

EXHIBIT B

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO.: 2021-CP-01-00076
)

WILLIAM F. NICKLES, IV,
PLAINTIFF,

V.

HOWAR EQUIPMENT, INC.,
SONOCO PRODUCTS COMPANY,
PALMETTO STATE
TRANSPORTATION, LLC,
KSC LOGISTICS, INC., AND
JOHN DOE CORPORATION.
DEFENDANTS.

ORDER ON DEFENDANT
KSC LOGISTICS INC. MOTION
TO SET ASIDE DEFAULT

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SC Court of Appeals

THIS MATTER came before the Court on January 30, 2024 in the Virtual Courtroom of the Honorable Donald B. Hocker at the appointed time of 11:00 AM. Present at the hearing were Thomas E. Hite, III, appearing on behalf of the Plaintiff, and Daniel Atkinson, appearing on behalf of Defendant KSC Logistics, Inc.

NOW THEREFORE BASED UPON MEMORANDUMS OF LAW, STATEMENTS OF COUNSEL AND EVIDENCE PRESENTED TO THIS COURT, I HEREBY MAKE THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

1. On April 12, 2021, the Plaintiff filed a Summons and Complaint against KSC and others as a result of his November 10, 2018 injury. KSC Registered Agent and President William Ray Kelley notified Plaintiff's counsel that they did not "deal in" high voltage reels during the time frame of the incident. Based on this information, KSC was dismissed without prejudice on August 23, 2021 and was notified that if it was discovered that this information was inaccurate

that they would be added back to the case.

2. Based on newly discovered information contradictory to Defendant's previous position, the Plaintiff filed an Amended Summons and Complaint on November 9, 2021.

3. The Amended Summons and Complaint was properly served on KSC's registered agent on December 16, 2021.

4. KSC did not respond to the Amended Summons and Complaint within thirty days. When the language of a court rule is clear and unambiguous, the court is obligated to follow its plain and ordinary meaning. *Stark Truss Co. v. Superior Construction Corp.*, 360 S.C. 503, 602 S.E.2d 99 (Ct.App.2004). Pursuant to *Rule 12(a), SCRCF* unless an extension is granted, a defendant must serve his answer within thirty days after the service of the complaint upon him.

5. On February 7, 2022 an Affidavit of Default was filed with the Clerk of Court for Abbeville County. *Rule 55(a) SCRCF* provides that when a party fails to respond to a complaint, the clerk shall record an entry of default.

6. Notice of Hearing and Notice of Motion to Set Damages on Default was served on KSC on November 21, 2023.

7. KSC made no formal appearance until December 7, 2023.

8. On December 7, 2023 KSC filed a Motion to Set Aside Entry of Default.

9. The standard for granting relief from an entry of default under *Rule 55(c)* is "good cause." The law requires the moving party to put forth a satisfactory explanation for the default, and then the trial court must 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. v. Intedge Indus.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009)

citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct.App.1989).

10. KSC has not provided an adequate explanation for the default. KSC’s excuse set forth in the Affidavit of President and Registered Agent of KSC, William Ray Kelley, is not a justifiable explanation for KSC’s failure to answer. This scenario is very similar to the law of the case in *Dixon v. Besco Engineering, Inc.* (S.C.App. 1995) 320 S.C. 174, 463 S.E.2d 636, in which the defendant failed to establish sufficient cause for relief from an entry of default judgment where he mistakenly believed that plaintiff’s counsel had given him an unlimited extension of time to respond to the complaint, and he thus failed to retain counsel until approximately 2 months after the extended deadline had passed.

11. KSC is beyond any reasonable amount of time that would allow for setting aside of the entry of default.

12. KSC did not present evidence sufficient to establish a meritorious defense.

13. Due to KSC’s failure to show good cause, the time that has passed from date of service to date of the Defendant’s motion, as well as the undue burden of further litigation, I find granting Defendant’s Motion to Set Aside Entry of Default would unduly prejudice the Plaintiff.

14. Based upon the foregoing, and in my sound discretion, I find that the entry of default shall not be set aside because the Defendant did not present a satisfactory explanation for “good cause” and did not meet the factors set out in *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. at 465, 381 S.E.2d at 501–02.

15. At the hearing of this matter both counsel for Plaintiff and Defendant presented sufficient documentation and made thoughtful and well-crafted arguments to articulate their side’s

position. That the ruling in this matter was not caused by the action or inaction of Defendant's counsel. Defendant's counsel is not at fault for the default.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED:

That the Defendant's Motion to Set Aside Entry of Default is denied.

AND IT IS SO ORDERED.

DONALD B. HOCKER
COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

FEBRUARY ____, 2024
LAURENS, SOUTH CAROLINA



Abbeville Common Pleas

Case Caption: William F Nickles Iv VS Palmetto State Transportation Llc ,
defendant, et al
Case Number: 2021CP0100076
Type: Order/Other

Circuit Court Judge

s/Donald B. Hocker, Judge Code 2167