1, 2023. No other filings appear on the Public Index until the filing of Judgment against SC OPCO and Ridgeland NC on May 12, 2023, including any evidence of service on SC OPCO or Ridgeland NC, of the damages hearing held before the Special Referee on April 25, 2023, and there is no evidence in the Public Index that the subsequent Judgment was served on any party.

On May 17, 2023, SC OPCO filed a Notice of Appearance through counsel, and on May 25, 2023, SC OPCO filed the Motion to Set Aside Default and For New Trial that was argued before Judge Bennett on July 20, 2023. Judge Bennett's Order on SC OPCO's Motions issued on September 13, 2023, and SC OPCO respectfully requests reconsideration for the reasons set forth herein.

II. LEGAL STANDARD

The South Carolina Supreme Court has recognized "two basic situations in which a party should consider filing a Rule 59(e) motion." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). First, a motion to reconsider is appropriate where a party believes the court misunderstood, failed to fully consider, or failed to rule on an argument or issue that the party desires the court reconsider. *Id.* Perhaps more importantly, "[a] party must file such a motion when

³ The three defendants named by Plaintiff in the Complaint are Ridgeland Nursing Center, Inc. ("Ridgeland Nursing Center"), Ridgeland NC, LLC ("Ridgeland NC"), and SC OPCO.

an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Id.* In addition to reconsideration of issues raised and/or ruled upon by the court, “the proper procedure for correcting factual errors in an order is to file a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP.” *Doe v. Doe*, 324 S.C. 492, 502, 478 S.E.2d 854, 859 (1996).

It is not error for a trial judge to change its mind and reconsider an earlier ruling. *See e.g. Abu-Shawareb v. S.C. State Univ.*, 364 S.C. 358, 363, 613 S.E.2d 757, 760 (Ct. App. 200); *see also PPG Indus., Inc. v. Orangeburg Painting & Decorating Ctr., Inc.*, 297 S.C. 176, 183, 375 S.E.2d 331, 335 (Ct. App, 1988). The South Carolina Supreme Court has explained that, “[t]here is nothing inherently unfair in allowing a party one final chance not only to call the court’s attention to a possible misapprehension of an earlier argument, but also to revisit a previously raised argument.” *Elam* at 22, 602 S.E.2d at 779. Rather, “[i]t is inherently unfair to disallow such an opportunity.” *Id.*

III. ARGUMENT

At Page 1 of the Order, the nature of the Contract⁴ by which Plaintiff’s Complaint seeks damages for breach is described as follows:

On March 3, 2020, Lowcountry entered into a contract with Ridgeland Nursing Center for Lowcountry to provide medical linens to the facility. The contract had a 60-month/5-year term and an April 1, 2020 start date, meaning it was effective from April 1, 2020 until March 31, 2025. The agreement ***specified penalties*** in the events of non-payment and early termination.

Order, p. 1 (emphasis supplied). The Order proceeds to describe certain specified penalties in the event of termination of the Contract prior to the five-year term, non-payment of invoices, and legal fees in the event of collection. *See id.* Throughout the underlying Complaint, Plaintiff specifically

⁴ For ease of reference, the capitalized term “Contract” shall mean and refer to the March 3, 2020 contract entered between Plaintiff and Ridgeland Nursing Center, a copy of which is attached as Exhibit A to Plaintiff’s Complaint.

alleges that “Ridgeland Nursing Center”⁵ entered the Contract, agreed to its terms, and was in breach of said Contract and consequently was liable to Plaintiff for contractual damages. *See* Compl. at ¶¶ 8, 10-12, 18. Nowhere in the Complaint does Plaintiff allege that SC OPCO agreed to the terms of the Contract, nor that SC OPCO assumed the Contract entered between Plaintiff and Ridgeland Nursing Center or was liable to Plaintiff for contractual damages. *See id.* Notwithstanding the absence of these allegations in the Complaint, which are necessary to impose damages against SC OPCO for breach of the Contract’s penalty provisions, the Order finds “SC OPCO is bound to the terms of the Contract.” (Order, p. 9). This result is controlled by errors of law and misunderstands or fails to fully consider the evidence and the law, such that the Court should reconsider the Order.

A. The Court Should Reconsider Denial of SC OPCO’s Request for New Trial Because the Judgment Improperly Assesses Damages Against SC OPCO Based on Plaintiff’s Contract with Ridgeland Nursing Center, Inc.

“[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.” *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 559 (Ct. App. 2019). SC OPCO submits the Order fails to fully consider its request for a new trial under Rule 59(a), SCRCp, and/or appears to misapprehend the applicability of the Rule to non-jury trials such as the damages hearing in this case. (Order, p. 12). According to Rule 59(a), in actions tried without a jury such as this, “[a] new trial may be granted on all or part of the issues . . . for any of the reasons for which rehearings have heretofore been granted in the courts of this State.” Rule 59(a), SCRCp. Although acknowledging SC OPCO addressed the legal standard applicable to its request, the Order asserts SC OPCO

⁵ The un rebutted affidavit testimony of Joe Neuman submitted in support of SC OPCO’s Motion to Set Aside Default & Motion for New Trial is that SC OPCO owns and operates “Ridgeland Nursing & Rehabilitation Center”. Mot. Set Aside & New Trial at Ex. B ¶ 2.

“makes no actual argument as to why it should receive a new trial” and claims “SC OPCO does not ask for a new trial as to damages.” (Order, p. 12). Respectfully, neither statement is correct.

Crucially important to the facts and circumstances of this case is that SC OPCO learned of its default within the timeframe allowed to request rehearing on the issue of damages. *See* Mot. Set Aside & New Trial, p. 1. The discussion of Rule 59 in the Order seemingly misunderstands or ignores the interplay between the rules applicable to default and requests pursuant to Rule 59. (Order, p. 12). By virtue of SC OPCO’s timely request under Rule 59, the Court is empowered to grant SC OPCO a new trial (*viz.* rehearing) on the amount of damages Plaintiff may be awarded against SC OPCO. Indeed, the text of Rule 59(a), SCRCP, plainly provides: “On a motion for a new trial in an action tried without a jury, the court may open the judgment if one has been entered, take additional testimony, amend findings of fact and conclusions of law or make new findings and conclusions, and direct the entry of a new judgment.” Rule 59(a), SCRCP (emphasis supplied). Consequently, not only did SC OPCO present the Court with the procedurally correct mechanism to allow for rehearing on the issue of damages, but the record is replete with SC OPCO’s arguments supporting and demonstrating the compelling reasons to allow for rehearing. SC OPCO reiterates several of these reasons below.⁶

1. **The Order’s finding that SC OPCO had “knowledge of the contract and its terms” is erroneous and fails to fully consider the credible evidence.**

In support of its May 25 Motion, 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

⁶ To date, SC OPCO has addressed multiple flaws with respect to the damages asserted and assessed against SC OPCO in light of the allegations of the Complaint, both in the Motion filed May 25 and again at the hearing on July 20, 2023, detailing a lack of factual and legal support for holding SC OPCO in breach of a written contract to which it was not a party and imposing impermissible penalties and an unreasonable attorney fee award. *See* Mot. Set Aside & New Trial, pp. 11-12; Hr’g Tr., pp. 13-19. The fact that these issues also go to consideration of SC OPCO’s request that judgment be set aside under Rule 60(b) does not negate the arguments for purposes of Rule 59.

the business operations of Ridgeland Nursing & Rehab, ...” See Mot. Set Aside & New Trial, Ex. B at ¶ 3. Mr. Neuman’s sworn testimony includes that he has personal knowledge of SC OPCO’s purchase of Ridgeland Nursing & Rehabilitation Center on November 1, 2021, that the purchase was of “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 Nursing Center, Inc. See *id.* at ¶¶ 2, 4. Mr. Neuman’s sworn testimony was that he has “no knowledge of the terms of any contracts that may have existed between the Plaintiff and the predecessor owner(s) of Ridgeland Nursing & Rehab.” *Id.* at ¶ 4. Finally, Mr. Neuman testifies that “SC OPCO has never negotiated a contract with the Plaintiff 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.” *Id.* at ¶ 5.

Plaintiff did not submit any evidence refuting Mr. Neuman’s testimony. While the Court “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.⁷ (Order, p. 8). Instead, the Order relies on (1) imputing knowledge allegedly held by a former employee of Ridgeland Nursing Center and (2) continued use of Plaintiff’s linen services after purchasing the facility to find that SC OPCO had knowledge of the Contract and Contract terms that were entered by an unaffiliated predecessor owner some 20 months before SC OPCO purchased the facility. See *id.*

⁷ 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 Lowcountry’s invoices.” (Order, p. 8). The Order overlooks or ignores that at the time of the Motion filing, SC OPCO specifically informed the Court that Plaintiff’s “claim for unjust enrichment/quantum meruit is still being investigated by SC OPCO[.]” Mot. Set Aside & New Trial, p. 10. To the extent the Order’s harsh criticism of SC OPCO stems from a mistaken belief that SC OPCO denied liability under Plaintiff’s equitable claim, the Court should reconsider its denial of SC OPCO’s Motion. SC OPCO does not challenge the Court’s award of damages in the amount of the unpaid invoices stated in the Complaint.

In discussion of imputed knowledge, the Order cites *Equitable Trust Company of Columbia v. Columbia National Bank*, 145 S.C. 91, 142 S.E. 811 (1928), and based on the parenthetical description, either misunderstands or misconstrues the South Carolina Supreme Court's ruling. (Order, pp. 8-9). In *Equitable Trust Company*, the Supreme 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 Company* at 817-818. Nothing about the authorities quoted in *Equitable Trust Company* or the facts underlying that case involve imputing knowledge to a successor corporation, and the decision is simply not precedent for finding that knowledge obtained by an agent/employee while employed by one principal/employer is later imputed to a subsequent principal/employer. See *id.* SC OPCO submits there is simply no credible evidence demonstrating that the former employee's knowledge was or would have been made known to SC OPCO.

Additionally, the Order finds that SC OPCO "received services from a business and must (or should) have known they were provided under a contract." (Order, p. 8). Again respectfully, SC OPCO's receipt of linen services does not equate to knowledge of the Contract between Plaintiff and Ridgeland Nursing Center, much less the specificity of penalty provisions agreed to between Plaintiff and the former owner. As more fully explained below, to hold SC OPCO responsible to the terms of the Contract entered by a predecessor entity violates South Carolina's laws surrounding successor liability, and the Order's contrary findings should be reconsidered.

2. **The assessment of contractual damages against SC OPCO for Ridgeland Nursing Center's alleged breach of contract is contrary to South Carolina's laws on successor liability.**

Viewing the entirety of the Order's findings as related to imposition of damages against SC OPCO based on the penalty provisions in the Contract between Plaintiff and Ridgeland Nursing

Center, it is apparent the Court believed the mere continued use of Plaintiff's linen services after SC OPCO purchased the facility was sufficient to find SC OPCO responsible for Ridgeland Nursing Center's contractual damages.⁸ (Order, pp. 8-10). This is an error of law.

Under South Carolina law, "a successor corporation is generally not liable for the debts and liabilities of its predecessor." *In re AuditHead, LLC*, 624 B.R. 134, 141 (Bankr. D.S.C. 2020).

South Carolina courts have rejected the continuity of enterprise theory of successor liability, which examines the successor's use of the predecessor's business operation, assets, and personnel. Rather, in order for the "mere continuation" exception to apply, there generally must be commonality of ownership and management among the entities (e.g., shareholders, officers, and directors).

Id. (citing *Nationwide Mut. Ins. Co. v. Eagle Window & Door, Inc.*, 424 S.C. 256, 268, 818 S.E.2d 447, 453 (2018)). The South Carolina Supreme Court explained in *Nationwide Mutual*, "[a]lthough the mere continuation test is a high burden for a plaintiff to meet, it is intentionally so, as corporate law generally favors the free transfer of assets and disfavors successor liability." *Nationwide Mut. Ins. Co.*, 424 S.C. at 269, 818 S.E.2d at 454. In order for SC OPCO's "mere continuation" of the same linen service provider to equate to liability under Ridgeland Nursing Center's contracts, Plaintiff must have alleged and proven "commonality of ownership and management among the entities (e.g., shareholders, officers, and directors)." *Id.* at 268, 818 S.E.2d at 453. Not only is there a failure of such proof from Plaintiff, but the un rebutted evidence from SC OPCO is that there is no affiliation between the two entities. Mot. Set Aside & New Trial, Ex. B at ¶ 2.

⁸ The Order quotes language in the Contract stating it "shall enure to the benefit of any successors or assignees" as if to bolster the argument that SC OPCO may be bound to the terms of the Contract. Importantly, Plaintiff's Complaint does not allege that SC OPCO is a successor or assignee of Ridgeland Nursing Center, Inc. Moreover, the Supreme Court has explained that "... it is there settled that a claim for professional services against persons ... must, like a claim for any other services, rest upon contract either express or implied, made directly with the persons so sought to be charged, or with some agent or representative of such persons, and that the simple fact that such services have enured to the benefit of others, with whom there is no contract relation, either directly or through some agent or representative, affords no legal foundation for a charge against such other persons." *Hubbard v. Camperdown Mills*, 25 S.C. 496, 501, 1 S.E. 5 (1886).

SC OPCO respectfully submits that the assessment of contractual damages *against SC OPCO* for penalties agreed to in an agreement between Plaintiff and Ridgeland Nursing Center prior to SC OPCO's purchase of the facility is an error of law. *See Walton v. Mazda of Rock Hill*, 376 S.C. 301, 306, 657 S.E.2d 67, 69-70 (Ct. App. 2008) (rejecting successor liability and affirming summary judgment where purchase transaction did not include assumption of any contracts or liabilities of predecessor). This erroneous understanding of the law leads to other prejudicial findings in the Order, such as the Court "not believ[ing] that a multi-state, federally regulated corporation bought a skilled nursing home facility without reviewing its contracts".⁹ (Order, p. 9). Because the Order's assessment of damages against SC OPCO for the penalty provisions in Plaintiff's Contract with Ridgeland Nursing Center is contrary to South Carolina law, the Order should be reconsidered and these findings altered or amended.

3. **Plaintiff is not entitled to damages in the form of the early termination "fee" because it did not allege or prove termination and, as against SC OPCO, the fee is an unenforceable penalty.**

Further demonstrating compelling need to allow a new trial solely as to the amount of damages Plaintiff may obtain by default judgment, Plaintiff has not proven entitlement to the early termination "fee" in accordance with the Contract, and as assessed against SC OPCO in the Judgment issued May 12, 2023, the fee imposed represents 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," here the question is answered by the terms of the Order¹⁰ that unequivocally

⁹ As addressed below, the finding that SC OPCO is "a multi-state, federally regulated corporation" is factually incorrect. (Order, p. 9).

¹⁰ Plaintiff's counsel submitted a proposed order to the Court on September 13, 2023, via email, and SC OPCO received a notice of electronic filing for the Order a few hours later. It does not appear the Court made any changes to Plaintiff's proposed order, including the description on Page 1 that the agreement between Plaintiff and Ridgeland Nursing Center "specified penalties in the events of non-payment and early

acknowledges the contractual provisions challenged by SC OPCO are penalties. *Moser v. Gosnell*, 334 S.C. 425, 431, 513 S.E.2d 123, 126 (Ct. App. 1999).

SC OPCO raised the absence of any allegation or evidence of the Contract's termination by SC OPCO (or even Ridgeland Nursing Center)—the allegations of the Complaint only allege “Defendants have refused to pay the invoices thereby breaching the terms of the Contract”—and there is no credible support for the calculated \$623.13 as “a depreciated rate of 50% of the rental rate” to calculate the early termination fee. The Court has not addressed these deficiencies in Plaintiff’s pleadings. In addition to the problem of proof, SC OPCO addressed the punitive nature of this specific penalty given how grossly disproportionate to the \$20,311.36 in unpaid invoices to the Court as part of its Motion. *See* Hr’g Tr. pp. 14-15. The fee amounts to an unenforceable penalty, “because the stipulated sum is clearly disproportionate to any probable damage resulting from a breach” of the Contract.¹¹ *See id.* 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 v. Le Master*, 231 S.C. 429, 441-42, 99 S.E.2d 39, 46 (1957). “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.” *Id.*

Here, the penalty imposed on SC OPCO for the “early termination” of Plaintiff’s agreement

termination.” (Order, p. 1).

¹¹ The Complaint alleges that Plaintiff’s “Contract provides that if Ridgeland Nursing Center terminated the Contract prior to the agreement term, Ridgeland Nursing Center agreed to pay Lowcountry Medical Linens at a depreciated rate of 50% of the rental rate times the number of weeks left in the agreement.” Compl. at ¶ 12; *see also* Compl at Ex. A. With a five-year term that began on April 1, 2020, the Judgment entered finds “Defendants are liable to Plaintiff for 50% of the early termination weekly amount (\$623.13) times the number of weeks (145 weeks) left in the agreement, which equals \$90,353.85.” J. at 6. This calculation leads to the absurd result of an early termination fee that is more than four times the amount of Plaintiff’s actual damages (which was \$20,311.36 in unpaid invoices).

with Ridgeland Nursing Center (\$90,353.85), is grossly disproportionate to the actual damage to Plaintiff from the non-payment of its invoices to SC OPCO. Even if SC OPCO were bound by the Contract, which is denied, the early termination fee would be an unenforceable penalty. The foregoing are examples of material deficiencies present in the nature and amount of damages imposed against SC OPCO even with default having been entered.

“It is generally recognized that 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.” *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 and/or the jury 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.* Here, the Court should be concerned that its default judgment imposes damages in the form of contractual penalties against SC OPCO—a stranger to such agreement—and pursuant to a Complaint that lacks allegations supporting Plaintiff’s entitlement to these damages from SC OPCO. “Judgment should not be rendered for an amount greater than that prayed for in the declaration or complaint, ***or justified by the facts alleged.***” C.J.S. *Judgments* § 290 (2023) (emphasis supplied). For these reasons and as further demonstrated in filings and at oral argument on SC OPCO’s Motion, the Court should reconsider its Order and grant a new trial in order to rehear the issue of damages.

4. The Court Should Reconsider the Damages Awarded to be Commensurate with SC OPCO’s Liability for Unjust Enrichment/Quantum Meruit.

“An action based on a theory of quantum meruit sounds in equity.” *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). 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) and 27 Am.Jur. *Equity* § 103 (1966)). Here, notwithstanding SC OPCO's admitted failure to timely respond to the Complaint, the Court sitting in equity must nonetheless take into consideration "the equities of both sides", which necessarily includes the absence of any written contract entered between Plaintiff and SC OPCO that provides for the penalties imposed by the default judgment. *See id.* SC OPCO respectfully submits Plaintiff's recovery from SC OPCO must be limited to the reasonable value of the services conferred by Plaintiff on SC OPCO, which even taking into consideration the effect of the entry of default against SC OPCO, is represented by the remaining unpaid invoices for services issued by Plaintiff to SC OPCO in the amount of \$20,311.36. *See* Compl. at pp. 3-4.

"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 v. Dobbs House, Inc.*, 275 S.C. 562, 567, 274 S.E.2d 290, 293 (1981). In *Renney*, the South Carolina Supreme Court raised *ex mero motu* the issue of damages awarded in a default judgment where the "award [wa]s patently so greatly out-of-proportion to the wrongs alleged in the complaint that [the Court], as a matter of common law, and independent of s 15-27-130, should not allow the same to stand." *Id.* The *Renney* Court further cited to 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] w[as] not party[y] to the contract[] a judgment for breach of contract cannot be rendered against [it].” *Chan v. Thompson*, 302 S.C. 285, 292, 395 S.E.2d 731, 736 (Ct. App. 1990). 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. Because the damages imposed on SC OPCO substantially exceed the amount recoverable under the law, the Court should reconsider its Order and alter/amend the amount of the judgment accordingly or, in the alternative, grant SC OPCO’s request for rehearing on damages.

B. The Order Fails to Fully Consider SC OPCO’s Entitlement to Relief Under Rule 60(b), SCRCP.

“The decision to deny or grant a motion made pursuant to Rule 60(b), SCRCP is within the sound discretion of the trial judge. An abuse of discretion occurs when the order of the court is controlled by an error of law or where the order is based on factual findings that are without evidentiary support.” *Ware v. Ware*, 404 S.C. 1, 10, 743 S.E.2d 817, 822 (2013) (citing *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006)). “To justify relief under this rule, a party must establish that he has a meritorious defense and that the judgment was taken against him by mistake, inadvertence, surprise or excusable neglect.” *Thompson v. Hammond*, 299 S.C. 116, 119-20, 382 S.E.2d 900, 903 (1989) (citing H. Lightsey & J. Flanagan, *South Carolina Civil Procedure*, p. 402 (2d Ed.1985)). “The complainant does not have to establish that he would prevail on the merits, but only that his defense is meritorious.” *Id.* at 120, 382 S.E.2d at 903.

In the Order, the Court finds “that SC OPCO fails to make the threshold showing of a mistake to warrant relief, but even if it could make this showing, the other relevant factors do not support relief in this case.” (Order, p. 4). There are four grounds explicitly stated in Rule 60(b)—

mistake, inadvertence, surprise, or excusable neglect—and each is a mechanism by which a defendant may be entitled to relief from imposition of a judgment default. “Default judgments are a generally recognized judicial tool, utilized primarily as a means of preventing procrastinating parties from causing unnecessary delays They were never meant to provide an inequitable advantage to a party so that an action or defense might be defeated without the difficulty and expense involved in contesting the issue.” 24 Am. Jur. *Proof of Facts* 2d § 705. The Order’s finding “[b]ecause there is no mistake, I do not need to address the additional factors,” is an erroneous view of the law, and the Order should be reconsidered in order to assess whether SC OPCO is entitled to relief for any other reason allowed by Rule 60(b), SCRCF.¹² (Order, p. 7).

Moreover, the Court fails to fully consider the evidence demonstrating SC OPCO’s good faith mistake and satisfaction of the relevant factors. With regard to the evidence of mistake, the Order briefly notes the multiple communications directed by Plaintiff to the facility, but summarily rejects any significance to Plaintiff’s conduct directing multiple letters regarding its dispute to an unrelated entity and not SC OPCO. (Order, p. 6). This summary rejection ignores the weight of that evidence and its contribution to SC OPCO’s confusion, and ignores that Plaintiff failed to provide any explanation or justification to rebut its role in the confusion. See Mot. Set Aside & for New Trial, pp. 4-5 and Ex. B, ¶¶ 6-11. The Order finds instead “[t]hat Lowcountry **separately** served the registered agents for SC OPCO and Ridgeland Nursing Center actually shows that it intended to sue them both as separate entities. SC OPCO’s registered agent is not at the facility.” (Order, p. 6) (emphasis original). But noted in the Procedural History above, Plaintiff has never

¹² For example, the Court did not give any consideration to whether the evidence supported setting aside the judgment on the grounds of inadvertence, surprise, or excusable neglect. “‘Excusable neglect,’ allowing relief from a judgment, is that neglect that might have been the act of a reasonably prudent person under the same circumstances.” 49 C.J.S. *Judgments* § 420 (2023). SC OPCO submits the facts also meet the excusable neglect basis for relief.

filed evidence of service on Ridgeland Nursing Center, nor made any attempt to hold Ridgeland Nursing Center in default—***despite Ridgeland Nursing Center being the only entity bound to Plaintiff under the Contract.*** Reviewing the entirety of the Order’s findings regarding SC OPCO’s good faith mistake of fact and Plaintiff’s contribution to its confusion, it appears the Court failed to fully consider the evidence justifying relief under Rule 60(b), SCRCP, and SC OPCO respectfully requests reconsideration.

Finally, the Order’s findings regarding the promptness in seeking relief, meritorious defenses, and prejudice to Plaintiff fail to fully consider the evidence before the Court and are based on errors of fact and law. (Order, pp. 7-10). The unrebutted testimony submitted by SC OPCO was that it first became aware of the entry of default on May 10, 2023, which evidence the Order acknowledges. (Order, p. 7). The Order rejects the evidence, however, and summarily finds “SC OPCO clearly knew about the lawsuit and the damages hearing.” (Order, p. 7). To borrow from the language of the Order, notice and knowledge are two different things. SC OPCO has not challenged the service on its registered agent and has come to this Court requesting the opportunity to address the lawsuit’s merits despite its failure to timely respond to the Complaint. There is simply no basis in the record to ascribe SC OPCO’s mistakes as “intentional” or purposefully ignoring the legal process. (Order, pp. 7-8). Furthermore, it is “the timing of the motion for relief” that is relevant to assessing SC OPCO’s request under Rules 55(c) and 60(b), SCRCP, and the Motion was promptly filed both temporally to SC OPCO learning of the default and within days of the Judgment issuing by the Court. *See Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). With regard to the existence of meritorious defenses, SC OPCO submits that the multiple reasons described in Section A regarding the application of the Contract and its penalty provisions to SC OPCO, as well as the discussion of the attorney fee

award below, are more than sufficient for the Court to find this factor is satisfied.

And finally, the Order finds prejudice to Plaintiff if default is set aside based on erroneous facts. First, just prior to the discussion of prejudice, the Order finds “[t]his is a breach of contract and quantum meruit case *that has been pending for over a year-and-a-half.*” (Order, p. 10). This is materially mistaken—Plaintiff’s Complaint was filed January 5, 2023, and thus had been pending approximately **four months** at the time that the default judgment was entered. Moreover, and perhaps more importantly, the Order considers the timing of Plaintiff’s judgment to be “particularly important in this case” because “[t]here is already another judgment against SC OPCO and other known creditors. [Plaintiff] will be prejudiced if it loses its priority date for collection of its judgment.” (Order, p. 10). This is neither correct on the facts nor the law.

The finding that there are “other known creditors” of SC OPCO has no support whatsoever. (Order, p. 10). As Plaintiff argued in opposing SC OPCO’s Motion, a single other action was filed against SC OPCO that involves TCI Business Capital, which was filed on December 22, 2022, and judgment entered February 10, 2023. As a result, Plaintiff’s judgment in this action does not have a “priority date” over TCI’s earlier obtained judgment. Given these corrections of facts and legal positions, the Court should reconsider its findings as to the factors that support the relief sought by SC OPCO.

C. The Attorney Fee Award is Unreasonable as a Matter of Law.

“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). SC OPCO challenged the reasonableness of the amount awarded in addition to the absence of a contractual or statutory basis for imposing these fees on SC OPCO. *See* Mot. Set Aside & New Trial at pp. 11-12. Rule 54(c), SCRCP, provides, in relevant

part: “[a] judgment by default shall not . . . exceed in amount that prayed for in the demand for judgment.” A defendant in default “admit[s] the allegations in the complaint concerning liability, not damages. [A plaintiff] ha[s] the burden of proving damages.” *Harbor Isl. Owners’ Ass’n v. Pref. Isl. Prop., Inc.*, 369 S.C. 540, 546, 633 S.E.2d 497, 500 (2006) (citing *Renney*, 275 S.C. at 566, 274 S.E.2d at 292).

Plaintiff’s Complaint alleges entitlement to damages “for which Ridgeland Nursing Center is liable” pursuant to its Contract with Plaintiff in the total amount of \$112,931.80, plus “attorney fees *for having to bring this action*.”¹³ Compl. at ¶ 18 (emphasis supplied). Plaintiff 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 Plaintiff’s counsel submitted for entry of default. Instead, it was not until the Judgment issued that it was revealed Plaintiff sought \$38,419.45 in attorney’s fees and costs through application of a 33 1/3% contingency fee agreement with its attorneys.

Here, there is simply no rational basis to support nearly \$40,000 in attorney’s fees on a case with roughly \$20,000 in actual damages where default judgment was obtained four months after filing. Noted above, the Order 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. Additionally, while the Order quotes from the Contract language that “Customer will be responsible for all legal fees to collect any unpaid balances” (Order, p. 9), as thoroughly discussed above and in SC OPCO’s Motion, SC OPCO did not agree to this provision and there is no evidence of a contract between SC OPCO and Plaintiff that allows for recovery of attorney’s fees. In addition, while the Order mentions efforts of Plaintiff’s counsel following the default judgment,

¹³ Here again, SC OPCO must reemphasize that the allegations of the Complaint *do not allege* SC OPCO entered the Contract, assumed the Contract, or breached the Contract. See Compl. ¶¶ 8-18. The only party alleged to be in default and responsible to Plaintiff for contractual damages is Ridgeland Nursing Center. Compl. ¶18.

these subsequent efforts are not evidence justifying the reasonableness of the fee awarded. Order, p. 10; *see also Jackson v. Speed*, 326 S.C. 289, 486 S.E.2d 750 (1997) (holding award for attorney fees will be affirmed so long as sufficient evidence in the record supports each factor).

Rather than address the six specifically enumerated factors set by the Supreme Court for use in evaluating a reasonable fee award, the Order simply states “[t]he contingency agreement is customary for similar services,” and cites *Global Protection v. Halbersberg* to support the attorney fee award. 332 S.C. 149, 503 S.E.2d 483 (Ct. App. 1998).¹⁴ While certainly the use of contingency fee agreements has not been condemned or eliminated, the South Carolina Supreme Court has noted a caveat to their use that “the terms of the agreement are not controlling.” *S.C. Dep’t of Transp. v. Revels*, 411 S.C.1, 11, 766 S.E.2d 700, 705 (2014). The Supreme Court in *Revels* quoted a 2013 Oklahoma ruling:

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.

Revels at 11-12, 766 S.E.2d at 705 (quoting *Silver Creek Inv., Inc. v. Whitten Const. Mgmt., Inc.*, 307 P.3d 360 (Okla. Ct. App. 2013)). Notably, the *Silver Creek* court further observed “[e]xclusive reliance on a contingent fee contract in setting a court awarded attorney fee has also been criticized by the Oklahoma Supreme Court.” *Silver Creek Inv.* at 368.

An award of attorney’s fees must be supported by competent evidence. In *Sunrise Savings*

¹⁴ Other than the similar fact that the case involved application of a contingency fee agreement, *Global Protection* offers no support for the Plaintiff’s windfall of attorney’s fees. Rather than a four-month pursuit of default judgment, *Global Protection* involved “numerous and complex issues requiring time-consuming research and trial preparation.” *Id.* at 161, 503 S.E.2d 489. Not only this difference in scope and complexity, but the decision in *Global Protection* also demonstrates that the trial judge reduced the contingency percentage from the 40% agreed to between the party and counsel, and made specific findings on each of the factors that must be addressed in the determination of reasonableness. *See id.* at 160-61, 503 S.E.2d at 489 (finding sufficient evidence in the record to support each factor that the trial court considered).

and *Loan Association v. Mariner's Cay Development Corporation*, 295 S.C. 208, 367 S.E.2d 696 (1988), the South Carolina Supreme Court reversed the attorney fee award of \$125,000 on one cause of action for deficiency following foreclosure of property securing a \$2.8 million note, describing the award as “outrageous and shocking to the conscience of the court.” *Sunrise Sav. & Loan Ass’n*, at 210-11, 367 S.E.2d at 697-98. No evidence was presented to the master demonstrating the reasonableness of the fee, and the circuit court on appeal “had before it only an affidavit from Sunrise’s counsel stating, in conclusory fashion, that the fees were reasonable.” *Id.* In finding the award unsupported by the evidence, the Supreme Court observed: “It appears the matter was not particularly complex. Although a large amount of money was involved in collection of the note, this fact does not govern the size of the fees.” *Id.* at 211, 367 S.E.2d at 698.

In this proceeding, the only explanation for the amount of the attorney fee award in the Judgment is the contingency fee agreement between Plaintiff and its counsel. J. p. 6. In the Order, there is still no reference to evidence in the record supporting the reasonableness of the \$38,419.45 awarded, although there are several conclusory statements regarding Plaintiff’s counsel’s efforts, professional standing, and beneficial results, with no reference to any underlying evidentiary basis. See Order, p. 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. *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).

Notably, the propriety of using a contingency fee agreement as basis for an award of attorney’s fees was discussed by the South Carolina Supreme Court in *Glasscock v. Glasscock*,

304 S.C. 158, 403 S.E.2d 313 (1991), which addressed that both the contingency of compensation and the beneficial results obtained factors “are to be considered in determining *whether* an award should be made.” *Id.* at n.1 (emphasis original). However, with regard to the *amount* to be awarded, the Supreme Court held:

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 at 161, 403 S.E.2d at 315. For the foregoing reasons, the award of a 33 1/3% attorney fee in favor of Plaintiff should be reversed or, at a minimum, the Court should receive evidence on the reasonableness of the amount to award (if any) as part of a rehearing on damages.

IV. CONCLUSION

Based on the legal authorities set forth herein, and as demonstrated in SC OPCO’s earlier submissions to the Court and at oral argument, the Order Denying Defendant SC OPCO, LLC’S Motion to Set Aside Default Judgment and Motion for a New Trial should be altered or amended, reconsidering the foregoing issues in whole or in part, and the Court should set aside the default or, in the alternative, grant SC OPCO’s request for a new trial for rehearing on the issue of damages recoverable against SC OPCO.

[SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted,

s/ Kyle A. Brannon

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ATTORNEYS FOR DEFENDANT
SC OPCO, LLC

September 25, 2023
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
	)	PLAINTIFF'S MEMORANDUM IN
Plaintiff,	)	OPPOSITION TO SC OPCO, LLC'S
	)	MOTION TO ALTER OR AMEND
vs.	)	ORDER DENYING MOTION TO SET
	)	ASIDE DEFAULT JUDGMENT AND
Ridgeland Nursing Center, Inc., Ridgeland	)	MOTION FOR NEW TRIAL
NC, LLC, and SC OPCO, LLC,	)	
	)	
Defendants.	)	
	)	

The Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens ("Lowcountry") submits this memorandum in opposition to Defendant, SC OPCO, LLC's ("SC OPCO") Motion to Alter or Amend the Order Denying Defendant SC OPCO, LLC's Motion to Set Aside Default Judgment and Motion for a New Trial.

On May 12, 2023, the Court entered judgment against SC OPCO. On May 17, 2023, SC OPCO filed a motion to set aside default judgment, for a new trial, and for enlargement of time to file an answer. On September 13, 2023, the Court entered an order denying SC OPCO's motion for numerous, independent reasons. On September 25, SC OPCO filed a motion to reconsider under Rule 59(e), SCRCF. For the reasons stated below, the Court should deny the motion.

ARGUMENT

SC OPCO acquired a skilled nursing facility in Ridgeland, South Carolina. Lowcountry continued to provide linen services under a contract after SC OPCO purchased the facility. SC OPCO received the services, knew that Lowcountry provided them, and paid Lowcountry's invoices for a time after SC OPCO bought the facility. SC OPCO then received over 50 invoices over four months for Lowcountry's services that it ignored. SC OPCO informed Lowcountry that it no longer needed

linen services, thereby terminating the contract, and requested a final invoice so payment could be made. After not receiving payment for the outstanding balance, Lowcountry hired a lawyer and filed this action. SC OPCO received service of process naming it as a defendant and stating it must answer. SC OPCO received notice of a damages hearing but chose not to attend.¹ These facts dictate the same result—SC OPCO is bound to the default judgment by its own conduct. None of its arguments in the motion to reconsider change these undeniable and dispositive facts.

At the core of this judgment is that SC OPCO received service of process and chose not to respond. The result is that SC OPCO is in default and has admitted liability for breach of contract and unjust enrichment/quantum meruit. There is a valid contract and SC OPCO is bound to it. It cannot collaterally attack the contract under the guise of a damages challenge. SC OPCO is bound to the contract, including its early termination fee and attorney's fee.

SC OPCO stuck its head in the sand and ignored repeated attempts to get it to pay or respond. That the judgment has made it see the light is not a basis for relief. Granting relief in this situation would encourage litigants to ignore legal process.

SC OPCO's continued assertion that it is not bound to the contract is a liability argument, not a damages argument. It waived the right to contest liability when it chose not to answer.

Lowcountry incorporates its prior arguments and memoranda, and responds below to SC OPCO's specific arguments.

I. There is no basis to reconsider or amend the denial of SC OPCO's motion for a new trial.

The Court properly denied SC OPCO's motion for a new trial under Rule 59(a), SCRCP, and there is no basis to alter or amend that decision.

¹ SC OPCO complains that Lowcountry did not publicly file service of the notice of damages hearing or service of the judgment on another party. (Mot. p. 2). There is no legal requirement to publicly file those documents, and SC OPCO cites to none. Regardless, the point is whether SC OPCO received proper notices, which it did.

SC OPCO states its Rule 59(A), SCRCP, motion asks for a “hearing [] on the amount of damages.” (Mot. p. 5). In other words, it asks for the Court to have a new damages hearing with SC OPCO remaining in default but to consider anew the amount of damages awarded.

SC OPCO’s arguments as to why the amount of damages are wrong actually address liability by asserting different ways that it is not bound to the contract. (Mot. pp. 5-11). Critically, it is established by virtue of the default that SC OPCO is bound to the contract because it is liable for breach of contract. *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”). The default establishes that SC OPCO is bound to the contract that includes an obligation for legal expenses and an early termination fee, and it cannot contest that liability. It certainly cannot do so by masquerading the arguments as related to damages. This is an independent basis to deny the motion.

SC OPCO takes issue with the Court questioning whether Rule 59(a), SCRCP, applies to this situation—a party seeking to set aside a default judgment using the same arguments under three separate rules. It cites to no law that endorses separate motions under Rule 55, Rule 60, and Rule 59 that all argue the same grounds for relief. To the contrary, the Court of Appeals has held that a “Rule 59 motion pertaining to the default issue was more properly characterized as a Rule 60(b) motion, SCRCP.” *Yoko Kim Melton v. Chong Olenik*, 379 S.C. 45, 49 n.6, 664 S.E.2d 487, 489 (Ct. App. 2008) (separating the argument that the court should have granted the request for a court-certified interpreter as proper under Rule 59 from the remainder of the arguments about excusable neglect and damages).

This Court correctly stated that, in this situation where the grounds for relief from default judgment and a new trial are the same, Rule 59(a) is not meant to provide relief separate from Rule 55 or 60. Regardless, the Court did not refuse to address the motion but, instead, considered the merits and still denied it. (Order p. 12).

Further, the Court did not conduct a trial. It conducted a damages hearing—one that SC OPCO purposefully chose not to attend. SC OPCO had the right to appear and challenge damages at that time, but waived that right by choosing not to attend based on its unilateral view of liability. *Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived). This is not a typical default situation where the defendant argues it did not know about the complaint or the damages hearing. SC OPCO knew. It cannot ignore legal process and notice—waiving its legal rights—and then expect to get a new trial. Waiver is another independent basis to deny the motion on Rule 59.

II. The Court correctly held that SC OPCO had knowledge of the contract and its terms.

SC OPCO argues that the affidavit of Joe Neumann establishes that it did not know about the contract or its terms and that there is no evidence to refute his testimony. (Mot. pp. 5-7). As an initial matter, as explained above, that argument goes to liability that is uncontestable under a Rule 59(a) motion. Even if the Court could address it, SC OPCO is wrong.

SC OPCO's continued assertion that it did not know about the contract is disingenuous at best and outright false at worst. Attached as Exhibit A is an email from an SC OPCO employee for the nursing facility to Lowcountry terminating the contract. It is dated June 21, 2022—six months after SC OPCO purchased the facility. In the email, the employee states:

Thank you for taking care of all of our linen needs & for providing such good service to us for so long. Effective immediately, we will no longer need to continue your service as we are now doing our own linens in house. All of your clean linen is ready for pick up. Please send any final invoices to us so that we may settle our account with you.

(Exh. A). Clearly SC OPCO knew that it was receiving linen services and that the services required termination to stop accruing invoices. The only basis for Lowcountry to provide the linens was the contract. It did not simply show up one day and deliver linens without request.

SC OPCO accuses the Court of not explaining why it rejected some of Neumann's assertions. (Mot. p. 6). The Court plainly explained that it rejected them because the facts show otherwise. (Order p. 8).

The evidence is that SC OPCO knew about the contract.² A review of the undenied facts of this case show that SC OPCO's assertions ignore reality. The reality is that SC OPCO operated a business that received **weekly** linen services from Lowcountry for **months** after it bought the facility. (Exh. A to Cmplt.). Between February 14, 2022 and April 29, 2022, SC OPCO wrote four separate checks to Lowcountry for outstanding invoices. (Exh. E – Checks). SC OPCO knew where the linens were coming from. Despite paying nearly \$20,000.00 to Lowcountry after acquiring the facility, Neumann asserts that, when SC OPCO received the Complaint, it “had no knowledge of the Plaintiff.” (Aff. p. 2 ¶ 6). The Plaintiff—Lowcountry—provided weekly services to SC OPCO for eight months under a contract signed by Facility Administrator, Sheri Boyles, received payment for some of those services, and sent over 50 invoices to SC OPCO for those services over the course of four months. (Cmplt.; Order p. 2). To argue that SC OPCO did not know who Lowcountry was and did not know about the contract defies reality. The Court correctly “reject[ed] SC OPCO's assertion that it did not have any knowledge of the contract or its terms.” (Order p. 8).

SC OPCO disputes the Court's finding that the knowledge of Sheri Boyles, its Facility Administrator, is imputed to it. (Mot. Pp. 6-7). It does cite to any law to refute the Court's holding but only incorrectly criticizes the decision the Court relied upon. In *Equitable Tr. Co. v. Columbia Nat'l Bank*, 145 S.C. 91, 114, 142 S.E. 811, 818 (1928), the Supreme Court stated:

The rule now adopted in most jurisdictions is this: ***Any knowledge or information possessed by an agent at the time of acting as agent for a corporation, with respect to the matter upon which he is to act, is notice to the corporation, whenever and however such knowledge or information may have been acquired*** . . . There is no

² SC OPCO tries to distance itself from the contract by differentiating between Ridgeland Nursing Center and Ridgeland Nursing & Rehabilitation Center. (Mot. p. n.5). There is no evidence that these are truly separate entities or separate names for doing business, especially in light of Exh. B from Medicare.gov.

practical distinction between individual knowledge and official knowledge in such cases. In other words, if knowledge is acquired by an agent while not acting for the corporation, but afterwards he acts for the corporation in a matter in which it becomes his duty to communicate the fact his knowledge is imputed to the corporation.

Id. at 114, 142 S.E. at 818 (internal quotation marks omitted) (emphasis added). SC OPCO attacks this authority because it does not discuss knowledge of an employee who then works for a “successor corporation.” (Mot. p. 7). The law cited is not about successor corporations. It is about employee knowledge and when the knowledge is imputed to an employer. Here, Sheri Boyles had actual knowledge of the contract’s terms and its existence, and she continued to work for SC OPCO. Under *Equitable Trust Co.*, her knowledge acquired prior to working for SC OPCO was imputable to SC OPCO. It is simply not credible to continue to employ the **facility administrator**³ who signed contracts on its behalf and then argue that you do not, as the purchasing entity who chose to continue to employ her, have any knowledge of the contract.

Regardless, Boyles’ knowledge is not dispositive of SC OPCO’s knowledge, as explained above and below, because it undeniably knew about and accepted Lowcountry’s service for months.

Finally, SC OPCO disagrees with the Court’s ruling that its receipt of linen services means it must have had knowledge of the contract. (Mot. p. 7). It does not explain how it could receive services, pay nearly \$20,000.00 to Lowcountry, refuse to pay over 50 invoices over a matter of months, and terminate the contract but not know that a contract existed that provided the basis for those services and invoices. It employed someone—paying them a salary—for the purpose of keeping up with vendor contracts. (Aff. of Neumann). This assertion, made without any citation to legal authority, is simply not credible.

³ At the hearing on the motion, SC OPCO stated that it terminated Ms. Boyles in May 2022. (Tr. p. 6). A search of the facility records on October 12, 2023 at <https://www.medicare.gov/care-compare/?guidedSearch=NursingHome&providerType=NursingHome>, showed that Ms. Boyles was still listed as the Managing Employee, and had been since November 2021. (Exh. B). A search on SC DHEC’s website on October 12, 2023 at <https://sc-dhec.maps.arcgis.com/apps/webappviewer/index.html?id=e8b4eea83cab491bb3e3663093e14656>, also still listed Ms. Boyles as the facility Administrator. (Exh. C).

III. The Court correctly held that successor liability is not at issue.

SC OPCO continues to misstate this argument and issue.⁴ It says the Court held it “responsible for Ridgeland Nursing Center’s contractual damages” under the mere continuation exception to successor liability. (Mot. pp. 8-9). The Court made no such ruling. It held that SC OPCO’s own conduct in accepting the services with knowledge of the contract and its terms. (Order p. 8). It was not held liable simply because it continued to operate the facility but because it chose to receive the services and pay for them with knowledge of the existence of the contract, and continued to receive services after paying invoices and while it employed someone whose job is to deal with vendor contracts. The Court correctly held it is simply not credible for a sophisticated business entity⁵ to receive a weekly service for months, pay nearly \$20,000.00 in outstanding invoices, and not know that a contract for that service exists.

Regardless, this argument goes to liability for breach of contract which is established as a matter of law in this case by virtue of SC OPCO’s intentional default. Therefore, it is barred from making this argument.

SC OPCO does not state that it gave Lowcountry notice of its purchase. To accept the services while not telling Lowcountry of the entity change and then argue it is not bound to the contract under which Lowcountry believed it was providing services amounts to equitable estoppel. *See Zabinski v.*

⁴ As an initial matter, SC OPCO seems to have taken inconsistent positions on whether it is a successor. In the motion to set aside default, SC OPCO said that it did not succeed Ridgeland Nursing Center. (Mot. p. 10). In the current motion, SC OPCO criticizes the Court’s citation to a case because, it says, the case does not “involve imputing knowledge to a successor corporation”—implying that a successor corporation exists in this case. (Mot. p. 7). SC OPCO must choose one position. But, regardless of which one it is, the Court still correctly ruled on this issue.

⁵ SC OPCO states that the finding that it is a “‘multi-state, federally regulated corporation’ is factually incorrect” but never explains why that is incorrect. (Mot. p. 9 fn.9). SC OPCO is a New Jersey corporation and operates a business in South Carolina. (Aff. of Neuman). Medicare.gov states that the facility participates in Medicare and Medicaid, which necessarily means that it is subject to federal regulation.

Bright Acres Assocs., 346 S.C. 580, 589, 553 S.E.2d 110, 114 (2001). The evidence and law support the Court’s ruling, and there is no reason to reconsider.

IV. The Court correctly awarded damages for the early termination fee.

SC OPCO’s argument on this damage element is barred as a matter of law and waived. Even if the Court could address it, SC OPCO is wrong on the merits.

The default itself means that SC OPCO is bound to the contract terms as a matter of law. It cannot attack the enforceability of contract terms and masquerade that as a damages argument. Here, it argues that it cannot be liable for an early termination fee. That is a liability argument that is barred. *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”).

Further, SC OPCO waived the right to challenge the amount of damages by admittedly choosing not to appear at the damages hearing. *See Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived).

On the merits, there is evidence of termination. SC OPCO terminated Lowcountry’s services and, despite asking for a final invoice so payment could be made, SC OPCO refused to pay. Nonpayment is a basis to consider the contract terminated. *See Silver v. Aabstract Pools & Spas, Inc.*, 376 S.C. 585, 593, 658 S.E.2d 539, 543 (Ct. App. 2008) (holding the failure to pay an installment is a “substantial breach” that gave the non-breaching party “the right to consider the contract at an end”). Exhibit A shows that SC OPCO clearly gave notice of its early termination to Lowcountry.

SC OPCO’s attack of the Complaint allegations is baseless. The Complaint alleges the existence of a contract, a breach, and the contract terms—including the early termination fee—and asks for damages for that fee. (Cmplt. pp. 2-4). SC OPCO knew that Lowcountry alleged it owed that fee but intentionally chose not to respond or challenge it at the damages hearing. It is too late.

Finally, SC OPCO incorrectly argues that the early termination fee is “grossly disproportionate to the actual damage” of the unpaid invoices amount. (Mot. p. 11). This is legally

and factually wrong. Legally, SC OPCO cites to no law that requires a termination fee to proportionately match another category of damages. Factually, it is not disproportionate. The annual value of the contract to Lowcountry was approximately \$60,000.00 per year (using the \$20,000.00 owed for four months in 2022). SC OPCO terminated the contract by nonpayment in early 2022, with three years of the term left. That is approximately \$180,000.00 of revenue that Lowcountry expected and planned for under the contract terms but did not receive. An early termination fee for half of that is not grossly disproportionate by any measure. Regardless, it was contractually agreed upon, and SC OPCO cannot dispute the contract terms.

The Court correctly denied the motion for a new trial, and SC OPCO raises no basis for reconsideration.

V. The damages amount is equitable.

SC OPCO chose to go into default. As a result, it is liable for breach of contract and for unjust enrichment. The damages are fully supported by the breach of contract cause of action. Therefore, there is no basis to address equitable damages. Even if the Court needed to address it, SC OPCO is wrong on the merits.

“In an action in quasi-contract, the measure of recovery is the extent of the duty or obligation imposed by law, and is expressed by the amount which the court considers the defendant has been unjustly enriched at the expense of the plaintiff.” *Stringer Oil Co. v. Bobo*, 320 S.C. 369, 373, 465 S.E.2d 366, 369 (Ct. App. 1995). Prejudgment interest is recoverable in an unjust enrichment claim. *QHG of Lake City, Inc. v. McCutcheon*, 360 S.C. 196, 206, 600 S.E.2d 105, 110 (Ct. App. 2004). The Court of Appeals stated the standard for calculating quantum meruit damages as:

If the value of what was received and what was lost were always equal, there would be no substantial problem as to the amount of recovery, since actions of restitution are not punitive. In fact, however, the plaintiff frequently has lost more than the defendant has gained, and sometimes the defendant has gained more than the plaintiff has lost. In such cases the measure of restitution is determined with reference to the tortiousness of the defendant’s conduct or the negligence or other fault of one or both of the parties in creating the situation giving rise to the right to restitution. If

the defendant was tortious in his acquisition of the benefit he is required to pay for what the other has lost although that is more than the recipient benefited. If he was consciously tortious in acquiring the benefit he is also deprived of any profit derived from his subsequent dealing with it.

Stringer Oil Co. v. Bobo, 320 S.C. 369, 373-74, 465 S.E.2d 366, 369 (Ct. App. 1995) (internal quotation marks omitted) (emphasis in original).

This case falls squarely within *Stringer*'s standard. SC OPCO's conduct resulted in it gaining more than the mere \$20,311.36 in Lowcountry's loss for the actual linens. It gained the time value of the money it retained, it gained the ability to operate its facility on a daily basis for months without payment for that, it gained the time value of money in refusing to respond to invoices and proper service of this lawsuit.

It is undisputed at this point that SC OPCO owes \$20,311.36 in unpaid invoices. (Mot. p. 6 n.7). Its wrongful refusal resulted in its enrichment of more than simply that amount. It received the benefit of goods and services from Lowcountry and must pay damages for the unjust receipt and retention of them without payment. *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 467, 684 S.E.2d 756, 764 (2009).

SC OPCO wrongfully refused to pay for the linens after repeated invoices—keeping that money and interest that could have been earned on it for its own benefit. See *Wachovia Bank, N.A. v. Coffey*, 404 S.C. 421, 426 n.1, 746 S.E.2d 35, 38 (2013) (“One of equity’s most important aspects is the principle of right and fair dealing, between parties to particular transaction.”).

SC OPCO benefitted from operating its business with linens without payment. The linens provided include sheets, pillow cases, towels, washcloths, mops, and tablecloths. (Exh. to Cmplt.). All of these are necessary to its everyday operations and to fulfill its obligations to residents. It cannot operate a skill nursing facility without linens. But when it did so, SC OPCO was able to float its operations without paying for them in full.

SC OPCO refused to respond to Lowcountry's demands for months and forced Lowcountry to hire an attorney and file this lawsuit to try to get money it is rightfully owed. All the while, SC OPCO benefitted from not paying to hire a lawyer to challenge payment, likely in the hopes that Lowcountry would just drop its request for payment. *See Taff v. Smith*, 114 S.C. 306, 312, 103 S.E. 551, 553 (1920) ("No person shall be allowed to reap the benefits arising from his own wrongful acts.").

Stated plainly, SC OPCO tried to operate its business with goods and services from Lowcountry without paying for them. This is the hallmark of inequitable conduct. The fact that it ignored invoices for months while continuing to get the services shows that it wanted to get something for nothing. Its retention of the goods, services, and money owed unjustly enriched SC OPCO and the damages awarded are the remedy for that wrong. *Taff*, 114 S.C. at 312, 103 S.E. at 553 ("Equity will not suffer a wrong without a remedy.").

SC OPCO cites to *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990), for the proposition that it cannot be liable for interest, early termination, or attorney's fees because it was not a party to the contract. (Mot. pp. 12-13). *Chan* has nothing to do with the facts of this case. In *Chan*, the court *sua sponte* used permissive joinder to add parties to a breach of contract action because it believed they were used by an existing party to deprive the opposing party of sales commissions. *Chan v. Thompson*, 302 S.C. 285, 291, 395 S.E.2d 731, 735 (Ct. App. 1990). On rehearing, the Court explained that adding "these companies as parties provided the opportunity to the Thompsons to prove their claim" but, because "they were not parties to the contracts a judgment for breach of contract cannot be rendered against them." *Chan v. Thompson*, 302 S.C. 285, 292, 395 S.E.2d 731, 735-36 (Ct. App. 1990). Those facts are wholly distinguishable from this case. Here, Lowcountry named SC OPCO as a defendant and directly asserted a breach of contract claim against it. (Cmplt.).

SC OPCO does not (and cannot) allege any inequitable conduct by Lowcountry. Lowcountry did everything it was required to do in providing services and seeking payment for its services. It

even continued to provide the services for months without payment. It is SC OPCO's conduct that resulted in its unjust enrichment beyond the value of the linens. The Court correctly entered damages for SC OPCO's inequitable conduct as supported by the law.

VI. The Court fully and correctly considered and rejected SC OPCO's Rule 60(b), SCRCP argument.

SC OPCO's first argument on Rule 60(b), SCRCP, is unfair to the Court. It argues that there are four grounds for good cause under Rule 60(b)—“mistake, inadvertence, surprise, or excusable neglect”—and the Court erred by only considering mistake and not the other three grounds. (Mot. pp. 13-14). While SC OPCO's motion states that the same facts support a finding on all four grounds, it focused almost exclusively on an alleged mistake of fact.⁶ (Mot. to set aside default pp. 7-8). To accuse the Court of an error in this regard is unfair. Notably, SC OPCO does not even now articulate why its conduct could meet any of these three grounds that it accuses the Court of not considering. The sole fact that SC OPCO admits it received service of process and chose not to respond prohibits a finding of inadvertence, surprise, or excusable neglect.

As to the merits of good cause, the Court did fully consider SC OPCO's evidence of an alleged mistake of fact. Its assertion to the contrary is based only on the Court's rejection of evidence that Lowcountry sent correspondence to the facility that was not addressed to SC OPCO. (Mot. pp. 14-15). The Court disagreed because the relevant evidence is that actual service of process was made directly to SC OPCO. (Order p. 6). The addressee of correspondence does nothing to negate the undisputed fact that SC OPCO received actual service of process of a complaint with its name on it. SC OPCO accuses Lowcountry of having a “role in the confusion” of SC OPCO. (Mot. p. 14). This

⁶ “This was an honest **mistake** of fact.” (Mot. p. 7) (emphasis added). “. . . all led SC OPCO to **mistakenly** believe . . .” (Mot. p. 7) (emphasis added). “SC OPCO submits it made an honest **mistake** of fact . . .” (Mot. p. 7) (emphasis added). “SC OPCO's **mistake** was a good faith error . . .” (Mot. p. 8) (emphasis added). “That's a **mistake** of fact, and we contend that . . . satisfies the burden under – under Rule 60(b) . . . and is the basis, really, the heart of the motion.” (Tr. of hearing pp. 5-6) (emphasis added).

is absurd. Lowcountry sued SC OPCO as a defendant after making repeated requests for payment, served it with legal process, and provided it notice of the damages hearing. (Ex. F – Hearing Notice). There is nothing confusing about that.

Further, that there is not a filing of service of process on Ridgeland Nursing Center also does nothing to negate actual service on SC OPCO. In short, SC OPCO's arguments about correspondence and another entity are irrelevant to an argument about an alleged mistake in failing to file an answer when it received undisputed service and made a conscious, intentional decision to not answer or appear at the damages hearing.

The Court correctly held the factor of timing for the motion for relief did not weigh in favor of setting aside the default. SC OPCO argues the Court erred because it timely sought relief in relation to when it learned of the default judgment. (Mot. p. 15). However, it cites no authority that the only relevant time period is from when a party learns of judgment until when it files a Rule 60(b) motion, particularly where the defendant does not dispute service or notice of the damages hearing. Regardless, SC OPCO does not refute the law the Court cited that a "party has a duty to monitor the progress of his case." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). "When a SCRCP 60(b) motion is made within one year of the original judgment, whether the motion was made within a reasonable time after discovery of the mistake is within the sound discretion of the trial judge." *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992). Given that SC OPCO already knew about the lawsuit and damages hearing, and its obligation to monitor its case, the Court correctly exercised its discretion to find that SC OPCO's motion was untimely.

The Court correctly held that there is not a meritorious defense. (Order pp. 8-10). SC OPCO challenges the Court's rulings as to the contract termination fee and attorney's fees. (Mot. pp. 15-16). Its argument on this point merely references other arguments in its motion. The response to those is adequately addressed elsewhere in this memorandum. SC OPCO does not challenge the Court's

ruling that it has no meritorious defense to payment of the invoices. That ruling supports the Court's rulings on both mistake of fact and a meritorious defense.

Finally, the Court correctly found it would prejudice Lowcountry to set aside the default judgment. SC OPCO challenges this for two reasons—the statement of the length of the case and the reference to other creditors. (Mot. p. 16). Both are supported by the record.

First, the dispute between Lowcountry and SC OPCO for unpaid invoices began in March 2022, when SC OPCO stopped paying for services. Therefore, the dispute has been ongoing for a year-and-a-half. Regardless, that statement was not made in the prejudice ruling but was stated in the ruling on a meritorious defense to attorney's fees.

Second, the existence of another judgment is relevant to prejudice. In the action against SC OPCO by TCI Business Capital, TCI got a default judgment in February 2023 and has already initiated collection proceedings and received a nulla bona. (Exh. D). The facts in TCI's case mirror this case—SC OPCO paid for services for a short time when it took over the facility and then quit without explanation and refused to respond to any request for payment until a default judgment was entered. (Exhs. 3-4 to Pl. Memo. in Opp. to Mot. to set aside). TCI's collection efforts make it less likely that any money may be available for Lowcountry to collect. Regardless, the Court listed numerous other, independent reasons for finding prejudice, including that Lowcountry did all it was required to do in bringing this case, even asking and waiting a prolonged time for payment before resorting to the legal system. (Order p. 10).

VII. The attorney's fee award is reasonable and supported by the law.

The Court correctly held that the attorney's fee award is reasonable under the facts of this case and the law. (Order pp. 9-10). The Court rejected SC OPCO's argument that *Glasscock v. Glasscock*, 304 S.C. 158, 403 S.E.2d 313 (1991), prohibited a contingency fee award of attorney's fees, which SC OPCO no longer disputes. The Court then conducted an analysis of the *Glasscock* factors. (Order p. 10). SC OPCO provides no legal or factual error that warrants reconsideration.

SC OPCO continues to argue that it should not have to pay attorney's fees under the contract. As argued above, that is a liability argument that it is not bound to the contract. That argument is foreclosed by the fact of the default and was waived by SC OPCO when it chose not to participate in the damages hearing. *See Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (“[T]he defaulting defendant has conceded liability.”); *Beaufort Cnty. v. Butler*, 316 S.C. 465, 467, 451 S.E.2d 386, 387-88 (1994) (stating a procedural right may be waived).

Even if the Court could get past these procedural hurdles, SC OPCO is wrong on the merits of its five arguments on the amount of attorney's fees.

First, SC OPCO argues that Lowcountry did not list an amount of attorney's fees requested in the Complaint or the affidavit for entry of default. (Mot. p. 17). That is not a requirement. On the contrary, Rule 55(b)(3), SCRCF, provides the procedure for seeking attorney's fees for a default judgment. It says, “[i]f a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b) (2) of this rule shall be required unless” the party files a motion with an affidavit of fees. Rule 55(b)(3), SCRCF. In this case, the Court held a hearing to address attorney's fees. SC OPCO got notice of that hearing but chose not to attend.

SC OPCO cites to Rule 54(c), SCRCF, in support of its argument—alleging the rule says that a default judgment cannot differ from the amount requested. (Mot. pp. 16-17). Its argument is misleading because it omits a key phrase of the rule. The sentence, in full, states: “A judgment by default shall not be different ***in kind from or*** exceed in amount that prayed for in the demand for judgment.” Rule 54(c), SCRCF (emphasis added). Here, the “kind” of damages requested in the Complaint included attorney's fees. Therefore, the damages awarded satisfy Rule 54(c).

Second, SC OPCO argues it did not have a contract with Lowcountry and, therefore, cannot be bound to the attorney's fee provision. As argued above and in Lowcountry's prior memoranda, SC OPCO is bound to the contract because it knew about it, requested and accepted services under it, and made payments pursuant to its terms. SC OPCO has never provided an explanation for how or

why Lowcountry would have provided services and how or why SC OPCO knew what to pay for them and was obligated to pay without the contract. SC OPCO continues to falsely argue that the Complaint does not allege it had or breached a contract with Lowcountry. (Mot. p. 17 n.13). The Complaint names SC OPCO as a defendant and states a cause of action for “Breach of Contract against All Defendants.” (Cmplt.) (emphasis added). That is a direct allegation of a contract and its breach. If SC OPCO disagreed, it should have filed an answer.

Third, SC OPCO criticizes the Court’s considerations of the work of Plaintiff’s counsel following the default judgment and says that does not “justify[] the reasonableness of the fee awarded.” (Mot. pp. 17-18). Every bit of work that Lowcountry’s counsel does to seek recovery for it is justification for the reasonableness of the fee. There is no law that says an attorney’s fee for a default judgment is cutoff at the moment of the judgment. To the contrary, the fee, costs, and interest may be increased in an order entered after collection efforts.

Fourth, SC OPCO criticizes the Court’s citation to *Global Protection Corp. v. Halbersberg*, 332 S.C. 149, 161, 503 S.E.2d 483, 489 (Ct. App. 1998), for the premise that a contingency fee can be a customary agreement for services in pursuing a breach of contract action. (Order p. 10; Mot. p. 18). SC OPCO asserts that the only basis for the fee award is the contingency fee award and argues a contingency agreement is “not controlling” and should not be exclusively relied upon. (Mot. pp. 18-19). This Court did not treat it as controlling or rely upon it exclusively. Instead, in its order denying the motion to set aside the judgment and for a new trial, the Court actually addressed the *Glasscock* factors “without regard to the contingency fee arrangement.” (Order p. 10). Therefore, SC OPCO’s argument on this point is moot. There is simply nothing for this Court to reconsider on this issue when it is already addressed in its Order.

Fifth, SC OPCO argues there was not sufficient evidence to support the award of attorney’s fees. (Mot. pp. 18-20). To the contrary, the Court correctly considered the evidence and the law to find the award reasonable. When “determining a reasonable attorney’s fee,” the Court considers: “(1)

the nature, extent, and difficulty of the case; (2) the time necessarily devoted to the case; (3) professional standing of counsel; (4) contingency of compensation; (5) beneficial results obtained; (6) customary legal fees for similar services.” *Glasscock v. Glasscock*, 304 S.C. 158, 161, 403 S.E.2d 313, 315 (1991).⁷ The Court analyzed each of those factors. (Order p. 10). SC OPCO describes its analysis as “conclusory” and without “reference to any underlying evidentiary basis.” (Mot. p. 19). That is false and unfair. The evidence of attorney’s fees was addressed at the damages hearing that SC OPCO chose not to attend. There was evidence of all of the *Glasscock* factors. SC OPCO’s disagreement with the analysis is not a basis for reconsideration, especially when it provides no conflicting evidence.

SC OPCO complains that the amount of attorney’s fees exceeds the amount of the invoices. Notably, “[t]he amount of recovery and the contingency of compensation are only two of the six factors to be considered by the trial court in determining an appropriate attorney’s fee.” *Rice v. Multimedia, Inc.*, 318 S.C. 95, 101, 456 S.E.2d 381, 385 (1995). Regardless, that is not dispositive of an award of attorney’s fees. *See Baron Data Sys., Inc. v. Loter*, 297 S.C. 382, 385, 377 S.E.2d 296, 297 (1989) (noting that “other jurisdictions have awarded attorney fees which exceeded the verdict obtained” and affirming an award of \$26,000.00 in attorney’s fees for a \$16,151.00 judgment). “[T]here is no requirement that an attorney’s fee be less than or comparable to a party’s monetary judgment.” *Taylor by Taylor v. Medenica*, 331 S.C. 575, 582, 503 S.E.2d 458, 462 (1998) (citing *Baron* as approving “an award of attorney’s fees where the fee substantially exceeded the actual

⁷ SC OPCO criticizes the Court’s use of the *Glasscock* factors because it says those are used to decide whether to award an attorney’s fee and not the amount of the fee. (Mot. p. 20). This is unpreserved and hypocritical given that SC OPCO argued in its motion to set aside the judgment that the Court used the contingency fee agreement “instead of the actual attorney’s fees incurred by [Lowcountry]’s counsel based on the six factors prescribed by *Glasscock*.” (Mot. to set aside p. 11). Regardless, the “amount” factors that SC OPCO cites to do not necessitate reconsideration because they are either inapplicable as dealing with an hourly rate or are already included in the six *Glasscock* factors.

recovery”). The Court’s award of fees in this case follows the law and was an appropriate exercise of discretion.

CONCLUSION

Lowcountry did everything that it could do to get SC OPCO to timely respond. It sent invoices for four months asking for payment. It filed suit and properly served it, giving SC OPCO the right to explain why it should not have paid the invoices. It sent notice of the damages hearing to give SC OPCO an opportunity to challenge why it should have not to pay damages. SC OPCO ignored all of it. If there is a case for default judgment, this is it.

The award of damages corresponds to the contract terms and complies with the law on unjust enrichment and attorney’s fees.

SC OPCO provides no basis for the Court to alter or amend its decision, and the Court should deny the motion.

BARNES LAW FIRM, LLC

/s/ William F. Barnes, III

William F. Barnes, III

SC Bar #78220

13 Mulberry Street East

P.O. Box 897

Hampton, SC 29924

Phone: (803) 943-4529

wbarnes@barneslawfirm.com

ATTORNEY FOR THE PLAINTIFF

October 13, 2023
Hampton, South Carolina



Perry Bullard <perry6434@gmail.com>

Fwd: RE: Lowcountry Medical Linens - Automated Statement

1 message

Abby Boswell [REDACTED]@lowcountrymedicallinens.com>

Tue, Jun 21, 2022 at 10:12 AM

To: Brunson Laundry & Lowcountry Medical Linens [REDACTED]@lowcountrymedicallinens.com>, reelclean@comcast.net, b.laundry@comcast.net

Abby Boswell
Scrub and Lab Coat Division Manager
[REDACTED]-2558

----- Original Message -----

Subject: RE: Lowcountry Medical Linens - Automated Statement**Date:** 2022-06-21 10:10**From:** Trisha Dixon [REDACTED]@ridgelandnrc.com>**To:** Lowcountry Medical Linens [REDACTED]@lowcountrymedicallinens.com>, RIDGELAND NURSING CENTER <WParker@ltccs.com>, RIDGELAND NURSING CENTER <amuszkat@ltccs.com>

Good morning,

Thank you for taking care of all of our linen needs & for providing such good service to us for so long. Effective immediately, we will no longer need to continue your service as we are now doing our own linens in house. All of your clean linen is ready for pick up. Please send any final invoices to us so that we may settle our account with you.

Thank you again for all of your service!

Trisha Dixon RN, LNHA*Ridgeland Nursing & Rehab*

1516 Grays Hwy

Ridgeland, SC 29936

[REDACTED]-5581

From: Lowcountry Medical Linens <clean@lowcountrymedicallinens.com>**Sent:** Thursday, June 2, 2022 8:03 PM**To:** RIDGELAND NURSING CENTER <WParker@ltccs.com>; RIDGELAND NURSING CENTER

Ridgeland Nursing Center Inc**Ownership****Legal business name**

SC Opco LLC

Ownership type

For profit - Individual

Contact info

1516 Grays Highway
 Ridgeland, SC 29936
 (843) 726-5581

Affiliated entity name

None - This facility isn't part of an affiliated entity.

Affiliated entity ID

None - This facility isn't part of an affiliated entity.

Owners and managers of Ridgeland Nursing Center Inc**OWNER**

5% or greater direct ownership interest

RIDGEVIEW OPERATIONS HOLDINGS LLC (100%)

since 11/01/2021

5% or greater indirect ownership interest

MIRLIS, ELIYAHU

since 11/01/2021

NEUMAN, JOSEF

since 11/01/2021

SC OPCO HOLDCO LLC

since 11/01/2021

SHORE HEALTH MANAGEMENT TRUST

since 11/01/2021

OPERATIONAL/MANAGERIAL CONTROL

NEUMAN, JOSEF

since 11/01/2021

MANAGING EMPLOYEE

BOYLES, SHERI

since 11/01/2021



Nursing Home: RIDGELAND NURSING AND REHAB CENTER

License / Expiration: NCF-1066 / 11/30/2023

Address: 1516 GRAYS HWY
RIDGELAND, SC 29936

Facility #: [843-726-5581](#)

Administrator: [BOYLES, SHERI P](#) PH#: [803-865-1999](#)

Facility Email: JGREEN@RIDGELANDNRC.COM

Fac. Cont. Email: SHERI_BOYLES@LCCA.COM

County / Ownership Type: Jasper / Limited Liability

Mailing Address: ,

Licensee: SC OPKO LLC

Alzheimer Care: N
Alzheimer Unit: N

Institutional Beds:
Total Licensed Beds: 88

[Regulation 61-17](#)

[Medicare.gov Nursing Home Profile](#)

EXHIBIT

D

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

FILED
JASPER COUNTY
CLERK OF COURT

2023 AUG 28 P 4:46

TCI BUSINESS CAPITAL, A DIVISION OF FIDELITY BANK, Plaintiff, vs. SC OPCP LLC D/B/A RIDGELAND NURSING & REHABILITATION CENTER, Defendant	Case No.: 2022CP2700610 NULLA BONA
--	---

Per South Carolina Law SECTION 15-39-130 the Jasper County Sheriff's Office, is returning Execution of Judgment Case Number 2022CP2700610 to the Clerk of Court of Common Pleas, Nulla Bona. Upon receipt of the Execution of Judgment the Jasper County Sheriff's Office lodged considerable effort to collect from the Defendant to satisfy the Judgment in the following manner:

- ☒ Notice of Judgment and Demand for Payment mailed to the Defendant.
- ☒ Phone call(s) to the Defendant.
- ☒ Research conducted to ascertain debtor ownership of valuable assets.

Our research revealed the following information causing the Jasper County Sheriff's Office to wholly fail to execute the judgment.

- ☒ The Defendant does not own valuable asset(s) eligible for seizure and sale or the cost to the Plaintiff to pursue such asset(s) is too great.
- ☒ We have been unable to locate Defendant and/or they have not made contact with the Jasper County Sheriff's Office to enter into a Payment Agreement.

NULLA BONA

Dated this 23rd day of August, 2023


Jasper County Sheriff, Donald Hipp

NULLA BONA

ELECTRONICALLY FILED - 2023 Oct 13 11:21 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA

EXECUTION AGAINST PROPERTY

COUNTY OF JASPER

JUDGMENT ROLL NO: 2022-CP-27-00610

To the Sheriff of the County of Jasper, GREETINGS:

WHEREAS, a judgment was entered on the 10th day of February, 2023 in an action in the Court of Common Pleas for Jasper County between TCI Business Capital, a division of Fidelity Bank, Plaintiff, and SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center Defendants, in favor of said TCI Business Capital, a division of Fidelity Bank against the Defendant SC OPCO LLC d/b/a Ridgeland Nursing & Rehabilitation Center in the sum of One Hundred Forty Two Thousand Four Hundred Twenty and 47/100 (\$142,420.47) Dollars, as appears to us by the Judgment Roll, filed in the Office of the Clerk of Court for Jasper County.

AND WHEREAS, the said judgment was docketed in your County on the 10th day of February 2023 and the sum of \$142,420.47 Dollars for costs of suit, is now actually due thereon.

THEREFORE WE COMMAND YOU, that you satisfy said judgment out of the personal property of the said judgment debtor within your County, or if sufficient personal property cannot be found, then out of the real property in your County belonging to such judgment debtor on the day when the said judgment was so docketed in your County, or at any time thereafter, in whose hands soever the same may be, and duly return this execution, according to law, to the Clerk of Court of Common Pleas for the said County.

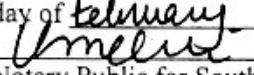
WITNESS the Honorable Clerk of Court of said Court at Ridgeland, South Carolina, the

____ day of _____, 2023.

(L.S.)
C.C.C.P.


Plaintiff's Attorney

Sworn to and subscribed before me this 20th
day of February, 2023


Notary Public for South Carolina

Print Name: Kelly McKain

My Commission Expires May 4, 2028

NULLA BONA

STATEMENT	
Amount of Judgment	\$142,420.47
Plaintiff's Attorney	\$
Clerk	\$
Sheriff	\$
Interest from date hereof	\$



Common Pleas

Case Caption: Tci, Business Capital, A Division Of Fidelity Bank VS Sc Opco Llc ,
defendant, et al
Case Number: 2022CP2700610
Type: Motion/Execution of Judgment

So Ordered

s/Margaret Bostick Jasper County Clerk of Court

Electronically signed on 2023-02-21 08:40:53 page 3 of 3

Ridgeland Nursing and Rehab Center
1516 Grays Highway
Ridgeland, SC 29936

Sterling National Bank

170

Date: 04/29/2022

EXHIBIT

E

Pay Six Thousand Nine Hundred Eight Dollars and 74 Cents

\$6,908.74

Pay to the Order of

Lowcountry Medical Linens
PO Drawer 549
Brunson, SC 29911
United States

[Signature]

096311

THIS CHECK IS VOID UNLESS IT IS DEPOSITED WITHIN 60 DAYS OF THE DATE OF ISSUANCE. IF NOT DEPOSITED WITHIN 60 DAYS, THE CHECK WILL BE VOID. THE BANK OF AMERICA IS NOT RESPONSIBLE FOR THE CASH VALUE OF THIS CHECK.

ENDORSE HERE

☐ CHECK HERE AFTER HOUSE OR REMOTE DEPOSIT DATE

For Deposit Only
APPROPRIATE FOR THE LOWCOUNTRY MEDICAL LINENS
RECEIVED BY: JAL
DO NOT WRITE, STAMP OR SIGN OVER THIS CHECK
2022-05-06 15:11
953

TO VIEW WATERMARKS,
HOLD AT AN ANGLE OR
UNDER BLACKLIGHT

THIS CHECK CONTAINS THE SECURITY FEATURES LISTED BELOW
AND EXCEEDS INDUSTRY STANDARDS

1. Microprint - The border on the face of this check and surrounding the endorsement area on the back of this check has lines that are formed by words printed as microprint that appear as a solid line or pattern.
2. Watermarks - The back of this check has "Secure Document" watermarks which may be seen by holding the check at an angle.
3. Warning Band - The Warning Band is a thick band across the top of this check with a printed message regarding its security features.
4. Thermochromic Secure Document Seal - This check has a secure document seal in the endorsement area which is printed with thermochromic ink, which will turn black when rubbed.
5. Diagonal Dimensional Backer - The back of this check has a pattern of diagonal lines. This is intended to deter counterfeiters in altering the check by using a cut and paste method.

ELECTRONICALLY FILED - 2023 OCT 13 11:21 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

Ridgeland Nursing and Rehab Center
1516 Grays Highway
Ridgeland, SC 29936

Sterling National Bank

141

Date: 04/11/2022

Pay Two Thousand Four Hundred Nine Dollars and 98 Cents

04/11/2022

Pay to the Order of Lowcountry Medical Linens
PO Drawer 549
Brunson, SC 29911
United States

[Signature]

096311

ELECTRONICALLY FILED - 2023 Oct 13 11:21 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

CHECK HERE AFTER MOBILE OR REMOTE DEPOSIT DATE
For Deposit Only
LOWCOUNTRY MEDICAL LINENS
LOWCOUNTRY Medical Linens
2022-04-18 14:13
088

TO VIEW WATERMARKS,
HOLD AT AN ANGLE OR
UNDER BLACKLIGHT

THIS CHECK CONTAINS THE SECURITY FEATURES LISTED BELOW
AND EXCEED INDUSTRY STANDARDS

Microprint - The border on the face of this check and surrounding the endorsement on the back of this check, has lines that are formed by words printed as microprint appear as a solid line or pattern.
Watermarks - The back of this check has "Secure Document" watermarks which be seen by holding the check at an angle.
Warning Band - The Warning Band is a thick band across the top of the check with printed message regarding its security features.
Thermochromic Secure Document Seal - This check has a secure document seal in the front that is provided with thermochromic ink which will fade when rubbed.
Diagonal Dimensional Backer - The back of this check has a pattern of diagonal lines. This is intended to deter counterfeiters in altering the check by using a cut and paste method.

Ridgeland Nursing and Rehab Center
1516 Grays Highway
Ridgeland, SC 29936

Sterling National Bank

118

Date: 03/24/2022

Pay Two Thousand Five Hundred Fifty Three Dollars and 50 Cents

2553.50

Pay to the Order of Lowcountry Medical Linens
PO Drawer 549
Brunson, SC 29911
United States

[Signature]

[REDACTED]

096311

ELECTRONICALLY FILED - 2023 OCT 13 11:21 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

THIS CHECK IS VOID WITHOUT A SIGNED ENDORSEMENT ON THE FRONT AND BACK OF THIS CHECK. THE CHECK OF ANY SCALE SHOULD BE DEPOSITED IN A DEPOSIT SLIT FOR ADDITIONAL SECURITY FEATURES.

ENDORSE HERE

☐ CHECK HERE AFTER ANNUAL OR REMOTE DEPOSIT DATE

For Deposit Only
Lowcountry Medical Linens
2022-03-23 15:41
049

TO VIEW WATERMARKS,
HOLD AT AN ANGLE OR
UNDER BLACKLIGHT

THIS CHECK CONTAINS THE SECURITY FEATURES LISTED BELOW
AND EXCEEDS INDUSTRY STANDARDS

1. Microprint - The border on the face of this check and surrounding the endorsement area on the back of this check has lines that are formed by words printed as microprint that appear as a solid line or pattern.
2. Watermarks - The back of this check has "Secure Document" watermarks which may be seen by holding the check at an angle.
3. Warning Band - The Warning Band is a thick band across the top of this check with a printed message regarding its security features.
4. Thermochromic Secure Document Seal - This check has a secure document seal in the endorsement area that is printed with thermochromic ink which will turn red when heated.
5. Diagonal Dimensional Backer - The back of this check has a pattern of diagonal lines. This is intended to deter counterfeiters in altering the check by using a cut and paste method.

Ridgeland Nursing and Rehab Center
1516 Grays Highway
Ridgeland, SC 29936

Sterling National Bank

56

Date: 02/14/2022

Pay Seven Thousand Two Hundred Seventy Three Dollars and 46 Cents

\$7,273.46

Pay to the Order of Lowcountry Medical Linens
PO Drawer 549
Brunson, SC 29911
United States



096311

ELECTRONICALLY FILED - 2023 Oct 13 11:21 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

THIS CHECK WAS PRINTED WITH MICROPRINTED BORDER AND SECURE DOCUMENT WATERMARKS ON BACK - HOLD AT ANGLE TO VIEW.
THIS CHECK CONTAINS THE SECURITY FEATURES LISTED BELOW

FOR DEPOSIT ONLY
LOWCOUNTRY MEDICAL LINENS
2022-02-15 11:47

CHECK HERE AFTER NOBILE OR REMOTE DEPOSIT DATE

DO NOT WRITE, STAMP OR SIGN
2022-02-15 11:47

TO NEW INTERNATIONAL
FOR DEPOSIT ONLY
ORDER BY MICHAEL

THIS CHECK CONTAINS THE SECURITY FEATURES LISTED BELOW
AND EXCEED INDUSTRY STANDARDS

- 1. Microprint - The border on the back of this check, and surrounding the endorsement area on the back of this check, has been microprinted by security features which may be seen by holding the check at an angle.
- 2. Watermarks - The back of this check has a watermark of the Lowcountry Medical Linens logo.
- 3. Warning Band - The Warning Band is a red band across the top of this check with a print of the Lowcountry Medical Linens logo.
- 4. Thermochromic Secure Document Seal - This check has a secure document seal in the endorsement area on the back of this check which will change color when tampered with.
- 5. Diagonal Dimensional Marker - The back of this check has a pattern of diagonal lines. These lines are used to detect counterfeiters by holding the check at an angle and viewing the lines.

Kathleen C. Barnes
kbarnes@barneslawfirmssc.com



William F. Barnes III
wbarnes@barneslawfirmssc.com

March 30, 2023

Via First Class Mail

Cogency Global, Inc., Registered Agent
SC OPCO, LLC
2 Office Park Court, Suite 103
Columbia, SC 29223

Re: Lowcountry Medical Linens v. Ridgeland Nursing Center, Inc., et al.
Civil Action No.: 2023-CP-27-00005

Dear Sir or Madam:

Please find enclosed a Notice of Hearing for service upon you regarding the above-referenced matter. The hearing is scheduled for Tuesday, April 25, 2023 at 10:00 a.m. EST at the Bennett Law Firm, P.S. located in 162 Second Avenue, Ridgeland, South Carolina 29936. Steve Bennett will serve as the Special Referee in this matter and take testimony and determine damages.

With kind regards, I am

Sincerely,


William F. Barnes, III

WFB/mcd
Enclosures as stated

ELECTRONICALLY FILED - 2023 Oct 13 11:21 AM - JASPER - COMMON PLEAS - CASE#2023CP2700005

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	NOTICE OF HEARING
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	
	)	

PLEASE TAKE NOTICE the Plaintiff, Bullard & Son, Inc. d/b/a Lowcountry Medical Linens, hereby provides notice that a hearing will be held before C. Stephen Bennett on Tuesday, April 25, 2023 at 10:00 a.m. The hearing will take place at the Bennett Law Firm, P.S. located at 162 Second Avenue, Ridgeland, South Carolina 29936. Mr. Bennett will serve as the Special Referee in this matter and take testimony and determine damages. You have a right to attend and participate in the hearing.

BARNES LAW FIRM, LLC



William F. Barnes, III, SC Bar #78220
 13 Mulberry Street East
 P.O. Box 897
 Hampton, SC 29924
 Phone: (803) 943-4529
wbarnes@barneslawfirmssc.com
 ATTORNEY FOR THE PLAINTIFF

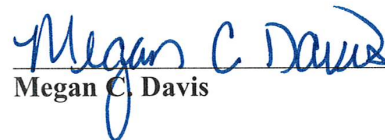
March 30, 2023
 Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTEENTH JUDICIAL CIRCUIT
COUNTY OF JASPER	)	
	)	CIVIL ACTION NO.: 2023-CP-27-00005
Bullard & Son, Inc. d/b/a Lowcountry	)	
Medical Linens,	)	
Plaintiff,	)	
	)	
vs.	)	CERTIFICATE OF SERVICE
	)	
Ridgeland Nursing Center, Inc., Ridgeland	)	
NC, LLC, and SC OPCO, LLC,	)	
Defendants.	)	

This is to certify that I, **Megan C. Davis**, with the Barnes Law Firm, LLC, attorneys for the Plaintiff, have this date mailed via the U.S. Postal Service, a true and correct copy of the within **Notice of Hearing** with first class postage prepaid to the last known address of such parties below:

Cogency Global, Inc., Registered Agent
SC OPCO, LLC
2 Office Park Court, Suite 103
Columbia, SC 29223

BARNES LAW FIRM, LLC


Megan C. Davis

March 30th, 2023
Hampton, South Carolina

1 STATE OF SOUTH CAROLINA) COURT OF COMMONS PLEAS
2)
3 COUNTY OF JASPER) CA NO.: 2023-CP-27-00005
4)
5 Bullard & Son, Inc., d/b/a)
6 Lowcountry Medical Linens,)
7)
8 Plaintiff,) VIDEO CONFERENCE
9)
10 vs.) HEARING
11)
12 Ridgeland Nursing Center,)
13 Inc., Ridgeland, NC, LLC)
14 and SC OPCO, LLC,)
15)
16 Defendants.)
17)
18)
19)
20)
21)
22)
23)
24)
25)

13 DATE: July 20, 2023

14 TIME: 10:01 a.m.

15 LOCATION: Video Conference Hearing.
16 All parties appearing remotely
17 in the State of South Carolina

19 REPORTED

20 BY

21 SALLYE D. NELSON

1 APPEARANCES:

2 Special Referee: C. Stephen Bennet, Esq.
3 Bennett Law Firm, PA
4 Post Office Box 1929
5 Ridgeland, South Carolina 29936

6 For the Plaintiff: William F. Barnes, III, Esq.
7 Barnes Law Firm, LLC
8 Post Office Box 897
9 Hampton, South Carolina 29924

10 For the Defendants: Kyle A. Brannon, Esq.
11 Maynard Nexsen, PC
12 Post Office Box 2426
13 Columbia, South Carolina 29202
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1 PROCEEDINGS

2 SPECIAL REFEREE BENNETT: All right. This is
3 in Civil Action 2023-CP-27-0005, Bullard & Son
4 d/b/a Lowcountry Medical Linens v. Ridgeland
5 Nursing Center, Inc., Ridgeland Nurse NC, LLC, and
6 South Carolina OPCO, LLC. I held a hearing -- a
7 default hearing; the case was referred to me by the
8 circuit court judge, I believe it was Judge Mullen,
9 and we held a hearing on April the 25th of 2023.
10 At the time of the hearing, present was the
11 plaintiff through Representative Perry N. Bullard
12 and also their attorney William Barnes. We called
13 the case after the ten o'clock set time. No one
14 appeared on behalf of the defendant. However, the
15 defendant had retained counsel which did file this
16 motion that we're hearing today, and two documents
17 have been filed. The defendant, South Carolina
18 OPCO has filed a notice of motion and motion to set
19 aside the default and for a new trial. And in
20 opposition to that, the plaintiff has filed a
21 memorandum in opposition to OPCO's motion to set
22 aside default and for a new trial. And so we're
23 here just to hear the OPCO motion today. And so,
24 gentlemen, I believe that's enough -- enough
25 history of the case to have in the record, and so

1 y'all can begin. I think, Kyle, you would -- you
2 would have the burden, so you'd have to go forward
3 first, I believe, am I right?

4 MR. BRANNON: Yes, sir. Thank you, Your
5 Honor.

6 SPECIAL REFEREE BENNETT: Okay. Go ahead.

7 MR. BRANNON: May it please the Court. Kyle
8 Brannon on behalf of defendant, SC OPCO. Your
9 Honor, thank you for -- for kind of teeing up where
10 we are. And we are here before you on that motion
11 that we filed on May 25th to set aside the default
12 judgment in this action and, alternatively, for a
13 new trial.

14 Your Honor, before I get into the timeline,
15 the gist of this really is the following: My
16 client, SC OPCO, made a mistake of fact that it was
17 not being pursued in this action for a couple
18 reasons: One, it knew that it did not have a
19 contract with Lowcountry Medical Linens; two, the
20 plaintiff didn't plead a contract with low -- with
21 SC OPCO, and the exhibit that attached is -- I
22 think, it's undisputed SC OPCO is not a party, and
23 the parties with whom it appears they did contract
24 were the defendants in the case, so that -- that's
25 a mistake. That's a mistake of fact, and we

1 contend that -- that -- that satisfies the burden
2 under -- under Rule 60(b) and -- and -- and is the
3 basis, really, the heart of the motion. There's
4 obviously more to it than that, and so I would jump
5 on in.

6 The timeline is as follows, as far as I can
7 tell, Your Honor: So on March 3rd of 2020, it
8 appears Lowcountry Medical Linens entered into a
9 contract with Ridgeland Nursing Center. Now, that
10 contract was signed by Sheri Boyles. I spoke with
11 my client after reading Mr. Barnes' memo, and Ms.
12 Boyles was terminated in May of 2022. So it sounds
13 like my folks need to update whatever document that
14 was Mr. Barnes pulled; I suppose something from
15 DHEC, so they need to update that. But she was
16 terminated in May of '22, no longer works there.
17 It appears from the contract that SC OPCO is not a
18 party. And the next point on the timeline kind of
19 says why. The why is 20 months after the contract
20 is when SC OPCO bought the assets of the facility
21 on Grays Highway from Ridgeland Nursing Center,
22 Inc. So on November 1st of 2021 is when they
23 bought the assets. They bought the assets only,
24 not the liabilities, your typical asset purchase
25 agreement. This is all in Mr. Newman's affidavit.

1 And they didn't take assignment of any contracts;
2 they don't know what contracts Ridgeland Nursing
3 Center had. So fast-forward a few more months into
4 February of '22 -- and that's -- that's the time
5 period of the invoices -- February of '22 to June
6 of '22 are the invoices at issue in this case. It
7 does appear undisputed that the plaintiff did not
8 get paid on those invoices. So on January 5th of
9 this year, plaintiff filed suit; they sued
10 Ridgeland Nursing Center, Inc., Ridgeland NC, LLC,
11 and SC OPCO, and they asserted claims for breach of
12 contract and unjust enrichment. The next day on
13 January 6th, the plaintiff's agent, process server,
14 hand delivered a copy of the summons and complaint
15 to SC OPCO's registered agent; that's -- that's a
16 fact.

17 The next point I think has some -- to me, it
18 is relevant, and I think, critical in -- in some
19 parts. On January 11th of this year, the facility
20 on Grays Highway received a -- a letter from Mr.
21 Barnes addressed to Ridgeland Nursing Center, Inc.,
22 that includes the summons and complaint. At that
23 point, I think that goes to show SC OPCO's belief:
24 "Well, shoot, this is against Ridgeland Nursing
25 Center, Inc. They must have contracted with them."

1 And the facility on Grays Highway did not receive a
2 letter from SC -- directed or addressed to SC OPCO,
3 so that kind of supported its belief that they
4 weren't being pursued: "This is a Ridgeland
5 Nursing Center action." The rest of the procedural
6 posture, Your Honor, you really already know, so
7 I'll be brief, and it's -- it's kind of as you
8 would expect: 39 days after service, affidavit of
9 default was filed; the case was then referred to
10 Your Honor on February 18th. The entry of default
11 was on March 1st. Now, on April 4th, the facility
12 received another letter, and that one was addressed
13 to Ridgeland NC, LLC, the other defendant in the
14 case, and that was a notice of hearing. So again,
15 not directed to SC OPCO. And again, the -- the
16 thought is: "They must be pursuing the
17 predecessor."

18 April 25th was the damages hearing, Your
19 Honor, as you mentioned, and on May 12th, the
20 judgment was signed. Now, in that judgment, it
21 appears that the plaintiff abandoned its case
22 against Ridgeland Nursing Center, Inc. And now, I
23 -- I find that kind of notable because really all
24 the allegations are against Ridgeland Nursing
25 Center. That term is not defined in the complaints

1 against Ridgeland Nursing Center, and that's who
2 their contracted is with. The Ridgeland Nursing
3 Center, Inc., didn't answer, but -- but the
4 judgment was not pursued against them; the judgment
5 was obtained against Ridgeland NC, LLC, who I -- I
6 -- to be honest with you, Your Honor, I don't know
7 who Ridgeland NC, LLC, is -- and the judgment was
8 obtained against SC OPCO. And this really kind of
9 gets into the heart of the argument as -- as the
10 timeline kind of winds down here: The case is
11 really about \$21,000; it's \$20,000 worth of
12 invoices, another \$1,200 in lost inventory, but the
13 judgment is for \$154,000, which, in large part, is
14 this \$90,000 early termination fee and \$39,000 in
15 attorney's fees. So, Your Honor, and that -- that
16 really kind of gets into the argument, so I'll hold
17 on to that.

18 My client found out about this serious problem
19 on May 10th, and that's when my partner, Jennifer
20 Hollingsworth, found it on the public index while
21 working for them on another matter and said, "Hey,
22 this -- this is an issue," and that was the "oh,
23 crap" moment. We reached out to Mr. Barnes on the
24 16th; he kindly replied on the 17th and sent us a
25 copy of the order. The order was not on the public

1 index on the 16th, and it doesn't look like in the
2 record that it was ever served on SC OPCO. But so
3 for that reason, I -- we -- our position is on the
4 17th is the first written receipt of the order, and
5 so the May 25th motion filing is timely for -- for
6 a Rule 59 motion as well, so this is a Rule -- Rule
7 60 and Rule 59.

8 I'll be brief on the legal standard. We've
9 all seen this legal standard many times over the
10 years. 55(c) says, "good cause standard is set
11 aside as" -- a default is you got to provide an
12 explanation for the default and give reasons why
13 vacating the default serves the interest of
14 justice. I think we're kind of in a weird place in
15 that the judgment's not yet final, but to the
16 extent 60(b) is the proper standard, on top of the
17 good cause, you got to show the motion's timely,
18 the defendant has a meritorious defense, and
19 there's no prejudice to the plaintiff if the
20 motion's granted. The purpose of this whole body
21 of law is to aid the administration of justice, not
22 defeat it. And while it's tough to set aside a
23 default judgment, it's not impossible; there's
24 these four grounds: there's mistake, inadvertence,
25 excusable neglect, and surprise; any one of those

1 four can do it. And there's been case law mistake
2 of fact that can set aside a default judgment, and
3 Columbia Pools case and Williams v. Watkins case
4 are two of them.

5 There's also case law that talks about if
6 you're trying to thwart the judicial system or, you
7 know, if you're if, you know, you're filing
8 technical and dilatory motions without merit that
9 the Court has no time for that. So, Your Honor, I
10 -- I want to say to make it clear, Your Honor, if -
11 - if -- if our folks just wanted to bury their head
12 in the sand, they would not have retained us. If
13 they just wanted to ignore this and make it go
14 away, we wouldn't be here. It would be like many
15 of the default judgments that are entered -- I do a
16 lot of creditor work myself -- where no one files
17 these kinds of motions, which, I think, Your Honor,
18 is evidence, along with Mr. Newman's affidavit --
19 said evidence is probably the wrong word -- the
20 affidavit is the evidence. For argument purposes,
21 it shows the Court this is not a situation where
22 they just buried their head in the sand and saying,
23 "We'll ignore it." It was a genuine mistake that
24 they're trying to -- (audio technical difficulty) -
25 - get fixed, and we've been trying to get fixed,

1 but it's a -- been in the arguments, won't belabor
2 it, but the good cause here is that when SC OPCO
3 received the complaint, it made the mistake of
4 thinking it wasn't being pursued because they knew
5 they didn't contract with Lowcountry Medical
6 Linens. The complaint doesn't -- (audio technical
7 difficulty) --

8 SPECIAL REFEREE BENNETT: You're breaking up.

9 MR. BRANNON: -- (audio technical difficulty)
10 -- a contract with SC OPCO; it says -- it says,
11 "Ridgeland Nursing Center." Can you still hear me,
12 Your Honor?

13 SPECIAL REFEREE BENNETT: I can. You're
14 breaking up a little bit. Madam Court Reporter, --

15 MR. BRANNON: Okay.

16 SPECIAL REFEREE BENNETT: -- are you getting
17 some of this or most of this? (Audio technical
18 difficulty) I can't hear her.

19 MR. BRANNON: I just got a message saying my
20 internet connection was unstable.

21 SPECIAL REFEREE BENNETT: It is. It's -- it's
22 coming and going. But it wasn't bad before; it was
23 just a little bit. But can you hear me now, Kyle?

24 MR. BRANNON: Yes, sir. I can.

25 SPECIAL REFEREE BENNETT: Okay. Okay.

1 MR. BRANNON: Okay. So jumping into the
2 argument, the -- the good cause, our -- our
3 position is when they received it, they made the
4 mistake of thinking they weren't being pursued
5 because they knew they didn't contract with
6 Lowcountry Medical Linens, the predecessor must
7 have. They viewed the complaint as being --
8 asserting a contract with Ridgeland Nursing Center;
9 that term is not defined, it's and the name of the
10 predecessor, the seller, is Ridgeland Nursing
11 Center, Inc., and the contract on attached as an
12 exhibit doesn't have SC OPCO as a party. They made
13 that mistake of thinking they weren't being
14 pursued. The letter on January 11th they received,
15 I think, compounded that; it was directed to
16 Ridgeland Nursing Center, Inc. Nothing at the
17 facility was received directed to SC OPCO. And
18 again, they knew that they had not negotiated a
19 contract with -- with Mr. Bullard's company, with
20 the plaintiff. So that's -- that's the mistake.
21 They're not trying to thwart the judicial system.
22 We really wouldn't be here if -- if they were going
23 to just say, "Well, to heck with this. We're --
24 we're going to -- we're going to ignore it."
25 The next point, Your Honor, going to the

1 60(b)'s is the motion was timely. They discovered
2 the issue on May 10th. We were talking with Mr.
3 Barnes by the 16th, got the judgement on the 17th,
4 and filed the motion by the 25th. It's our
5 position that that time period should run from
6 discovery of the mistake, which was May 10. The --
7 there's an ex parte Carter case from 2018 Supreme
8 Court, that's 422 S.C. 623, and in that case, the
9 Court found that a "60(b) motion four months after
10 the order was within a reasonable time of and
11 within the one year contemplated by the rule."

12 The next point is we've got to show some
13 meritorious defenses. And the standard for that's
14 not showing necessarily you prevailed, but that
15 there's enough here worthy of a hearing in raising
16 questions of law and fact.

17 So three points on that and -- and I, again,
18 want to continue to try to be brief. Three points
19 that one, Lowcountry didn't plead a contract, and
20 there is no contract that they could plead with --
21 with my client. Second is the successors and
22 assigns language is boilerplate language that the
23 case law doesn't support automatically binding a
24 third party to contract terms. And the third
25 point, are -- and this is by no means directed to

1 Mr. Barnes whatsoever -- but it is from a legal
2 perspective, our position that the attorney's fees
3 award was unreasonable, the \$39,000.

4 So the first point, the contract was 20 months
5 before SC OPCO bought the assets of this facility,
6 so they weren't a party. There's no privity. You
7 can't bind them to the terms of this contract, which
8 are pretty onerous. You know, a \$90,000 early
9 termination fee to me sounds like a penalty. And -
10 - and, you know, the standard on that is, it's --
11 it's not a liquidated damages provision if -- if --
12 if it provides for a -- So onerous that it's not
13 proportioned or tailored to the probable
14 damages incurred. It's a \$21,000 case.
15 And, critically and lastly on that point,
16 there's nothing in the pleading that says that
17 anybody on the facilities-end ever terminated the
18 contract. Yeah. It -- it pleads that the -- the
19 invoices weren't paid, but to have a early
20 termination trigger, someone has to terminate it.
21 So there's no -- there's no allegation that it was
22 terminated.

23 The successors and assigns language I -- I
24 know that's a big point for the plaintiff. Mr.
25 Newman's affidavit states that, "SC OPCO neither

1 succeeded the predecessor, original nursing center,
2 nor did they take assignment of their contract."
3 This was simply an asset purchase agreement where
4 they bought the assets not the liabilities. So we
5 contend not a successor or assign. In the
6 Nationwide receiver window and door case that we
7 cited, that case gets into the whole, you know,
8 "mere continuation" and if you're Company A on
9 Friday and Company B on Monday, but you're the same
10 people, yeah, you can't avoid your creditors.
11 Well, that -- that's not what happened. It's --
12 it's two different owners. There's no commonality
13 of ownership. So that, you know, boilerplate
14 language that we've all used, and we've all seen in
15 contracts, successors and assigns doesn't have the
16 enforceability under the law.

17 Last point on the attorney's fees, Your Honor,
18 again, this -- not Mr. Barnes whatsoever. I have never
19 worked with Mr. Barnes. From what I've seen of his
20 filings, he seems to be an excellent lawyer.
21 But \$39,000 is not reasonable for a
22 four-month default case. The six factors --
23 we cite "Glasscock". That's a family court case.
24 It is but those six factors apply across the board
25 in -- in every kind of case, breach of contract.

1 I've seen some breach of lease cases. Those are
2 the six factors, and they're the nature, extent,
3 and difficulty of the services rendered. The
4 second one is the time and labor devoted to the
5 case. The third one is professional standing of
6 counsel which we take no issue whatsoever there.
7 Number 4 is contingency of compensation. Number 5
8 is the fee customarily charged for -- in the
9 locality for similar services. Number 6,
10 beneficial results obtained. The Court said,
11 "Contingency of compensation goes to whether the
12 party who received the services, (a) the client,
13 whether they can afford to pay the attorney." That
14 doesn't go to a contingency fee agreement. And
15 while I have not seen Mr. Barnes' contract with his
16 client, my guess is, like other contingency fees,
17 it says something along the lines of,
18 hypothetically, if -- if he got an award of 120,
19 \$120,000 for his client and they got paid, he would
20 take a third, 40 grand. And you obligate not what
21 the order is which is 120 plus another 40 on top of
22 that to get to 154. I'm using rough numbers. You
23 know, there's -- there's a "Jackson v. Speed" case,
24 326 S.C. 289 that says, "The contract between the
25 attorney and the client doesn't control the

1 termination of the reasonable hourly rate." Those
2 six factors do. And according to "Science Global
3 Protection Corp. v. Holdersberg," Your Honor, that
4 was a trademark infringement case that went to
5 trial in trial court. This is a quote from the
6 Court of Appeals, pending in trial court, found
7 that there were -- that the case "presented
8 numerous and complex issues requiring time
9 consuming research and trial preparation." And
10 they cut the fee from a 40 percent contingency to a
11 -- to a one-third contingency. And they looked at
12 the some six factors.

13 So, Your Honor, it really -- don't want to
14 belabor the point. In -- in our view, the case is
15 not a \$39,000 case. It's a four-month
16 action that was in default.

17 Last, the prong on 60 days, it's our position
18 there's no prejudice to the plaintiff. This case
19 took four months from the time of the complaint to
20 the time of the filing of our motion. It's not a
21 prejudice for the plaintiff to have to prove its
22 case. That Colleton Preparatory Academy case talks
23 about that. It's not prejudiced to have to prove
24 the case and our courts have repeatedly said that
25 "judgment by default is disfavored and the Court

1 tries to hear the cases on the merits."

2 Real briefly on the new trial part of it, the
3 Rule 59 part of it. Just because a parties in
4 default, there is precedent for the Supreme Court
5 knocking a judgment down if the award doesn't match
6 the proof submitted. And the Court, the Supreme
7 Court, noted "the trial court is required to
8 scrutinize the award and prevent harsh, unwarranted
9 results even when a defaulting party does not
10 participate in the hearing." And that's "Lewis v.
11 Congress of Racial Equality" 275 S.C. 556.

12 So, Your Honor, with that, we -- we
13 respectfully request the Court vacate the default
14 judgment, alternatively for a new trial, and
15 lastly, if -- if the Court grants the motion to
16 enlarge time to file an answer, which I can promise
17 we'd file A-S-A-P.

18 SPECIAL REFEREE BENNETT: All right. Thank
19 you, sir. Mr. Barnes?

20 MR. BARNES: Thank you, Your Honor, may it
21 please the Court. I try to take a simplistic look
22 on this. SC OPCO got served with this complaint.
23 That's undisputed. They received notice of the
24 damages hearing. They chose not to answer. They
25 chose not to come to the damages hearing. SC OPCO

1 is a sophisticated entity. They're based in New
2 Jersey. They have operations in South Carolina.
3 They've got a registered agent. They've got a
4 director of business operations. You know, they
5 comply with state and federal regulations and bill
6 Medicare and Medicaid for their services. So, you
7 know, this is not Joe Smith down the street that
8 may not be familiar with the legal process. And,
9 basically, what they've argued today is: "We
10 didn't know this was something that we were
11 supposed to respond to." I -- I take the position
12 that I think they looked at this. They made a
13 conscious decision not to respond. And I -- I
14 think the dates here are important. From Mr.
15 Newman's affidavit, SC OPCO acquired Ridgeland
16 Nursing Center on November the 21st of 2021. And
17 there's been some discussion of the contract and
18 all that. The contract does not have a -- a
19 corporate name. It -- it doesn't have an Inc. or
20 an LLC. It's just with Ridgeland Nursing Center.
21 Sheri Boyles signed that agreement. And when SC
22 OPCO acquired it, Sheri Boyles was still the
23 administrator. Mr. Brannon gave the Court the date
24 that she was terminated in May of 2022.
25 Importantly, the invoices that are at issue run

1 from February of '22, when Ms. Boyles was still
2 there, through June of '22. So what happens is SC
3 OPCO acquires this, and Ms. Boyles, as the
4 administrator, is still dealing with Lowcountry
5 Medical Linens just as if she had been. SC OPCO
6 received the benefit of those services. They even
7 kept the product that is about \$1200. And then
8 despite, in -- in my opinion, sticking their --
9 their head in sand and just ignoring this thing,
10 this was a -- a mistake of fact. They chose not to
11 respond. And I think they chose not to respond is
12 because they made a business decision that they
13 didn't want to pay this invoice because they knew
14 from the dates that were at issue, that they owned
15 Ridgeland Nursing Center at that time, and they had
16 received the benefit of these services. I think,
17 interestingly, and I provided this to the Court,
18 they also were sued by a TCI entity. And TCI
19 provided some staffing to Ridgeland Nursing Center,
20 and a lot of the unpaid dates or unpaid invoice
21 dates overlap with Lowcountry Medical Linens
22 invoices. And interestingly, in the TCI case,
23 where they went into default and a judgment was
24 entered, they're the only defendant. And so they
25 can't in that case say, "We were mistaken. That we

1 thought this was somebody else's responsibility"
2 because they're the sole defendant. And so I think
3 that they made a business decision thinking, "We
4 didn't want to pay this," and they just chose not
5 to respond.

6 I think, importantly, this is not a mistake of
7 fact. This is a mistake of law. And I think
8 that's -- an important difference because they're
9 taking the belief that they do not have to respond
10 to this, and that it's some other entity. But
11 again, I think, that goes back to the
12 sophistication of SC OPCO. They know when they get
13 sued that the law requires they respond, and they
14 chose not to.

15 We've provided some cases that failure to
16 understand the legal process is not excusable
17 neglect to warrant vacating the judgment. You
18 know, and so this is a 60(b) analysis, not a 55(c)
19 analysis. The -- the hearing was on April 25th.
20 Your Honor signed the judgment on May the 12th.
21 From my standpoint, that's when the judgment
22 becomes final. According to the Court record, I
23 think the judgment was filed -- there's some
24 notation of May 12th sometime in the afternoon that
25 day. So we believe it was entered on May 12th even

1 though I don't think at -- at time was showing up
2 as actually having the document attached to it.

3 And so we believe that SC OPCO cannot satisfy
4 the 60(b) burden to warrant vacating the judgment.
5 And so in all actuality, the -- the question would
6 stop there, and -- and the Court wouldn't even have
7 to get to timing or meritorious defense. We've
8 provided -- even if the Court wanted to get there,
9 we've provided some cases in our briefing that we
10 obviously rely on and incorporate all our arguments
11 here today. They've talked about passage of over
12 two months since the entry of default was
13 insufficient to satisfy Rule 55(c). That's the
14 "Richardson v. PeeDee" case, and then also the
15 "Hill v. Dotts" where a month and a half passed
16 between service and the 55(c) motion.

17 So I believe that with the -- with the timing,
18 it does not support vacating the judgment. I would
19 also add that the meritorious defense does not
20 warrant vacating the judgment. As I mentioned
21 earlier, at the time these invoices -- the services
22 were provided and the services provided and the
23 invoices were unpaid, SC OPCO was running the
24 facility. They are the ones that failed to pay
25 this at that point in time. Starting in February,

1 Sheri Boyles was the administrator still operating
2 as if the contract was valid. And we've cited the
3 case law that, you know, if an agent is operating
4 as if the contract was still in place, then it's
5 about a contract, and SC OPCO has knowledge of
6 that. And so they received these services, they
7 kept Lowcountry Medical Linens product. I don't
8 see how they have a meritorious defense to warrant
9 vacating the judgment. So for those reasons, the
10 judgment -- the 60(b) motion -- the motion here
11 today that we're arguing, should be denied.

12 Want to next turn to the attorney's fee
13 portion. The -- the contract that is at issue
14 states that Ridgeland Nursing Center would be
15 responsible for all legal fees to collect any
16 unpaid balances. It doesn't say that, you know,
17 they'll pay such and such hourly rate, or they'll
18 pay any fees not to exceed a certain amount. The
19 language is pretty clear. They'll be responsible
20 for all legal fees to collect any unpaid balances.
21 And so that's what this judgment is because it's
22 basically puts Lowcountry Medical Linens back in
23 the position from their losses both from the unpaid
24 invoices, the late fee that runs at 18 percent
25 annum that's in the contract, the unreturned

1 product, and then the early termination fee. And,
2 you know, there was some discussion about the early
3 termination and how that's calculated. I mean,
4 from my standpoint and it says there's nothing in
5 the contract that says it was terminated. I mean,
6 I think that's maybe semantics. I think when you
7 breach a contract, I think that's signaling you --
8 you -- you're terminating it. And so, you know, I
9 -- I -- I don't think we need to over-lawyer this
10 and say, "Well, it's not -- it's not terminated,
11 but it was in fact breached." To me that's a
12 distinction without a difference. And so, we
13 believe that under the contract they're responsible
14 for those fees, and that's what the judgment
15 contains. And as we cite in our briefing, even if
16 the Court looks through all the -- the factors, we
17 believe the attorney fee amount should -- should
18 still stand.

19 Lastly, on the -- the prejudice. Obviously,
20 and, you know, I -- I -- in cases I get this quite
21 often, "Well, there's no prejudice," you know, but
22 in fact there is. Mr. Bullard and Mr. Bullard both
23 of whom are here today, they took time out of their
24 day to attend a hearing in this which is a serious
25 matter that required notice to SC OPCO. They drove

1 from Brunson to Ridgeland for the hearing. We went
2 through the hearing; we drafted an order and did
3 all that. And -- and then after the fact, SC OPCO
4 pops up and says, you know, "Hey. We need to
5 vacate this judgment." And I think also,
6 importantly, on the prejudice standpoint, there are
7 multiple folks that SC OPCO owes money to that have
8 filed suit, and they have gone into default near
9 judgment. So where you stand in that line is an
10 important priority. You know, we don't know who
11 else SC OPCO has not paid, who may be suing them.
12 And so obviously there is some prejudice if this
13 judgment is vacated because it puts us starting
14 back anew.

15 And so we believe for those reasons that the
16 60(b) motion should be denied and likewise for --
17 for all the reasons already stated, the -- the new
18 trial motion should be denied as well for all those
19 grounds. And so, like I said, we would incorporate
20 all our arguments we made in our briefing and for
21 those reasons, the motion should be denied.

22 SPECIAL REFEREE BENNETT: All right. Kyle,
23 let me ask you a couple of questions about this
24 affidavit.

25 MR. BRANNON: Yes, sir.

1 SPECIAL REFEREE BENNETT: Joe Newman, what is
2 his relationship to OPCO?

3 MR. BRANNON: He's the -- gosh, what exactly
4 is the title we use?

5 SPECIAL REFEREE BENNETT: Is -- is there --

6 MR. BRANNON: He oversees the business
7 operations. So he -- he -- he handles the invoices
8 that come in and things like that. So --

9 SPECIAL REFEREE BENNETT: Okay.

10 MR. BRANNON: I -- I would generally call him,
11 Your Honor, a business manager. He's not -- my
12 understanding is he's not a member of the LLC.

13 SPECIAL REFEREE BENNETT: Okay. He's not a --
14 is he an incorporator? Do you know that, or you
15 don't?

16 MR. BRANNON: I don't.

17 SPECIAL REFEREE BENNETT: Okay. I'm -- I'm
18 just -- and I'm not trying to put you on the spot.
19 I'm just trying to figure out --

20 MR. BRANNON: No. I -- I think, Your Honor,
21 he's the person who would -- would handle these
22 types of things, and he's the one who made the
23 mistake.

24 SPECIAL REFEREE BENNETT: Okay. What -- tell
25 me a little bit about him. I mean, does he have a

1 college degree? Does he have a -- I mean, you know
2 anything about him personally?

3 MR. BRANNON: No, sir. I don't.

4 SPECIAL REFEREE BENNETT: Because -- and the
5 reason I asked that is sophistication of the party
6 that receives a pleading is -- is always looked at
7 by the Court. I mean, I've seen that, you know,
8 time and time again. I wondered about -- yeah --
9 and then I see a guy named Ray Williams, who is an
10 agent according to the affidavit of Mr. Newman.
11 He's a registered agent for Ridgeland Nursing
12 Center.

13 MR. BRANNON: Yes, sir. That -- that's who
14 the letter in January was directed to and -- and so
15 that's apparently the registered agent for the
16 predecessor entity, Ridgeland Nursing Center. So
17 he's not affiliated with SC OPCO.

18 SPECIAL REFEREE BENNETT: Okay. Do we know
19 who -- anything else about him or that's about it?

20 MR. BRANNON: The answer's no, Your Honor. My
21 guess is that he was either a principal of
22 Ridgeland Nursing Center, Inc. --

23 SPECIAL REFEREE BENNETT: Uh-huh.

24 MR. BRANNON: -- or -- or just somebody that
25 they appointed as registered agent. I'm not sure

1 which.

2 SPECIAL REFEREE BENNETT: Okay. All right. I
3 don't have anything else unless y'all have any
4 further argument. I'll be glad to listen to it.
5 What I normally do is I'll take this and go over
6 everything and make a decision and notify the
7 prevailing party to get me an order that indicates
8 what I ruled. It's going to take me awhile. I'm
9 going go back through it again and look at it
10 carefully in light of -- of, Kyle, in light of
11 y'all's arguments and in light of -- of Mr.
12 Barnes's arguments as well. And then --

13 MR. BRANNON: Your Honor, can I make just a
14 couple more small --

15 SPECIAL REFEREE BENNETT: Yeah. Absolutely.
16 Go ahead. Yes, sir.

17 MR. BRANNON: These -- these are all just in
18 rebuttal.

19 SPECIAL REFEREE BENNETT: Okay.

20 MR. BRANNON: Number 1 is: It may say all
21 fees in the contract, which we contend we're not a
22 party to, but fees still have to be reasonable, and
23 the Court still has discretion on fees.

24 The other case that Mr. Barnes mentioned, the
25 TCI case. We filed a motion to vacate that default

1 judgment. It was heard by Judge Rivers, down the
2 street from you, last month. And he's taking that
3 under advisement. So we're hoping to prevail on
4 that. And there was confusion there. There was a
5 scattershot approach by the plaintiff in that case.
6 They didn't sue multiple defendants in the same
7 action. They filed multiple lawsuits against
8 multiple different parties. So we contend that's
9 not relevant, but I wanted to clarify that since,
10 you know, we've got -- we handled that, too. And I
11 think this goes to show, hey -- there was some
12 transitional confusion that went on here. And --
13 and mistakes were made that we, you know, contend.

14 Lastly, Your Honor, I think it seems that the
15 unjust enrichment claim is much more difficult for
16 my client than the breach of contract claim. But
17 the unjust enrichment claim would be a \$21,000
18 claim. Doesn't have the early termination fee and
19 -- and -- and all the attorney's fees. So that's
20 really it in a nutshell of the contract. Says,
21 "Ridgeland Nursing Center." It's not a
22 coincidence, I don't think, that the predecessor
23 was Ridgeland Nursing Center, Inc. So, Your Honor,
24 the unjust enrichment claim, much more difficult
25 than the breach of contract. But the unjust

1 enrichment would be a significantly a lot less
2 money. That's all I've got, Your Honor.

3 SPECIAL REFEREE BENNETT: Let me, let me ask
4 you this, Kyle. The --

5 MR. BRANNON: Yes, sir.

6 SPECIAL REFEREE BENNETT: The cases that Mr.
7 Rivers handled, did he handle -- are you telling me
8 that -- that it was several lawsuits on behalf of
9 the same plaintiff, or tell me about that again.

10 MR. BRANNON: Yes, sir. So one plaintiff,
11 TCI, who's a factor -- they had a factoring
12 agreement -- they sued multiple defendants in
13 multiple actions.

14 SPECIAL REFEREE BENNETT: Okay.

15 MR. BRANNON: There was only one suit against
16 SC OPCO.

17 SPECIAL REFEREE BENNETT: Okay.

18 MR. BRANNON: In facts, you know, are
19 different than this one.

20 SPECIAL REFEREE BENNETT: Right.

21 MR. BRANNON: There's some similarities, but
22 there's only one judgment. And that -- my
23 understanding is there's only one lawsuit other
24 than these two. So these two are the only
25 lawsuits.

1 SPECIAL REFEREE BENNETT: Okay.

2 MR. BRANNON: And -- and Judge Rivers took
3 that under advisement last month on different facts
4 but similar motion.

5 SPECIAL REFEREE BENNETT: Was that -- was that
6 a default that was referred to him?

7 MR. BRANNON: Yes, sir.

8 SPECIAL REFEREE BENNETT: Okay. All right.
9 Okay. Well, let's -- let me -- anything else, Mr.
10 Barnes, from you?

11 MR. BARNES: Nothing, Your Honor.

12 SPECIAL REFEREE BENNETT: All right. Anything
13 else, Kyle, from you?

14 MR. BRANNON: No, sir, Your Honor. Thank you
15 for your time.

16 SPECIAL REFEREE BENNETT: Well, no. Thank
17 y'all. I appreciate it. I'm going to review both
18 documents that have been filed and the exhibits
19 that have been filed. Did y'all want to get me
20 anything else to read? I think I got enough to
21 choke on here, but I'll be glad to -- I'm glad to
22 look at anything else y'all would like to submit if
23 you want to. Anything from you, William?

24 MR. BARNES: I'm good at this time, Your
25 Honor.

1 SPECIAL REFEREE BENNETT: Okay. Kyle?

2 MR. BRANNON: Your Honor, I mentioned a couple
3 cases with some citations that -- that real frankly
4 looked at after reading Mr. Barnes's response. I
5 don't know if those will be dispositive, but I'm
6 happy to send you a couple cases.

7 SPECIAL REFEREE BENNETT: If you want to send
8 them to me and send a copy, you know, e-mail them
9 to me and e-mail a copy to William --

10 MR. BRANNON: Yes, sir.

11 SPECIAL REFEREE BENNETT: -- I'll be glad to
12 look at yours. And then I'll -- if he's got any
13 cases he wants to submit in reply, I'll look at
14 those.

15 MR. BRANNON: Okay.

16 SPECIAL REFEREE BENNETT: But at some point,
17 what I want y'all to do together, I guess, is say,
18 "Okay. That's all I want you look at," you know?

19 MR. BRANNON: We're pretty -- we're pretty
20 much there, and I don't want to -- I don't want to
21 drag it out. I'm -- I'm not --

22 SPECIAL REFEREE BENNETT: Okay.

23 MR. BRANNON: It might make me sleep a little
24 better if I sent you three cases. Other than that,
25 I'll -- I'll -- I'm done.

1 SPECIAL REFEREE PRICE: That's fine. Okay.

2 William, if you -- if you decide to -- to do any
3 kind of cases back, just let me know. Just get
4 them to me and get them to Kyle.

5 MR. BARNES: Will do.

6 SPECIAL REFEREE BENNETT: All right.

7 Gentleman, I do appreciate it.

8 MR. BRANNON: Thank you.

9 SPECIAL REFEREE BENNETT: Madam Court Reporter,
10 thank you. And Kyle, I guess you're going to be in
11 charge of the original transcript of this.

12 MR. BRANNON: Yes, sir.

13 (Whereupon, the hearing was
14 concluded at 10:40 a.m.)

15 (*This transcript may contain quoted
16 material. Such material is reproduced as
17 read or quoted by the speaker.)

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CERTIFICATE

This is to certify that the foregoing hearing consisting of 34 pages, represents a true and accurate transcript of the testimony given by said deponent after first being placed under oath and sworn to speak the whole truth.

This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker. This deposition transcript has been transcribed as to the questions set forth and answers provided.

Any and all offered exhibits, stipulations, and objections, if any, involved in the referenced matter are attached or included herein.

IN WITNESS WHEREOF, I have set my hand this 19th day of August 2023.



Sallie D. Nelson
Verbatim Court Reporter

Notary Public for the
State of South Carolina
My Commission Expires: May 5th, 2032

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

C. Stephen Bennett, Special Referee

Case No. 2023-CP-27-00005

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.

NOTICE OF APPEAL

SC OPCO, LLC appeals the Default Judgment dated May 12, 2023, attached hereto as **Exhibit A**; the Order Denying SC OPCO, LLC's Motion to Set Aside Default Judgment and Motion for a New Trial dated September 13, 2023, attached hereto as **Exhibit B**; and the Order Denying SC OPCO, LLC's Motion to Alter or Amend Order Denying Motion to Set Aside Default Judgment and for New Trial dated December 7, 2023, attached hereto as **Exhibit C**.

Appellant received written notice of the latter Order, denying Appellant's Motion to Alter or Amend, on December 7, 2023.

Respectfully submitted,

January 2, 2024

s/ Kyle A. Brannon

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