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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lancaster County
Court of Common Pleas

Brian M. Gibbons, Circuit Court Judge

Case No. 2022-CP-29-00240
Appellate Case No. 2023-001980

Jenna Robbins,

Appellant,

v.

IMF13, LLC d/b/a The Indigo at Cross Creek, Taft Management Group, Taft Family Ventures, Southern-eez Landscaping, LLC, and Southern Horticulture Group, LLC d/b/a Southern-eez Landscaping,

of which Southern Horticulture Group, LLC d/b/a Southern-eez Landscaping is

Respondent.

RESPONDENT'S INITIAL BRIEF

CLEMENT RIVERS, LLP
Catherine H. Chase (SC Bar No. 74593)
Graydon V. Olive, IV (SC Bar No. 105319)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402-0993)
Charleston, South Carolina 29401
(843) 720-5488
cchase@ycrlaw.com
golive@ycrlaw.com

**additional counsel listed on next page*

and

WOLFE, GUNST & HINSON, PLLC
Brian E. Wolfe (SC Bar No. 77463)
Robert C. Gunst, Jr. (SC Bar No. 102957)
Joshua R. Hinson (SC Bar No. 102270)
215 Queens Road, Suite 200
Charlotte, NC 28204
(704) 827-3774
bwolfe@wolfegunst.com
rgunst@wolfegunst.com
jhinson@wolfegunst.com

Attorneys for Respondent

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INTRODUCTION

In her Appellate Brief, Appellant Jenna Robbins contends that Respondent Southern Horticulture Group, LLC d/b/a Southern-EEZ Landscaping ("Horticulture") refused to address this issue on appeal by asserting a highly technical argument to escape the consequences of a risky strategic decision. In fact, the opposite is true.

Ms. Robbins named the wrong entity in her Complaint. Instead of Horticulture, Ms. Robbins named Southern-EEZ Landscaping, LLC ("Landscaping"). Horticulture's counsel immediately informed Ms. Robbins's counsel of the mistake and offered to accept service of an amended complaint that included Horticulture.

Ms. Robbins refused to simply amend the complaint to include Horticulture; instead, she obtained a default judgment against Landscaping, an entity she knew was incorrect, and tried to have that default judgment against Landscaping amended so that it could be enforced against Horticulture. Ms. Robbins's conduct was clearly improper, and the circuit court properly denied her motion to amend the default judgment.

COUNTER-STATEMENT OF THE ISSUES ON APPEAL

I. Is the circuit court's order immediately appealable?

II. Did the circuit court err in denying Ms. Robbins's motion to amend the default judgment to include Horticulture?

III. Did the special referee have jurisdiction as to Horticulture?

IV. Did the circuit court err in ruling on the related motions?

COUNTER-STATEMENT OF THE CASE

On March 3, 2022, Ms. Robbins filed a complaint alleging that she tripped and fell while walking her dog at the Indigo at Cross Creek Apartments. **(Complaint.)** Ms. Robbins asserted claims for negligence, gross negligence, negligence per se, and public and private nuisance. **(Complaint.)** Critically, Ms. Robbins did not name, identify, or assert claims against Horticulture. **(Complaint.)**

On April 22, 2022, Ms. Robbins filed an affidavit of service as to Landscaping. **(Affidavit of Service.)** On June 16, 2022, Ms. Robbins obtained an entry of default as to Landscaping. **(Default.)** The circuit court issued an order referring all claims against Landscaping to a special referee on June 17, 2022. **(Order of Referral.)**

On June 29, 2022, Ms. Robbins sent a *Tyger River*[1] letter to Horticulture and its insurer demanding that they settle all claims asserted against Landscaping.

[1] 170 S.C. 286, 170 S.E. 346 (1933) (providing that an insurer can be held liable for bad faith for unreasonably refusing to settle a claim against its insured).

(Tyger River Letter.) Horticulture did not pay the demand; instead, it filed a motion to intervene on July 11, 2022. **(Motion to Intervene.)** After a hearing on July 28, 2022, the circuit court granted Horticulture's Motion to Intervene on August 2, 2022. **(Order Granting Motion to Intervene.)** On August 4, 2022, Horticulture filed a responsive pleading[2] pursuant to Rule 24, SCRCP and served Plaintiff with written discovery. **(Answer, Counterclaim, and Crossclaim (plus Exhibit A); Order Denying Ms. Robbins's Rule 60(a) Motion.)**

On August 15, 2022, the special referee issued a default judgment against Landscaping in the amount of $1,500,000.00. **(Special Referee Order.)** Ms. Robbins then filed a motion to amend judgment pursuant to Rule 60(a), SCRCP. **(Motion to Amend.)** Ms. Robbins argued that she misnamed Landscaping in her Complaint and asked the special referee to change the debtor of the default judgment from Landscaping to Horticulture. **(Motion to Amend.)**

The parties asked the special referee whether she would hear the motion to amend. **(Gunst e-mail.)** On September 20, 2022, the special referee informed the parties that she had asked the circuit court for guidance on whether she had jurisdiction to hear the motion, but the parties never received another response from

[2] Southern Horticulture's responsive pleading included an Answer, thirty-one Affirmative Defenses, and a Counterclaim/Crossclaim seeking declaratory relief pursuant to S.C. Code Ann. § 15-53-20.

her. **(Gunst e-mail.)** Eventually, Ms. Robbins noticed a hearing for the pending motions in the circuit court. **(Notices of Hearing.)**

On September 2, 2022, Ms. Robbins filed a motion to dismiss Horticulture's counterclaim/crossclaim and a motion for protective order. **(Motion to Dismiss and Motion for Protective Order.)** Ms. Robbins argued that Horticulture could not assert counterclaims/crossclaims or participate in discovery because it was in default. **(Motion for Protective Order.)** After Ms. Robbins did not respond to either Horticulture's First Set of Interrogatories or First Set of Requests for Production, Horticulture filed a motion to compel her answers on November 11, 2022. **(Motion to Compel.)** Horticulture argued it was entitled to be a full participant in discovery because it was not subject to the default judgment entered against Landscaping. **(Motion to Compel.)** Horticulture also noted that the circuit court had permitted it to independently intervene in the action as a matter of right. **(Motion to Compel.)**

On August 14, 2023, the circuit court heard arguments on Horticulture's Motion to Compel and Ms. Robbins's Motion for Protection from Participating in Discovery, Motion to Dismiss, and Motion to Amend Judgment. **(Circuit Court Order.)** On November 21, 2023, the circuit court entered an order granting Horticulture's motion and denying Ms. Robbins's motions. **(Circuit Court Order.)** Regarding Ms. Robbins's Motion to Amend Judgment, the circuit court found that

Horticulture and Landscaping were two different entities, Ms. Robbins never served Horticulture, and Ms. Robbins's requested relief was improper under Rule 60(a). **(Circuit Court Order.)** This appeal followed.

STATEMENT OF FACTS

Horticulture is a North Carolina limited liability company employed as a landscaping contractor for the Indigo at Cross Creek. **(Negrin Affidavit ¶¶ 4, 22-25.)** In 2015, Horticulture purchased the right to conduct business under the trade name "Southern-EEZ Landscaping" from Landscaping, a South Carolina limited liability company. **(Negrin Affidavit ¶ 5.)** Landscaping continued to exist as a separate and distinct entity from Horticulture after the transaction. **(Negrin Affidavit ¶¶ 6, 8-21.)** Horticulture has never used "Southern-EEZ Landscaping, LLC" as a trade name. Indeed, the two entities were adverse in an action in North Carolina that was brough in 2016 and settled in 2017. **(Negrin Affidavit ¶ 8.)**

In late March 2022, Ms. Robbins's process server contacted Horticulture's principal, Nate Negrin, looking for Landscaping's principal, Tyler Smith. **(Negrin Affidavit ¶ 28.)** Mr. Negrin informed the process server that he was not Mr. Smith, Landscaping was not his company, and Landscaping did not maintain an office at Horticulture's address 187 Sutton Road South, Fort Mill, SC 29708. **(Negrin Affidavit ¶¶ 29-31.)** Nevertheless, Ms. Robbins's process server delivered a copy of the complaint addressed to "Southern-EEZ Landscaping, LLC c/o Tyler Jonathan

Lee Smith" to Mr. Negrin at Horticulture's address 187 Sutton Road on April 6, 2022. **(Negrin Affidavit ¶¶ 26-27.)** Mr. Negrin then sent the complaint to Horticulture's insurer out of an abundance of caution. **(Negrin Affidavit ¶ 35.)**

Horticulture's insurer assigned Wolfe, Campbell, Gunst & Hinson, PLLC ("Trial Counsel") as counsel to defend Horticulture. **(Gunst Affidavit ¶ 5.)** On April 14, 2022, Ms. Robbins's counsel provided an indefinite extension for Trial Counsel to file a responsive pleading.[3] **(Gunst Affidavit ¶ 7.)** As Trial Counsel investigated the claim, it became clear that Landscaping, a South Carolina limited liability company, was not the proper defendant. **(Gunst Affidavit ¶¶ 8-10.)** Indeed, Mr. Negrin is not an owner, officer, director, employee, agent, or legal representative for Landscaping. **(Negrin Affidavit ¶¶ 9-15.)**

On April 21, 2022, Trial Counsel notified Ms. Robbins's counsel that Landscaping was not the correct defendant and service was improper. **(Gunst Affidavit ¶ 11.)** Trial Counsel asked Ms. Robbins's counsel to amend the complaint to assert claims against Horticulture. **(Gunst Affidavit ¶ 11.)** Trial Counsel concluded that they could not ethically represent or appear for Landscaping because it was a separate and distinct entity than Horticulture, and Mr. Smith had not given Trial Counsel any authority to represent Landscaping. **(Gunst Affidavit ¶ 8-9.)**

[3] In requesting the extension, a paralegal for Trial Counsel incorrectly stated that Trial Counsel represented Southern-EEZ Landscaping, LLC. **(Gunst Affidavit ¶ 6.)**

On May 4, 2022, counsel for both parties held a telephone conference to discuss the issues Trial Counsel identified. **(Gunst Affidavit ¶ 12.)** Trial Counsel informed Ms. Robbins's counsel that Landscaping is a South Carolina legal entity that is separate from Horticulture, a North Carolina legal entity that held the relevant landscaping contract. **(Gunst Affidavit ¶ 12.)**

On May 5, 2022, Ms. Robbins's counsel requested additional information regarding the distinctions between Landscaping and Horticulture. **(Gunst Affidavit ¶ 13.)** Trial Counsel immediately responded and informed Ms. Robbins's counsel that he could accept service for Horticulture, a North Carolina limited liability company that is a separate and distinct legal entity from Landscaping. **(Gunst Affidavit ¶ 14; Ex. J.)** Trial Counsel also noted that Landscaping's registered agent was Mr. Smith, not Mr. Negrin, and Landscaping had no involvement with the apartment complex where Ms. Robbins allegedly fell. **(Gunst Affidavit ¶ 14; Ex. J.)** Trial Counsel explained that Horticulture uses "Southern-EEZ Landscaping" for marketing as established on its website, and Horticulture was the named insured on the relevant insurance policy. **(Gunst Affidavit ¶ 14; Ex. J.)** Trial Counsel suggested that Ms. Robbins's counsel amend the complaint to join Horticulture as a defendant. **(Gunst Affidavit ¶ 14; Ex. J.)**

Ms. Robbins's counsel did not respond. **(Gunst Affidavit ¶ 15.)** On May 24, 2022, Trial Counsel followed up and asked if Ms. Robbins's counsel had decided to

amend the complaint to join Horticulture. **(Gunst Affidavit ¶ 16.)** Ms. Robbins's counsel responded that they could not "dismiss Southern EEZ . . . without further discovery." **(Gunst Affidavit ¶ 17.)**

On June 15, 2022, Trial Counsel and Ms. Robbins's counsel held another telephone conference to discuss Ms. Robbins's counsel's proposal to join Horticulture through an amended complaint so that the parties could conduct discovery and identify the correct corporate defendant. **(Gunst Affidavit ¶ 23.)** Ms. Robbins's counsel informed Trial Counsel that he needed to discuss the proposal further with his partner. **(Gunst Affidavit ¶ 23.)** Trial Counsel expected to hear back from Ms. Robbin's counsel, but Ms. Robbin's counsel did not contact Trial Counsel from June 16, 2022 through June 28, 2022. **(Gunst Affidavit ¶ 24.)**

On June 16, 2022, Ms. Robbins's counsel filed a motion for entry of default and supporting affidavit as to Landscaping without informing Trial Counsel. **(Motion for Entry of Default; Gunst Affidavit ¶¶ 27, 29.)** Trial Counsel was unaware of the motion for default, affidavit in support, order of default, and order appointing a special referee until Ms. Robbins delivered them as enclosures with her *Tyger River* letter on June 29, 2022. **(*Tyger River* Letter and Enclosures; Gunst Affidavit ¶¶ 27-29.)**

STANDARD OF REVIEW

"In reviewing decisions to grant or deny motions under Rule 60, SCRCP, the abuse of discretion standard applies." *Landry v. Landry*, 430 S.C. 153, 160, 843 S.E.2d 491, 494 (2020). "An abuse of discretion occurs when the ruling is controlled by an error of law, or when based on factual conclusions, is without evidentiary support." *Id.*

Additionally, "[w]hether a court has subject matter jurisdiction is a question of law [that appellate courts] review de novo." *First Citizens Bank & Tr. Co., Inc. v. Taylor*, 431 S.C. 149, 162, 847 S.E.2d 249, 256 (Ct. App. 2020) (quoting *Deborah Dereede Living Tr. dated Dec. 18, 2013 v. Karp*, 427 S.C. 336, 346, 831 S.E.2d 435, 441 (Ct. App. 2019)).

ARGUMENT

I. The circuit court's order is not immediately appealable.

Section 14-3-330 of the South Carolina Code primarily governs whether an order is immediately appealable. *Hagood v. Sommerville*, 362 S.C. 191, 195, 607 S.E.2d 707, 708 (2005). "An order generally must fall into one of several categories set forth in that statute in order to be immediately appealable." *Id.* Moreover, "[a]n appeal ordinarily may be pursued only after a party has obtained a final judgment." *Id.* at 194, 607 S.E.2d at 708.

A. The circuit court's order does not fall within any of the categories set forth in section 14-3-330.

Section 14-3-330 allows appellate courts to review the following:

> (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
>
> (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
>
> (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
>
> (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

Tellingly, Ms. Robbins does not address section 14-3-330 in either her Memorandum Concerning Appealability or her Appellate Brief. Instead, Ms. Robbins cites *Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*,

340 S.C. 57, 530 S.E.2d 383 (2000), in her Memorandum Concerning Appealability to support her contention that the "denial of a motion under Rule 60 is immediately appealable." Robbins's Memo re Appealability p. 1. *Sadisco* does not support that broad and sweeping proposition.

In *Sadisco*, the moving party filed a Rule 60 motion for relief from judgment after the circuit court dismissed an appeal from the Greenville County Board of Zoning Appeals for failure to timely file and serve the notice of appeal. 340 S.C. at 58, 530 S.E.2d at 384. While not explicitly stated in the opinion, the circuit court's order denying that Rule 60 motion was immediately appealable pursuant to section 14-3-330(2) of the South Carolina Code because the moving party was in default and the circuit court's order denying the Rule 60 motion resulted in a final judgment. *Id.*; *see also Winesett v. Winesett*, 287 S.C. 332, 334, 338 S.E.2d 340, 341 (1985) ("The proper procedure for challenging a default judgment is to move the trial court to set aside the judgment pursuant to Rule 60(b), SCRCP. An appeal may then be taken from the denial of this motion." (footnote omitted)).

Unlike the moving party in *Sadisco*, Ms. Robbins did not seek relief from default judgment; **rather, Ms. Robbins moved to have the default judgment against Landscaping <u>amended</u> to include Horticulture**. Therefore, unlike the circuit court's order in *Sadisco*, the circuit court's order denying Ms. Robbins's request to include Horticulture in the default judgment against Landscaping did not

result in a final judgment. Because the circuit court's order does not fall within any other category set forth in section 14-3-330,[4] the circuit court's order is not immediately appealable.

Additionally, Ms. Robbins cites *Tunstall v. Lerner Shops, Inc.*, 160 S.C. 557, 159 S.E. 386 (1931), to support her claim that the "Supreme Court of South Carolina has treated the denial of a motion to amend the way a defendant is named in a judgment . . . as immediately appealable." Memo re Appealability p. 2. However, the *Tunstall* court did not address whether that order was immediately appealable. Our courts have subsequently clarified that orders that do not fall within any of the categories set forth in section 14-3-330 are not immediately appealable.

In *Pioneer Assocs., Inc. v. Ticor Title Ins. Co.*, this Court observed that in previously ruling on an order setting aside default judgment, it had clearly not decided whether the order was immediately appealable because the parties did not address that issue. 300 S.C. 346, 348 n. 2, 387 S.E.2d 711, 712 n. 2 (Ct. App. 1989). This Court reasoned that its previous decision was therefore "not determinative" of its decision in *Pioneer*. *Id.* This Court went on to hold that the order in *Pioneer* was not immediately appealable because it did not "fall within any exception enumerated in section 14-3-330." *Id.* at 348, 387 S.E.2d at 712.

[4] Indeed, Ms. Robbins does not argue that the circuit court's order falls within any category set forth in section 14-3-330.

In *Pocisk v. Sea Coast Const. of Beaufort*, this Court reiterated that appellate courts that had previously considered appeals from orders ruling on Rule 60 motions had not addressed the issue of appealability. 380 S.C. 584, 589 n.3, 671 S.E.2d 98, 101 n.3 (Ct. App. 2008). Again, this Court noted that those decisions were not dispositive regarding the issue of appealability because that issue had not been addressed. *Id.* This Court went on to hold that the order in *Pocisk* was not immediately appealable because it did not "fall within any of the . . . categories set forth in section 14-3-330." *Id.* at 589, 671 S.E.2d at 101.

Our appellate courts have made clear that orders, including those ruling on Rule 60 motions, must fall within a category provided by section 14-3-330 to be immediately appealable. Like the orders in *Pioneer* and *Pocisk*, the circuit court's order does not result in a final judgment or fall within any other category set forth in section 14-3-330. Accordingly, this Court should dismiss the appeal because the circuit court's order is not immediately appealable.

II. Alternatively, the circuit court did not err in denying the motion to amend the default judgment against Landscaping to include Horticulture.

"Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders." Rule 60(a), SCRCP. However, "the general rule is that whe[n] the

name [of a corporation] is mistaken materially and substantially, or where there is such a variation that a different entity is indicated, the suit cannot be regarded as against the corporation, and it cannot be affected by the proceedings or judgment therein." *Tunstall*, 159 S.E. at 388. Moreover, "[w]hile a court may correct mistakes or clerical errors [*in*] *its own process* to make [a judgment] conform to the record, it cannot change the scope of the judgment." *Ex parte S.C. Dep't of Revenue*, 350 S.C. 404, 408 n.1, 566 S.E.2d 196, 198 n.1 (Ct. App. 2002) (emphasis added) (quoting *Dion v. Ravenel, Eiserhardt Assocs.*, 316 S.C. 226, 230, 449 S.E.2d 251, 253 (Ct. App. 1994)).

A. Rule 60 cannot be used to change the scope of a judgment.

"Rule 60 specifically provides for a party's relief *from* a judgment, not the enforcement of that judgment against non-parties." *Id.* at 408 n.1, 566 S.E.2d at 198 n.1. "Thus, attempting to bind a non-party to a judgment . . . changes the scope of the original judgment and extends beyond the relief contemplated by Rule 60, SCRCP." *Id.*

Ms. Robbins clearly did not seek relief from a judgment; rather, she sought to have the default judgment against Landscaping enforced against Horticulture. However, Horticulture was not a party to the lawsuit when Ms. Robbins obtained the default judgment against Landscaping. Despite Ms. Robbins's attempts to conflate Landscaping and Horticulture, they are two separate and distinct entities.

Landscaping continued to exist as a South Carolina entity after Horticulture purchased the right to use Southern-EEZ Landscaping as a trade name. Indeed, the two entities were adverse in litigation after that purchase. Therefore, amending the default judgment against Landscaping to include Horticulture, a nonparty, would change the scope of the default judgment against Landscaping. Accordingly, the circuit court did not err in denying the motion to amend the default judgment.

B. Ms. Robbins did not seek to correct a clerical mistake by the circuit court.

"Generally, a clerical error is defined as a mistake in writing or copying." *Dion*, 316 S.C. at 230, 449 S.E.2d at 253. "As applied to judgments and decrees, it is a mistake or omission by a clerk, counsel, judge or printer which is not the result of exercise of judicial function." *Id.*

> The basic distinction between clerical mistakes and mistakes that cannot be corrected pursuant to Rule 60(a) is that [clerical mistakes] consist of blunders in execution whereas [mistakes that cannot be corrected pursuant to Rule 60(a)] consist of instances where the court *changes its mind*, either because it made a legal or factual mistake in making its original determination, or because on second thought it has decided to exercise its discretion in a manner different from the way it was exercised in the original determination.

Landry, 430 S.C. at 161, 843 S.E.2d at 495. "[F]or Rule 60(a) to apply, the 'mistake' must be one where 'there is an inconsistency between the text of an order

or judgment and the . . . court's intent when it entered the order or judgment.'" *Id.* (quoting *Sartin v. McNair Law Firm*, 756 F.3d 259, 265 (4th Cir. 2014)).

The circuit court clearly did not make a clerical error, oversight, or omission. Ms. Robbins mistakenly named Landscaping instead of Horticulture in the complaint; the circuit court did not mistakenly name Landscaping instead of Horticulture. Moreover, Ms. Robbins's mistake is clearly not a clerical error, oversight, or omission. **Ms. Robbins did not simply misspell Horticulture's name or use its trade name: she named a completely different entity.** Accordingly, the circuit court did not err in denying the motion to amend judgment because a motion under Rule 60(a) was inappropriate under these circumstances.

Ms. Robbins cites *Tri-County Ice & Fuel Co. v. Palmetto Ice Co*., 303 S.C. 237, 239, 399 S.E.2d 779, 781 (1990), to support her argument that the circuit court erred in denying the motion to amend judgment, but that case is easily distinguished from this case. First, and most importantly, the circuit court found that the two entities in *Tri-County* "were one in the same." *Id.* at 239, 399 S.E.2d at 781. Accordingly, our supreme court found on appeal that amending the default judgment to substitute a trade name was "not so extensive as to substitute a new defendant, but was merely a correction of a clerical mistake in the name of the corporation." *Id.* at 241, 399 S.E.2d at 782. Additionally, the individual served in *Tri-County* chose to ignore the summons and complaint because he knew the plaintiff did not know the

complaint named the wrong entity, and he also knew the plaintiff could not determine that mistake because the correct entity was not registered with the Secretary of State. *Id.* at 240–41, 399 S.E.2d at 782. Indeed, the plaintiff in *Tri-County* was unaware he named the wrong entity until the defendant filed a motion to vacate judgment. *Id.* at 238–39, 399 S.E.2d at 780–81. Finally, the defendant in *Tri-County* argued that it could not be sued by its trade name. *Id.* at 238, 399 S.E.2d at 780.

Here, unlike the court in *Tri-County*, neither the special referee nor the circuit court found that Horticulture and Landscaping were the same entity. Indeed, the circuit court found that Horticulture and Landscaping were different entities. **(*See* Circuit Court Order p. 5-6, 8-9.)** Additionally, unlike the individual served in *Tri-County*, Mr. Negrin immediately informed Ms. Robbins's process server that he was not Landscaping's principal and Landscaping and Horticulture were different entities. Indeed, Trial Counsel also immediately informed Ms. Robbins's counsel that the complaint named the wrong entity—Landscaping—and offered to accept service of an amended complaint on behalf of the correct entity—Horticulture. Moreover, the public record clearly indicates that Landscaping and Horticulture are two separate entities, unlike the public record in *Tri-County*. Ms. Robbins could have easily verified Trial Counsel's representation that Horticulture was the correct entity and Landscaping was a separate and incorrect entity by looking at

Horticulture's website and the Secretary of State's website. Finally, unlike the defendant in *Tri-County*, Horticulture does not argue that Ms. Robbins cannot sue Horticulture by its trade name; rather, Horticulture argues that Ms. Robbins cannot have a default judgment against a separate, distinct, and incorrect entity amended to include Horticulture. Accordingly, the circuit court did not err in denying the motion to amend judgment.

III. The special referee did not have jurisdiction as to Horticulture.

"[S]ubject matter jurisdiction refers to a court's constitutional or statutory power to adjudicate a case." *First Citizens*, 431 S.C. at 162, 847 S.E.2d at 256 (alteration in original) (quoting *Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs.*, 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007)). "Stated somewhat differently, 'subject matter jurisdiction is the power of a court to hear and determine cases of the general class to which the proceedings in question belong.'" *Id.* (quoting *Johnson*, 372 S.C. at 284, 641 S.E.2d at 897).

"In . . . a default case . . . some or all of the causes of action . . . may be referred to a master or special referee by order of a circuit [court] judge." Rule 53(b), SCRCP. "Pursuant to Rule 53, SCRCP, a [special referee] has no power or authority except that which is given to him by the order of reference." *Bunkum v. Manor Props.*, 321 S.C. 95, 98, 467 S.E.2d 758, 760 (Ct. App. 1996)).

Additionally, proper service is achieved "by delivering a copy of the summons and complaint to an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Rule 4(d)(3), SCRCP.

The special referee did not have jurisdiction as to Horticulture. First, the circuit court's order of reference only gave the special referee jurisdiction as to Landscaping's default. Determining whether Landscaping and Horticulture were different entities, an essential finding for the motion to amend the judgment, was therefore outside the purview of the special referee's order of reference because it did not relate to Landscaping's default.

Moreover, the circuit court properly found that Ms. Robbins never served Horticulture.[5] Again, Ms. Robbins's Summons and Complaint were addressed to Landscaping and Landscaping's principal Mr. Smith rather than Horticulture and Horticulture's principal Mr. Negrin. Mr. Negrin has never been an officer, or agent for Landscaping and has never been authorized or appointed to accept service of process on Landscaping's behalf. Indeed, Mr. Negrin informed the process server

[5] Horticulture chose not to file a motion to dismiss based on improper service and did not raise improper service in its answer. Instead, Horticulture raised the misidentification of parties as an affirmative defense in its answer after it was allowed in intervene. **(Answer, Counterclaim, and Crossclaim (plus Exhibit A).)** Contrary to Ms. Robbins's assertions, Horticulture has not tried to avoid or delay this litigation; Horticulture has merely tried to participate in it properly.

that Mr. Smith was Landscaping's principal and that he was not Mr. Smith. Accordingly, the special referee did not have jurisdiction as to Horticulture.

IV. Because the circuit court did not err in refusing to amend the judgment to include Horticulture, this Court need not address Ms. Robbins's arguments regarding the circuit court's rulings on the related motions.

This Court's decision regarding Ms. Robbins's motion to amend the default judgment is dispositive of this appeal. If this Court agrees with Horticulture's assertion that the circuit court did not err in refusing to amend the default judgment, then this Court need not address the remaining issues regarding Ms. Robbins's related motions. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (providing that appellate courts need not address remaining issues when disposition of a prior issue is dispositive of the appeal). Conversely, Horticulture concedes that if this Court finds that the circuit court erred in refusing to amend the default judgment, then the circuit court erred in denying Ms. Robbins's related motions.

CONCLUSION

Rather than simply amend the complaint to name Horticulture as a defendant, Ms. Robbins obtained a default judgment against Landscaping and then tried to have that default judgment against Landscaping amended to include Horticulture. We ask this Court to dismiss the appeal because the circuit court's order is not immediately

appealable. Alternatively, we ask this Court to affirm the circuit court's order denying the motion to amend default judgment.

Respectfully submitted,

CLEMENT RIVERS, LLP

By: s/ Catherine H. Chase

Catherine H. Chase (SC Bar No. 74593)
Graydon V. Olive, IV (SC Bar No. 105319)
25 Calhoun Street, Suite 400
P.O. Box 993 (29402-0993)
Charleston, South Carolina 29401
(843) 720-5488
cchase@ycrlaw.com
golive@ycrlaw.com

and

WOLFE, GUNST & HINSON, PLLC
Brian E. Wolfe (SC Bar No. 77463)
Robert C. Gunst, Jr. (SC Bar No. 102957)
Joshua R. Hinson (SC Bar No. 102270)
215 Queens Road, Suite 200
Charlotte, NC 28204
(704) 827-3774
bwolfe@wolfegunst.com
rgunst@wolfegunst.com
jhinson@wolfegunst.com

Attorneys for Respondent

Charleston, South Carolina

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