

IN THE STATE OF SOUTH CAROLINA )  
COUNTY OF FLORENCE )

IN THE COURT OF COMMON PLEAS  
FOR THE 12TH JUDICIAL CIRCUIT  
CASE NO: 2023-CP-21-02320

ASZANE CRUZ,

Plaintiff,

v.

ARETE WYNDHAM PROPERTY  
OWNER, LLC d/b/a WYNDHAM PLACE  
APARTMENTS; CASA BAHARI, LLC;  
DARLINGTON 48 UNIT, LLC; and  
JOHN DOE, individually and as a  
Manager/General Manager of ARETE  
WYNDHAM PROPERTY OWNER, LLC  
d/b/a WYNDHAM PLACE  
APARTMENTS,

Defendant.

**RECEIVED**

**Oct 11 2024**

**SC Court of Appeals**

**ORDER  
DENYING DEFENDANT CASA  
BAHARI LLC'S MOTION TO  
RECONSIDER**

This matter came before the Court on August 21, 2024 on dueling motions – Plaintiff’s motion to hold Defendant Casa Bahari LLC’s (hereinafter “Casa Bahari” or “Defendant”) in default, and Defendant’s Motion to Reconsider. Regardless of how the motions are captioned, the substance is default – Defendant will either be held in default or not. Accordingly, this Court is treating the matter as a motion for relief from default judgement, and applying the appropriate two-step analysis. *Williams v. Condon*, 347 S.C. 227, 252, 553 S.E.2d 496, 510 (Ct. App. 2001) (“[I]s the substance of the relief sought that matters regardless of the form in which the request for relief was framed.”) (Internal quotations omitted).

Present were Mary Harriett Moore for Defendant Casa Bahari and India D. Shaw of Poulin Willey Trial Lawyers for Plaintiff Aszane Cruz. For the reasons set forth below, Plaintiff’s Motion to hold Defendant in Default is **GRANTED**, Plaintiff’s award of \$40,686.00 is **GRANTED**, and Defendant Casa Bahari’s Motion for Reconsideration is **DENIED**.

## THE LAW

Once a default judgment has been entered, a party seeking relief must do so under a rule that imposes a more stringent standard than the "good cause" standard required for pre-entry relief from default. This standard necessitates a more detailed demonstration of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party," as outlined in South Carolina Rules of Civil Procedure 55(c) and Rule 60(b).

To relieve a defendant from default, the court must undertake a two-step analysis, both of which are necessary. The first step involves determining whether the defendant has demonstrated "mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party." This principle is supported by *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885, 888 (S.C. 2009) (citing *Wham v. Shearson Lehman Bros., Inc.*, 381 S.E.2d 499, 501–02 (S.C. Ct. App.1989)). If the defendant can provide such a showing for failing to answer in a timely manner, the court then proceeds to the second step, which involves analyzing any meritorious defenses.

However, if the defendant does not demonstrate a sufficient basis for relief, such as showing mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party, the analysis ends there, and the court does not proceed to consider the meritorious defenses. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988), "Having concluded there is an insufficient factual basis for finding mistake, inadvertence, or excusable neglect, we need not decide whether the Gaffneys have shown a meritorious defense."

Many defendants seek to conflate the two steps into a single multi-factor analysis. This is not proper. The proper analysis is sufficient basis for relief; meritorious defenses factors second, if at all.

Fortunately, South Carolina appellate courts have given us excellent guidance with a number of of fact patterns that do not constitute a sufficient basis for relief.

**1. Lack of familiarity with Legal Proceedings does not amount to excusable neglect .** See *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 368 S.E.2d 687 (Ct. App. 1988) (citing H. Lightsey, J. Flanagan, *South Carolina Civil Procedure*, 400 (2nd Ed.1985) and *McCall v. A–T–O, Inc.*, 276 S.C. 143, 276 S.E.2d 529 (1981)). (“Any neglect resulted from American using Ms. O’Rear, a layman, in defending the case. In our opinion, the facts of this case do not amount to excusable neglect.”)

**2. Negligence of Attorney is not excusable neglect.** See *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988) (citing *Ledford v. Pennsylvania Life Insurance Co.*, 267 S.C. 671, 230 S.E.2d 900 (1976)) and *Clark v. Clark*, 271 S.C. 21, 244 S.E.2d 743 (1978)) (“As in Ledford, the Gaffneys' attorney has shown neglect, but no excuse for it.”).

### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

With the above-described two-step analysis and the guidance provided by Rule 60(b) in mind, this Court makes the following findings of fact and conclusions of law.

"A defendant shall serve their answer within 30 days after the service of the complaint upon them," as required by South Carolina Rule of Civil Procedure<sup>12</sup> (a). In this case, the Defendant was served with the summons and complaint on December 4, 2023, which is not disputed. There has been no argument suggesting that the service was improper or untimely. Accordingly, Defendant Casa Bahari's answer was due by January 3, 2024. However, the Defendant did not file an answer.

Instead of responding as required, the Defendant sent correspondence acknowledging their awareness of the lawsuit and unilaterally provided themselves with a 10-day extension to appear and answer. Despite this, the Defendant still failed to file an answer.

Subsequently, the Plaintiff properly moved for an Entry of Default against Defendant Casa Bahari Casa Bahari on January 25, 2024, which was granted the same day.

A hearing on damages was held March 13, 2024 before the Honorable Michael G. Nettles, awarding Plaintiff Azane Cruz \$40,686.00 and Ordered April 03, 2024.

In its memorandum and during the hearing, the Defendant, despite their actions—or rather inactions—with full knowledge of the summons and complaint, insists that their letter amounts to (1) mistake; (2) fraud, misrepresentation, or misconduct of an adverse party; and (3) a claim that it is no longer equitable for the default judgment to have prospective application, asserting that the Court erred in entering default judgment against Defendant Casa Bahari.

Defendant received notice and failed to answer. Plaintiff properly served Defendant's registered agent on December 4, 2024 with her Summons and Complaint. *Williams v. Watkins*, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009), "In order to gain relief under Rule 60(b)(1), SCRCF, a party must first show a good faith mistake of fact has been made." Additionally, in *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992), a party seeking relief from judgment under Rule 60(b)(1) on the grounds of mistake "must make a showing that failure to avoid the mistake was justified." Defendant does not provide evidence of a mistake, in fact Defendant demonstrates the opposite in acknowledging receipt of the complaint.

The Defendant not only allowed the deadline to answer the complaint to lapse but also missed the deadline they unilaterally provided themselves. There was no agreed-upon extension to answer, despite the fact Plaintiff provided one.

Moreover, there was no showing of fraud, misrepresentation, or other misconduct by the adverse party. As established in *Coleman*, "In order to secure equitable relief on the basis of fraud, the fraud must be extrinsic." Extrinsic fraud is defined as "fraud that induces a person not to present a case or deprives a person of the opportunity to be heard." On the other hand, intrinsic fraud,

which is not applicable here, is fraud that misleads a court in determining issues and induces the court to find for the party perpetrating the fraud, such as through perjured testimony or forged documents. Neither type of fraud is found in this case. Plaintiff also did not alter the complaint, the deadline, or the language, nor did they attempt to cause confusion regarding Defendant's right and obligation to answer the summons and complaint served upon them.

Furthermore, notice of the hearing was sent to the Defendant. Defendant suggests they did not *receive* the notice. However, no such rule exists. South Carolina Rules of Civil Procedure Rule 5(a) specifically provides that "notice of any trial or hearing on unliquidated damages shall also be given to parties in default." In *Roche v. Young Bros. Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 901 (1995), Chief Justice Toal reversed the trial judge and remanded the case to the circuit court for a new damages hearing because "Young Brothers did not receive notice of the damages hearing as required by Rule 5(a), SCRPC." In that case, no attempt was made to notify Young Brothers of the hearing, which is not the situation here. As indicated in Defendant's own motion, Plaintiff provided notice to Defendant's registered agent.

Defendant failed to timely answer and had two opportunities to do so. Finding such, this court need not decide whether Defendant have shown a meritorious defense.

Based on the motions, arguments of counsel, memoranda, documents on file with the Court, and for the reasons set forth above, Defendant's Motions to Reconsider must be and hereby is **DENIED**, Plaintiff's award of \$40,686.00 is **GRANTED**, and Plaintiff's Motion to hold Defendant in default is **GRANTED**.

**IT IS SO ORDERED!**

\_\_\_\_\_, South Carolina  
Dated: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Michael G. Nettles.  
Circuit Judge  
12<sup>th</sup> Judicial Circuit



Florence Common Pleas

**Case Caption:** Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al  
**Case Number:** 2023CP2102320  
**Type:** Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140