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SC Court of Appeals

IN THE COURT OF APPEALS OF SOUTH CAROLINA

CASE NO.: 2022-CP-28-00877

JOSEPH AND LAUREN JACO,

Respondents,

v.

J.N. GREEN & ASSOCIATES, LLC, BIG BLUE EXPRESS, LLC, AND JOE N. GREEN,

Appellants.

APPELLANTS' INITIAL BRIEF

/s/Adrienne L. Turner

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TABLE OF CONTENTS

1. Table of Authorities
2. Statement of Issues on Appeal
3. Statement of the Case
4. Statement of Facts
5. Summary of Argument
6. Argument

Issue Statements

1. **The Special Referee erred in refusing to set aside the entry of default.**
2. **The Special Referee erred in failing to dismiss Big Blue Express and Joe Green as improper parties and in not holding that J.N. Green and Associates, LLC, is solely liable for its own torts.**
3. **The Special Referee's award of compensatory damages is arbitrary and capricious, lacks support from qualified testimony, and improperly relies on inadmissible hearsay.**
4. **The Special Referee erred in awarding punitive damages absent any evidence justifying such an award, let alone the excessive amount granted.**

Statement of the Case

Plaintiffs Joseph and Lauren Jaco filed suit on October 10, 2022, against J.N. Green and Associates, LLC, a residential construction company, along with Big Blue Express, LLC, a trucking company, and Joe Green. They alleged that nearby subdivision construction caused pollutants to flow into a one-acre pond on their property.

After failed attempts at traditional service, Plaintiffs obtained court approval for service by publication. A Summons was published in the *Chronicle-Independent* on November 15, 22, and 29, 2022. Plaintiffs then filed for default against Defendants and moved to transfer the case to a special referee. The court granted these motions, entering default on January 9, 2023. Shortly after, Defendants' counsel filed a notice of appearance and requested to set aside the default, which Plaintiffs opposed. On January 19, 2023, Defendants moved to vacate the default, but after briefing and a hearing, the Special Referee, Joseph Hodges, denied their motion.

On June 23, 2023, Defendants moved to dismiss Big Blue Express, LLC, and Joe N. Green as defendants, arguing they were improperly named as parties and were not individually liable for the debts of . Though unresolved at the time of the September 22, 2023, damages hearing, the Special Referee later denied the motion, holding that default had established all Defendants' liability.

At the damages hearing, Plaintiffs presented testimony, including expert witness Brian Taylor, qualified in stormwater management, pond management, and environmental consulting. Plaintiffs also sought to introduce a third-party damage estimate from Stylecraft, but Defendants objected on hearsay grounds. The court excluded the report but allowed

Taylor to testify to figures derived directly from it. Defendants requested an independent expert assessment of damages, but the Master declined.

On January 2, 2024, the Special Referee awarded Plaintiffs \$500,000 in compensatory damages and \$2,000,000 in punitive damages. Defendants sought reconsideration, but the Master indicated he would not address the motion. This appeal followed.

STATEMENT OF FACTS

Plaintiffs, residents of South Carolina, own a 25-acre parcel of land located at 848 Tookie Dao Lane, Elgin, South Carolina, identified as Kershaw County Parcel Identification Number 305-00-00-009 (hereinafter the "Jaco Property"). A small pond, approximately one acre in size, is situated near the southwest corner of the Jaco Property. This pond is fed by a stream that runs generally from north to south.

Adjacent to the Jaco Property, to the north and west of the pond, lies real property previously owned by Defendant J.N. Green & Associates, LLC. Beginning in May 2021, Defendant J.N. Green & Associates applied for and received approval from Kershaw County to develop a minor subdivision, known as the "Tookie Dao Subdivision." The Tookie Dao Subdivision is topographically positioned uphill from the stream that flows onto the Jaco Property and was developed in compliance with county regulations.

Following the commencement of lawful and permitted land clearing for the Tookie Dao Subdivision, Plaintiffs alleged that their stream and pond became increasingly turbid and cloudy after rainfall events.

On September 23, 2021, Plaintiffs, through their counsel, contacted Defendant J.N. Green & Associates with concerns regarding stormwater flow. Defendant promptly responded and

took reasonable steps to address the concerns, though there was no conclusive evidence that the development activities directly caused the alleged changes to Plaintiffs' water conditions.

On February 4, 2022, Plaintiffs' counsel again contacted Defendant J.N. Green & Associates, claiming that the measures taken were insufficient. However, Plaintiffs provided no scientific evidence proving that the development caused any pollution or erosion issues. Defendant maintained compliance with applicable stormwater management and environmental regulations.

In September 2022, Defendant J.N. Green & Associates voluntarily entered into a "Consent Order" with the South Carolina Department of Health and Environmental Control (DHEC). The agreement, while acknowledging a technical permitting oversight, did not establish any wrongdoing or direct causation of harm to Plaintiffs' property. As part of the resolution, Defendant agreed to minor remediation efforts and paid a nominal civil penalty of \$4,000 to DHEC, demonstrating a willingness to comply with regulatory requirements.

Subsequently, J.N. Green & Associates issued a formal response disputing Plaintiffs' claims. Defendant noted that pre-existing conditions of Plaintiffs' pond, visible in historical satellite imagery, contradicted Plaintiffs' assertions. Defendant further suggested that Plaintiffs' objections might stem from opposition to new neighboring developments rather than actual environmental harm.

On October 12, 2022, Plaintiffs initiated legal proceedings against Defendant J.N. Green & Associates, LLC, Big Blue Express, LLC, a trucking company, and Joe N. Green in his individual capacity.

ARGUMENTS

I. THE SPECIAL REFEREE ABUSED HIS DISCRETION IN REFUSING TO SET ASIDE THE ENTRY OF DEFAULT

A. The special referee erred in failing to find that irregularities and deficiencies in service of process established “good cause” to set aside the entry of default such that consideration of the remaining WHAM factors was indicated to set aside the entry of default because service of process was deficient and did not provide defendant with notice of the proceedings.

It is well established under South Carolina law that a default judgment should not stand where the defendant was not properly served with process. Rule 55(c), SCRCP, permits a court to set aside an entry of default for mere “good cause shown.” Moreover, South Carolina courts have recognized that improper service constitutes sufficient grounds to vacate an entry of default.

Roche v. Young Bros., Inc. of Florence, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995).

In this case, service was effectuated by publication. South Carolina courts have long held that service by publication is a last resort and must be executed in a manner that maximizes the likelihood of actual notice. **See Montgomery v. Mullins, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct. App. 1997).** Rule 4(d)(2) of the South Carolina Rules of Civil Procedure mandates that service by publication must be made in a newspaper most likely to provide notice to the defendant/ Furthermore, **South Carolina Code § 15-9-740** provides that the order of publication “shall direct the publication to be made in one newspaper, to be designated by the officer before whom the application is made.” Additionally, while judicial discretion may allow the court to specify the newspaper in its order, best practices suggest that doing so enhances clarity and

compliance with statutory obligations. In any event, there can be no question but that when selection of the publication to be used is left to the serving party, due process considerations nonetheless dictate that the chosen publication must still be reasonably calculated to inform the defendant of the lawsuit. See **Mullane v. Central Hanover Bank & Trust Co.**, 339 U.S. 306, 314 (1950).

In the instant case, the order of service by publication failed to specify the publication in which notice would be placed. Instead, Plaintiffs unilaterally chose an obscure digital-only newspaper with no printed circulation outside of Camden, South Carolina. Such a choice was not reasonably calculated to provide notice to Defendant, particularly given that Defendants were not located in Camden, had no ongoing business operations there, and had no reason to review that particular publication. The Plaintiffs' method of service failed to meet this standard, thereby rendering service defective. Even if the deficiencies in service of process are not deemed to have deprived the special referee of jurisdiction over the Appellants, the nature and extent of the deficiencies more than meet with the "good cause" standard such that a full analysis and application of the remaining WHAM factors is mandated.

Further, the evidence does not support the Special Referee's finding that Defendants clearly understood their obligation to answer the summons and complaint. Defendants were correct in their understanding that unless and until proper service of process is accomplished, there is no obligation to answer a lawsuit. The commonly understood method of service of process is to have someone personally serve a party. It is undisputed that Defendants were not personally served. No evidence was presented establishing that Mr. Green was ever confronted by a process server and actively refused to accept service of process. There was no evidence that Mr. Green

saw and ran away from process servers or otherwise actively tried to evade service. Even if there were such evidence, the law does not impose a duty on civil defendants to assist or cooperate plaintiffs in accomplishing service of process. **See Roche v. Young Bros., Inc., 318 S.C. 207, 456 S.E.2d 897 (1995) (holding that a defendant has no affirmative duty to assist a plaintiff in effectuating service of process).**

B. Even if service had been effective, defendants presented good cause to set aside the entry of default based on excusable neglect.

The South Carolina Supreme Court has held that excusable neglect sufficient to set aside an entry of default includes situations where a party was unaware of the proceedings. **Micronics, Inc. v. South Carolina Dep't of Revenue, 345 S.C. 506, 510, 548 S.E.2d 223, 225 (Ct. App. 2001).**

Here, Defendant had been in regular communication with Plaintiffs regarding the alleged silt runoff issue prior to the filing of the complaint and had voluntarily taken remedial measures to address Plaintiffs' concerns. Given this ongoing communication and cooperation, it was reasonable for Defendant to believe that no lawsuit was imminent when Defendants were not personally served with process, and service by publication was not accomplished in manner calculated to provide Defendant with actual notice of the suit. Under these circumstances, Defendant's failure to discover publication of the summons by checking every possible publication was, at the very least, excusable neglect.

C. DEFENDANT HAS A MERITORIOUS DEFENSE TO PLAINTIFFS' CLAIMS, JUSTIFYING RELIEF FROM DEFAULT.

A meritorious defense is a critical factor in determining whether to set aside an entry of default.

Gainey v. Gainey, 382 S.C. 414, 421, 675 S.E.2d 792, 796 (Ct. App. 2009). Defendant

presented compelling evidence that:

1. Defendant took proactive steps to remediate any potential silt runoff prior to the filing of the complaint.
2. Defendant received reports from the South Carolina Department of Health and Environmental Control (DHEC) indicating that Defendant was in compliance and had corrected any prior issues with silt escaping from the construction site.
3. The issues alleged by Plaintiffs had been effectively resolved prior to the lawsuit, rendering their claims legally and factually insufficient.

By failing to set aside the default and permit Defendant to present these defenses, the Special Referee improperly denied Defendant the opportunity to litigate the matter on its merits, in direct contravention of South Carolina's strong public policy favoring resolution of cases based on their substantive merits rather than procedural technicalities. See **Sundown Operating Co. v. Intedge Indus., Inc.**, 383 S.C. 601, 608, 681 S.E.2d 885, 889 (2009).

D. PUBLIC POLICY FAVORS RESOLVING CASES ON THE MERITS RATHER THAN BY DEFAULT.

South Carolina courts consistently favor resolving disputes on their merits rather than through procedural default. **Davis v. Davis**, 288 S.C. 313, 316, 342 S.E.2d 587, 589 (Ct. App. 1986).

This is particularly true where, as here, the defendant did not willfully ignore the litigation but actively participated in remedial measures designed to prevent damage to Respondent's pond

beginning before suit was filed, and was then denied proper notice and an opportunity to defend the case.

Given the totality of the circumstances, the Special Referee's refusal to set aside the default was an abuse of discretion and should be reversed. Defendant was not properly served, acted diligently upon discovering the default, and presented valid defenses to the claims against him. For these reasons, the entry of default should be set aside, and Defendant should be permitted to defend the case on its merits.

I. The Special Referee Erred in Finding that the Default Established Liability Against Big Blue Express and Joe N. Green Based on the Allegations in the Complaint

The Special Referee erred in determining in his order denying Defendants' motion to dismiss that the default judgment established liability, particularly as to the alter ego theory. While well-pleaded allegations are deemed admitted upon default, the Plaintiffs' Complaint does not contain substantive factual allegations supporting the claim that Big Blue Express, LLC and J.N. Green & Associates, LLC were alter egos of each other or that Joe Green was personally liable under an alter ego theory. Instead, the only reference to this issue appears in the **Jurisdiction, Venue, and Parties** section of the Complaint, which is conclusory and does not set forth specific allegations demonstrating the elements required to pierce the corporate veil.

A. The Complaint Fails to Contain Well-Pleaded Allegations Supporting an Alter Ego Theory

Under South Carolina law, a plaintiff seeking to establish alter ego liability must demonstrate:

1. **Unity of interest and ownership**—that the corporate entity had no separate mind, will, or existence of its own.
2. **Fraud or fundamental unfairness**—that adherence to the corporate form would promote fraud or injustice.

The Complaint fails to satisfy these elements. The only statement regarding the alleged alter ego relationship appears in the **Jurisdiction and Venue** section, which merely asserts in conclusory fashion that “J.N. Green & Associates, LLC and Big Blue Express, LLC are shell companies totally dominated and controlled by Defendant Green and these companies merely serve as the alter ego of Defendant Green and each other”. However, the Complaint lacks **any factual support** demonstrating (1) how the companies were allegedly dominated or (2) how their corporate separateness was disregarded to perpetrate fraud or injustice.

Further, every substantive factual allegation in the Complaint attributes wrongdoing **solely** to J.N. Green & Associates, LLC. There is no reference to specific actions by Big Blue Express, LLC that would support its liability under the alter ego theory, nor is there any factual assertion that Joe Green personally engaged in wrongful conduct separate from the actions of J.N. Green & Associates, LLC. Without specific allegations demonstrating an alter ego relationship, default cannot establish liability under that theory.

B. Default Judgment Does Not Cure the Complaint’s Deficiencies

While it is true that well-pleaded allegations are deemed admitted upon default, **default does not admit legal conclusions** or unsupported factual assertions. South Carolina courts have held that:

“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).

However, this principle applies only where the complaint contains **sufficient factual allegations** to support the legal claims. In South Carolina, a well-pleaded complaint must articulate sufficient factual allegations to establish a viable cause of action. As elucidated in *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019), the South Carolina Supreme Court stated:

“Because a Rule 12(b)(6) motion tests the sufficiency of a complaint rather than the merits of the claim, it is to be determined based solely upon the pleading.”

This underscores that, when evaluating a motion to dismiss under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, courts focus exclusively on the allegations within the complaint to assess whether they sufficiently outline a legitimate cause of action. See,

Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019). The *Skydive* decision clarifies that a Rule 12(b)(6) motion is evaluated based solely on the sufficiency of the complaint’s allegations. This principle implies that a complaint must contain legally sufficient facts to support a claim, rather than mere conclusions or legal assertions. When a party fails to respond to a complaint and defaults, the well-pleaded allegations in the complaint are deemed admitted. However, if the allegations are conclusory, vague, or fail to establish the essential elements of a cause of action, they do not constitute well-pleaded allegations and thus cannot support a finding of liability—even in default. *Id.* Since the *Skydive* ruling underscores that

sufficiency must be assessed on the face of the pleading, it follows that a default judgment cannot be based on allegations that would not survive a Rule 12(b)(6) motion. In other words, if a complaint does not state a valid cause of action, a default judgment does not cure this deficiency, as liability cannot be predicated on an insufficient pleading.

Courts have an independent duty to ensure that default judgments rest on legally sufficient claims. A default does not grant the plaintiff more than what is properly pleaded. The court must first determine whether the complaint states a claim upon which relief can be granted before entering a judgment, reinforcing the idea that default alone does not establish liability where the allegations fail to meet pleading standards.

Thus, under the reasoning in *Skydive*, a default judgment cannot be used to establish liability when the underlying allegations in the complaint are not well-pleaded. If the complaint lacks the necessary factual detail or fails to establish the elements of a claim, the defaulting party does not admit liability merely by failing to answer. The court must still ensure that the claim itself is legally sufficient before imposing liability.

Courts do not accept mere conclusions or boilerplate assertions as admitted by default. In this case, because the Complaint lacks **specific factual allegations** supporting an alter ego theory, liability cannot be imposed on Big Blue Express, LLC or Joe Green merely by default.

3. The Special Referee's Reliance on Default in Denying the Motion to Dismiss Was Misplaced

In denying the motion to dismiss, the Special Referee stated:

“The well-pleaded allegations of the Complaint here are sufficient to establish liability of each of the Defendants.”.

This conclusion is fatally flawed for the reasons outlined above—there were no well-pleaded factual allegations supporting alter ego liability. Instead, the Complaint simply states a legal conclusion without any supporting facts.

Moreover, the Special Referee’s reliance on default contradicts established law requiring courts to scrutinize complaints even in default proceedings. A default judgment **cannot** create liability where the underlying allegations are insufficient to state a claim. As South Carolina courts have recognized:

“A party seeking to pierce the corporate veil must show both that there is no separate corporate existence and that failing to disregard the corporate entity would result in fraud or injustice.”

Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984).

Because the Complaint contains **no allegations demonstrating fraud or injustice**, the Special Referee erred in holding that default established liability on an alter ego basis.

The Special Referee erred in denying Defendants’ motion to dismiss based on the finding that default established liability. The Complaint fails to include substantive factual allegations supporting alter ego liability, and default cannot cure these deficiencies. Because the allegations in the Complaint only reference the alter ego theory in the **Jurisdiction and Venue** section—without any specific factual support—liability against Big Blue Express, LLC and Joe Green was improperly imposed. Accordingly, the Court should reverse the Special Referee’s ruling and dismiss these parties from the case.

III. The Special Referee's award of compensatory damages is arbitrary, capricious, unsupported by qualified testimony, and evidences inappropriate reliance on inadmissible and improper hearsay evidence.

Brian Taylor's testimony regarding damages is fundamentally flawed because it relies on hearsay information rather than firsthand professional assessment. He admitted that his company, Aqueous Environmental, does not perform all necessary remediation services and that he had to consult StyleCraft Environmental for cost estimates. The defense objected to this reliance, arguing that StyleCraft was not present for cross-examination, making their cost estimates inadmissible hearsay. While Taylor was allowed to testify based on hearsay under Rule 703, the documents containing StyleCraft's estimates were excluded from evidence. Since Taylor's damage estimates were derived from third-party calculations rather than his own independent expertise, they lack sufficient reliability to serve as the basis for determining financial damages.

Rule 703 of the South Carolina Rules of Evidence states: "An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted." The intent of Rule 703 is to allow experts to utilize reports, data, and other information that may not be admissible to form and support their own well-reasoned opinions. However, in this case, there is no evidence that Brian Taylor did anything more than have an out-of-state company generate a report with exceedingly high estimates so that he could present their estimate at Plaintiff's damages hearing. There is no indication that he consulted any other sources to attempt to formulate his own independent assessment or that he made any attempt to independently verify

the numbers from the estimate relied on. Rule 703 is intended to allow experts to inform their own opinions with information that may not be admissible, not to serve as a backdoor for presenting purely hearsay testimony.

In a default judgment hearing in South Carolina, Defendants are limited to cross-examining Plaintiffs' evidence on damages. Here, Defendants were prevented from fully challenging the estimates because Brian Taylor had no independent expert knowledge of how the third-party company arrived at the figures he was tasked with presenting, or whether and to what extent those figures were derived from a reliable methodology. Although the attorney for Plaintiffs attempted to structure questions to Mr. Taylor that would give the impression of compliance with Rule 703, a cursory review of the excluded document reveals he did nothing more than recite the figures from the document that was excluded.

Additionally, Taylor was qualified in stormwater management, pond management, and environmental consulting, but he was not qualified in hydrology or precise cost estimation for remediation. His prior experience as an expert witness in *Tidwell v. S.C. DOT* was solely related to stormwater management and did not involve damage assessment or cost evaluation. He does not hold certifications in hydrology, which is directly relevant to assessing sedimentation impact and restoration needs. The court explicitly did not qualify Taylor as an expert in hydrology, which further undermines his ability to credibly assess damages related to sedimentation. Taylor's testimony on damages exceeds his area of expertise and should therefore be given little to no weight in determining financial liability.

Taylor's testimony primarily highlighted visual differences in water turbidity and changes to the pond after development, but he failed to establish a quantifiable, scientific causation between the

construction and the alleged damages. He primarily relied on aerial images and on-site visual inspections rather than conducting water quality testing, sediment sampling, or hydrological modeling to support his conclusions. He did not perform core sampling of the sediment or analyze flow rates to definitively prove that the development caused the damage. Without scientific testing or independent verification, Taylor's conclusions about the extent of damage and its causes are speculative at best.

Even if Taylor's assessment of environmental changes were accepted, his damage estimates remain unreliable because he outsourced cost calculations to an unaffiliated third party, StyleCraft Environmental. His degree is in economics, but he does not have specific expertise in construction cost estimation or industry-standard pricing for pond restoration. Since StyleCraft's cost estimates were not admitted into evidence, the financial impact of the alleged damages is entirely unsupported. Taylor referenced multiple remediation options, with cost ranges from \$2.1 million to over \$4 million, but he did not justify why these estimates were credible or which option was necessary. Without an industry-standard methodology, these numbers are arbitrary and lack evidentiary weight. Furthermore, the \$2 million discrepancy in the estimated cost of remediating a one-acre pond allegedly polluted by sand and erosive materials is itself evidence that the estimates are wholly unreliable, unsupported, and indefensible. A legitimate expert assessment would provide a clear, consistent basis for costs, rather than fluctuating figures that appear exaggerated for litigation purposes.

Accordingly, Taylor's testimony on damages should be excluded or given minimal weight because his cost estimates are based on hearsay and were ruled inadmissible, he lacks the necessary qualifications in hydrology and cost assessment, he did not perform independent

testing to establish a direct causal link, and his damage estimates are speculative and lack proper evidentiary support. Furthermore, his reliance on hearsay testimony and the Special Referee's reliance on that testimony violate the intent of Rule 703. The court should therefore reject his damage calculations as unreliable and dismiss any claims for financial restitution based on his testimony.

In the alternative, the court should reverse the award of compensatory damages and remand the case for a new damages hearing with the lower court ordering an independent evaluation of damages by an independent, qualified expert.

IV. The Special Referee erred in awarding punitive damages absent any evidence justifying such an award, let alone the excessive amount granted.

The Special Referee's findings on punitive damages, as reflected in the final order, fail to provide a legally sufficient basis for the extraordinary award of \$2 million. South Carolina law requires that punitive damages be supported by clear and convincing evidence of willful, wanton, or reckless conduct. However, the findings do not demonstrate that the Defendants engaged in conduct that meets this high threshold. Instead, the award appears to be largely based on an email from Joe Green in which he suggested that the Jacos may have had less than pure intentions in seeking to disrupt his construction project. The notion that this single email—expressing a speculative opinion—could serve as the foundation for a multimillion-dollar punitive damages award is legally indefensible.

The Special Referee's determination is wholly unsupported by applicable law. Courts in South Carolina and across the country have consistently held that punitive damages are intended to

punish extreme misconduct, not to penalize an individual for expressing skepticism or frustration in a private communication. The Special Referee's reasoning stretches the law far beyond its intended scope and effectively transforms a routine business dispute into a punitive windfall for the Plaintiffs. Moreover, there is no evidence that this email caused any actual harm or that it constituted reckless or fraudulent behavior. The decision to impose punitive damages based on such a weak foundation is not only arbitrary but also shocking to fundamental principles of fairness and due process.

The record demonstrates that the Plaintiffs' compensatory damages claim was significantly weakened by the exclusion of hearsay evidence. Despite this, the Special Referee proceeded to award **excessive punitive damages** in a manner suggesting an attempt to compensate for the lack of proven actual damages. South Carolina courts have consistently held that punitive damages cannot be used as a substitute for actual damages. *Minter v. GOCT, Inc.*, 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996).

Additionally, the Plaintiffs' own testimony underscores the **injustice of the excessive award**. The record reflects that the Plaintiffs primarily sought **repair of the pond**, and their counsel expressly stated on the record that a punitive damages award of one-fourth of the final amount awarded would have been more appropriate. This further demonstrates the arbitrary nature of the Master's ruling.

Furthermore, the excessive nature of the award underscores the legal deficiencies in the Special Referee's findings. The Plaintiffs' actual damages were determined to be \$500,000, meaning that

the punitive damages award is four times that amount. South Carolina follows the proportionality principles set forth in *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996), which require punitive damages to bear a reasonable relationship to the harm suffered. There is no justification for a fourfold multiplier, particularly when the underlying basis for punitive damages is so tenuous. The Defendants' compliance with regulatory requirements and their corrective measures further undercut any claim that they acted in a reckless or egregious manner.

For these reasons, the punitive damages award of \$2 million is legally unsound and must be vacated or substantially reduced. It rests on an insubstantial and legally insufficient basis, is grossly disproportionate to any alleged harm, and constitutes an arbitrary and punitive overreach by the Special Referee.

South Carolina law requires that punitive damages be supported by **clear and convincing evidence** of willful, wanton, or reckless conduct. *Lisenby v. Lear*, 341 S.C. 486, 534 S.E.2d 319 (Ct. App. 2000). The Special Referee's final order, however, does not establish any factual basis for such a finding. Instead, the record reflects that the Plaintiffs' claims were primarily based on negligence and hearsay testimony, which is **insufficient to justify punitive damages**.

Further, fraud is one of the recognized grounds for punitive damages, but the **Plaintiffs failed to prove the elements of fraud**, including intentional misrepresentation and reliance. Without evidence of fraudulent intent or recklessness, punitive damages cannot be sustained. See *Collins Holding Corp. v. Defibaugh*, 316 S.C. 373, 450 S.E.2d 626 (Ct. App. 1994).

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The **U.S. Supreme Court has held** that punitive damages must be proportional to the harm suffered by the plaintiff and that excessive punitive damages violate due process. *BMW of N. Am., Inc. v. Gore*, 517 U.S. 559 (1996). South Carolina follows the same principle, requiring that punitive damages be reasonably related to compensatory damages. *Gamble v. Stevenson*, 305 S.C. 104, 406 S.E.2d 350 (1991).

Here, the punitive damages award of **\$2 million** is disproportionate and fails the **Gore test**, which considers:

1. The **degree of reprehensibility** of the defendant's conduct;
2. The **ratio of punitive damages to actual damages**; and
3. A **comparison to similar civil penalties**.

Given that the Plaintiffs' actual damages were **\$500,000**, the punitive damages award is **four times** the actual damages, further highlighting its excessive nature. Moreover, the Defendants'

compliance with DHEC regulations and corrective measures weigh heavily **against** any finding of willful, wanton, or reckless misconduct.

For the foregoing reasons, the Appellant respectfully requests that this Court **vacate or substantially reduce the punitive damages award** on the grounds that it was legally and factually unsupported, arbitrarily excessive, and improperly used as a substitute for compensatory damages.

CONCLUSION

For the foregoing reasons, the Appellants respectfully request that this Court reverse the Special Referee's decision and grant appropriate relief. The refusal to set aside the entry of default was an abuse of discretion, given the deficiencies in service of process and the presence of meritorious defenses. Further, the imposition of liability against Big Blue Express, LLC and Joe N. Green was improper, as the Complaint lacked the requisite well-pleaded factual allegations to support an alter ego theory. The award of compensatory damages was arbitrary, unsupported by reliable testimony, and based on improper reliance on inadmissible hearsay.

Finally, the punitive damages award of \$2 million was excessive, unsupported by the evidence, and failed to meet the proportionality standards set forth in applicable case law. Accordingly, Appellants request that the Court reverse the Special Referee's rulings, set

aside the default, dismiss the improperly joined parties, and remand the case for a proper determination of damages based on admissible, reliable evidence.

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