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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Appellate Case No. 2024-001724
Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

RESPONDENT/APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

OF WHICH CASA BAHARI, LLC IS THE APPELLANT/RESPONDENT.

RECORD ON APPEAL

---

s/India D. Shaw
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The undersigned hereby certifies that the record on appeal contains all material proposed to be included by any of the parties and not any other material.

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May 1, 2025

ELECTRONICALLY FILED - 2024 Jan 25 4:48 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).	**ORDER FOR ENTRY OF DEFAULT AS TO DEFENDANT CASA BAHARI, LLC**

Plaintiff served the Summons and Complaint on Defendant on December 4, 2023. Defendant's Answer or other responsive pleading was due on or about January 3, 2024. Defendant Casa Bahari, LLC failed to submit an Answer or other responsive pleading within the time provided to do so under the South Carolina Rules of Civil Procedure, and on January 25, 2024, Plaintiff filed a Motion for Entry of Default.

THE COURT HEREBY FINDS Defendant Casa Bahari, LLC was properly served with the Summons and Complaint and failed to timely file and/or serve a responsive pleading, and Plaintiff properly moved for entry of default on January 25, 2024.

IT IS ORDERED that Defendant Casa Bahari, LLC, is in Default and this Entry of Default is considered effective as of on January 25, 2024, the date the Court was first notified of Defendant Casa Bahari, LLC`s default through Plaintiff`s Motion for Entry of Default.

Dated: _____

_____
Clerk of Court
Florence County
Court of Common Pleas

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Entry of Default

So Ordered

s/Doris Poulos O'Hara, Florence County Clerk of Court

FORM 4

00003

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

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		$ 00004
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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Florence Common Pleas

Case Caption:	Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al
Case Number:	2023CP2102320
Type:	Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Apr 02 11:45 AM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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, Defendants.	**ORDER ON DEFAULT JUDGMENT**

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

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Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

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shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

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3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

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Florence Common Pleas

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

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Sep 11 11:23 AM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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.	**ORDER DENYING DEFENDANT ARETE WHYNDHAM PROPERTY OWNER'S LLC'S MOTION TO SET ASIDE DEFAULT**

This matter came before the Court on August 21, 2024 on dueling motions – Plaintiff's motion to hold Defendant Arete Wyndham Property Owner, LLC's (hereinafter "Arete Wyndham" or "Defendant") in default, and Defendant's Motion to Set Aside Default. 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, 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] is 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 Arete Wyndham's Motion to Set Aside Default is **DENIED**.

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THE LAW

The issue before this Court is whether Defendant should be relieved of default. To relieve a defendant of default, the court must conduct a two-step analysis. The first step is to determine whether defendant has "a satisfactory explanation for the default." *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 defendant shows good cause for failing to timely answer, then the court proceeds to the second step, analysis of the Wham factors.

However, if defendant does ***not*** put forth a satisfactory explanation for the default – in other words, does not show good cause for failing to answer the complaint – then the analysis ends, and the court does ***not*** consider the Wham factors. *See Campbell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 793 (Ct. App. 2020) ("Because [defendant] has failed to put forward a satisfactory explanation, we need not address the *Wham* factors."); *Regions Bank v. Owens*, 741 S.E.2d 51, 55 (S.C. Ct. App. 2013) ("Because we find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the *Wham* factors.); *Sundown*, 681 S.E.2d at 888 (holding a court need only consider the *Wham* factors "[o]nce a party has put forth a satisfactory explanation for the default"); *Dixon v. Besco Eng'g, Inc.*, 463 S.E.2d 636, 639 (S.C. Ct. App.1995) (holding the trial court is not required to make specific findings of fact on the record for each Wham factor if the record contains sufficient evidentiary support for the finding of lack of good cause).

Many defendants seek to conflate the two steps into a single multi-factor analysis. This is not proper. The proper analysis is good cause first; *Wham* factors second, if at all.

Fortunately, South Carolina appellate courts have given us excellent guidance as to a number of fact patterns that do not constitute good cause. The following do not constitute good cause:

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1. Negligence of an Insurance Company is not good cause. *See Richardson v. P.V., Inc.*, 682 S.E.2d 263, 267 (S.C. 2009) ("Negligence of an insurance company is imputed to a defaulting litigant and ***cannot*** constitute good cause to relieve Appellants from the entry of default.") (emphasis added).

2. Negligence of Attorney is not good cause. *See Sundown*, 681 S.E.2d at 889 (holding "the law is clear that an attorney or insurance company's misconduct is imputable to the client"); *Williams v. Vanvolkenburg*, 440 S.E.2d 408, 409 (S.C. Ct. App. 1994) ("whether the attorney was negligent in failing to answer, however, is not critical, because even if the attorney were negligent in failing to answer the Complaint, his negligence would be imputed to the [defendants].").

3. Reliance on a codefendant is not good cause. *See Regions Bank v. Owens*, 741 S.E.2d 51, 55 (S.C. Ct. App. 2013) ("If reliance on one's own attorney is insufficient to show 'good cause,' then reliance on another defendant and ***his*** attorney is equally insufficient.") (emphasis in original).

4. Not remembering being served is not good cause. *See Wilder v. Blue Ribbon Taxicab Corp.*, 719 S.E.2d 703, 705 (S.C. Ct. App. 2011) (Not good cause where defendant's agent did "not recall ever personally receiving a copy").

5. Defense counsel not being provided with a courtesy copy is not good cause. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 12, 753 S.E.2d 537, 543 (2014) ("([Defendant] finally argues the Court should set aside the entry of default because [Plaintiff] failed to serve a courtesy copy of the complaint on [Defendant's] attorney. We disagree . . . nothing in the South Carolina Rules of Civil Procedure requires the service of a courtesy copy of the summons and complaint on opposing counsel.").

6. Losing the Summons and Complaint is not good cause. *See White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 543 (S.C. 2014) ("losing a summons and complaint is ***never*** a ground to set aside a default judgment.") (emphasis added); *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 900 (S.C. 1995) ("Losing a summons and complaint within the corporation is not a ground to set aside a default judgment.").

7. Failing to open or forward an email is not good cause. *Campbell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 792–93 (Ct. App. 2020) (. . . "failure to forward or open an e-mail did not satisfy the good cause standard articulated in Rule 55(c), SCRCP.")

8. Failure to recognize a deadline is not good cause. *Campbell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 793 (Ct. App. 2020) (citing *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 178-79, 463 S.E.2d 636, 638-39 (Ct. App. 1995) ("affirming the trial court's finding that the defendant's failure to recognize a deadline did not constitute good cause to set aside the entry of default.").

9. Defense attorney's failure to understand how federal law affects the time to answer in state court is not good cause. *Limehouse v. Hulsey*, 397 S.C. 49, 69, 723 S.E.2d 211, 222 (Ct. App. 2011) ("we find no indication that a party is entitled to a fresh thirty-day period upon remand [from federal court].").

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is with the above-described two-step analysis and guidance with respect to good cause in mind that this Court makes the following findings of fact and conclusions of law.

Plaintiff served Defendant with Plaintiff's Summons and Complaint and first set of discover request on December 2, 2024. This is not in dispute. Nor has any argument been made that service was improper or untimely. As a result, Defendant's answer was due on January 2, 2023.

Upon Plaintiff's motion, January 25, 2024 an Order for Entry of Default was entered the January 31, 2024. March 25, 2024 Defendant filed a Motion to Set Aside Default. Thus, over two months passed without Defendant filing an answer or a motion to set aside default.

In its memorandum, as well as during the hearing, Defendant argued at length as to how it satisfies the Wham factors of (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. Defendant's argument as to *Wham* factors 2 and 3 is not without merit.

However, we do not reach the *Wham* factors in this case. As noted above, as a prerequisite to considering the Wham factors, defendant must first "put forth a satisfactory explanation for the default." *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885, 888 (S.C. 2009). Here, Defendant failed to do so. Instead, Defendant offered as an excuse exactly the sort of thing that our appellate courts hold is not good cause.

The only explanation offered by Defendant for failing to timely answer the Complaint was that they "sent a letter". In other words, Defendant failed to timely answer. The sort of thing that our appellate courts hold is not good cause – see items 1, 2, and 8 above.

Defendant received notice and failed to answer. Plaintiff properly served Defendant's registered agent on December 4, 2024 with her Summons and Complaint. Defendant does not

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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. Defendant failed to timely answer and had two opportunities to do so.

Accordingly, this Court must and hereby does hold that Defendant has failed to show good cause. Having failed to show good cause, the *Wham* factors are not reached, and Defendant must remain in Default.

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 Set Aside Default must be and hereby is **DENIED**, 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
12rd Judicial Circuit

ELECTRONICALLY FILED - 2024 Sep 11 11:23 AM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Set Aside Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Sep 11 11:16 AM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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.	**ORDER DENYING DEFENDANT CASHA BAHARI LLC'S MOTION TO SET ASIDE DEFAULT**

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 Set Aside Default. 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, 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] is 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 to Set Aside Default is not only moot but is **DENIED**.

ELECTRONICALLY FILED - 2024 Sep 11 11:16 AM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE LAW

The issue before this Court is whether Defendant should be relieved of default. To relieve a defendant of default, the court must conduct a two-step analysis. The first step is to determine whether defendant has "a satisfactory explanation for the default." *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 defendant shows good cause for failing to timely answer, then the court proceeds to the second step, analysis of the Wham factors.

However, if defendant does ***not*** put forth a satisfactory explanation for the default – in other words, does not show good cause for failing to answer the complaint – then the analysis ends, and the court does ***not*** consider the Wham factors. *See Campbell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 793 (Ct. App. 2020) ("Because [defendant] has failed to put forward a satisfactory explanation, we need not address the *Wham* factors."); *Regions Bank v. Owens*, 741 S.E.2d 51, 55 (S.C. Ct. App. 2013) ("Because we find the master did not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the *Wham* factors.); *Sundown*, 681 S.E.2d at 888 (holding a court need only consider the *Wham* factors "[o]nce a party has put forth a satisfactory explanation for the default"); *Dixon v. Besco Eng'g, Inc.*, 463 S.E.2d 636, 639 (S.C. Ct. App.1995) (holding the trial court is not required to make specific findings of fact on the record for each Wham factor if the record contains sufficient evidentiary support for the finding of lack of good cause).

Many defendants seek to conflate the two steps into a single multi-factor analysis. This is not proper. The proper analysis is good cause first; *Wham* factors second, if at all.

Fortunately, South Carolina appellate courts have given us excellent guidance as to a number of fact patterns that do not constitute good cause. The following do not constitute good cause:

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1. Negligence of an Insurance Company is not good cause. *See Richardson v. P.V., Inc.*, 682 S.E.2d 263, 267 (S.C. 2009) ("Negligence of an insurance company is imputed to a defaulting litigant and ***cannot*** constitute good cause to relieve Appellants from the entry of default.") (emphasis added).

2. Negligence of Attorney is not good cause. *See Sundown*, 681 S.E.2d at 889 (holding "the law is clear that an attorney or insurance company's misconduct is imputable to the client"); *Williams v. Vanvolkenburg*, 440 S.E.2d 408, 409 (S.C. Ct. App. 1994) ("whether the attorney was negligent in failing to answer, however, is not critical, because even if the attorney were negligent in failing to answer the Complaint, his negligence would be imputed to the [defendants].").

3. Reliance on a codefendant is not good cause. *See Regions Bank v. Owens*, 741 S.E.2d 51, 55 (S.C. Ct. App. 2013) ("If reliance on one's own attorney is insufficient to show 'good cause,' then reliance on another defendant and ***his*** attorney is equally insufficient.") (emphasis in original).

4. Not remembering being served is not good cause. *See Wilder v. Blue Ribbon Taxicab Corp.*, 719 S.E.2d 703, 705 (S.C. Ct. App. 2011) (Not good cause where defendant's agent did "not recall ever personally receiving a copy").

5. Defense counsel not being provided with a courtesy copy is not good cause. *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 12, 753 S.E.2d 537, 543 (2014) ("([Defendant] finally argues the Court should set aside the entry of default because [Plaintiff] failed to serve a courtesy copy of the complaint on [Defendant's] attorney. We disagree . . . nothing in the South Carolina Rules of Civil Procedure requires the service of a courtesy copy of the summons and complaint on opposing counsel.").

6. Losing the Summons and Complaint is not good cause. *See White Oak Manor, Inc. v. Lexington Ins. Co.*, 753 S.E.2d 537, 543 (S.C. 2014) ("losing a summons and complaint is ***never*** a ground to set aside a default judgment.") (emphasis added); *Roche v. Young Bros., Inc. of Florence*, 456 S.E.2d 897, 900 (S.C. 1995) ("Losing a summons and complaint within the corporation is not a ground to set aside a default judgment.").

7. Failing to open or forward an email is not good cause. *Campbell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 792–93 (Ct. App. 2020) (. . . "failure to forward or open an e-mail did not satisfy the good cause standard articulated in Rule 55(c), SCRCP.")

8. Failure to recognize a deadline is not good cause. *Campbell v. City of N. Charleston*, 431 S.C. 454, 462, 848 S.E.2d 788, 793 (Ct. App. 2020) (citing *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 178-79, 463 S.E.2d 636, 638-39 (Ct. App. 1995) ("affirming the trial court's finding that the defendant's failure to recognize a deadline did not constitute good cause to set aside the entry of default.").

9. Defense attorney's failure to understand how federal law affects the time to answer in state court is not good cause. *Limehouse v. Hulsey*, 397 S.C. 49, 69, 723 S.E.2d 211, 222 (Ct. App. 2011) ("we find no indication that a party is entitled to a fresh thirty-day period upon remand [from federal court].").

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FINDINGS OF FACT AND CONCLUSIONS OF LAW

It is with the above-described two-step analysis and guidance with respect to good cause in mind that this Court makes the following findings of fact and conclusions of law.

Plaintiff served Defendant with Plaintiff's Summons and Complaint and first set of discover request on December 4, 2023. This is not in dispute. Nor has any argument been made that service was improper or untimely. As a result, Defendant's answer was due on January 3, 2024.

Upon Plaintiff's motion, January 25, 2024 an Order for Entry of Default was entered the same day. A hearing on Default was held March 13, 2024. March 25, 2024 Defendant filed a Motion to Set Aside Default. Default Judgment was entered by this court April 03, 2024 Thus, over two months passed without Defendant filing an answer or a motion to set aside default along with damages hearing heard.

In its memorandum, as well as during the hearing, Defendant argued at length as to how it satisfies the Wham factors of (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. Defendant's argument as to *Wham* factors 2 and 3 is not without merit.

However, we do not reach the *Wham* factors in this case. As noted above, as a prerequisite to considering the Wham factors, defendant must first "put forth a satisfactory explanation for the default." *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885, 888 (S.C. 2009). Here, Defendant failed to do so. Instead, Defendant offered as an excuse exactly the sort of thing that our appellate courts hold is not good cause.

The only explanation offered by Defendant for failing to timely answer the Complaint was that they "sent a letter". In other words, Defendant failed to timely answer. The sort of thing that our appellate courts hold is not good cause – see items 1, 2, and 8 above.

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Defendant received notice and failed to answer. Plaintiff properly served Defendant's registered agent on December 4, 2024 with her Summons and Complaint. 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. Defendant failed to timely answer and had two opportunities to do so.

Accordingly, this Court must and hereby does hold that Defendant has failed to show good cause. Having failed to show good cause, the *Wham* factors are not reached, and Defendant must remain in Default as Damages have been determined as to Defendant at this time.

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 Set Aside is moot and must be and hereby is **DENIED**, 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
12rd Judicial Circuit

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Set Aside Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Sep 11 11:40 AM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

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.	**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] is 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**.

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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."

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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 Procedure12 (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.

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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), SCRCP, 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,

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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), SCRCP." 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
12rd Judicial Circuit

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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

ELECTRONICALLY FILED - 2024 Sep 09 1:39 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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.	**ORDER FOR CONTINUANCE**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, requesting that the hearing on damages of the above-captioned case be continued from the September 9, 2024 term of court, and carried over to the next available term of court. As evidenced there is good cause for this continuance, and, therefore, it is

ORDERED, ADJUDGED and DECREED that the above-captioned hearing be continued from the September term of court, and not before determination of Counsel's pending motions and for such other relief as the Court deems just and proper.

AND IT IS SO ORDERED!

Florence, South Carolina
Dated: _____, 2024

_____
The Honorable David P. Caraker, Jr.

ELECTRONICALLY FILED - 2024 Sep 09 1:39 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Continuance

IT IS SO ORDERED

s/ David P. Caraker, Jr.

ELECTRONICALLY FILED - 2023 Sep 29 3:26 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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-

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,

Defendants.

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the Plaintiff or Plaintiff's attorneys, India D. Shaw and Lane D. Jefferies at their offices at 32 Ann Street, Charleston, South Carolina, 29403, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint. Dated at Charleston, South Carolina on September 29, 2023.

[SIGNATURE ON FOLLOWING PAGE]

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POULIN | WILLEY | ANASTOPOULO, LLC

*s/ India D. Shaw*___
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
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ELECTRONICALLY FILED - 2023 Sep 29 3:26 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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-
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, Defendants.	**COMPLAINT** **(Jury Trial Demanded)**

The Plaintiff, complaining of the Defendant, alleges and says as follows:

PARTIES, JURISDICTION, AND VENUE

1. That the Plaintiff, Aszane Cruz, (herein referred to as "Plaintiff") is a citizen and resident of Florence County, State of South Carolina.
2. That upon information and belief, Defendant Arete Wyndham Property Owner, LLC d/b/a Wyndham Place Apartments (herein referred to as "Defendant Wyndham") is a limited liability company organized and existing under the laws of the State of South Carolina, doing business and owning real property in Florence County, and whose registered agent for service of process is Derek Hogarty at 657 Leisure Lane, Mount Pleasant, South Carolina, 29464.
3. That upon information and belief, Defendant Casa Bahari, LLC (herein referred to as "Defendant Bahari") is a limited liability company organized and existing under the laws of the State of Florida, doing business and owning real property in Florence County, and

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whose registered agent for service of process is Registered Agents Inc. at 7901 4th Street North, Suite 300, St. Petersburg, Florida, 33702.

4. That upon information and belief, Defendant Darlington 48 unit, LLC (herein referred to as "Defendant Darlington") is a limited liability company organized and existing under the laws of the State of South Carolina, doing business and owning real property in Florence County, and whose address for service of process is 307 State Road S-21-174, Florence, South Carolina, 29501.

5. That upon information and belief, Defendant John Doe, Individually and as an Manager/General Manager of Arete Wyndham Property Owner, LLC d/b/a Wyndham Place Apartments (herein referred to as "Defendant Doe") is a citizen and resident of Florence County.

6. That Defendant Wyndham, Defendant Bahari, Defendant Darlington, and Defendant Doe are referred to herein collectively as "Defendants" and each individually by name or as "Defendant."

7. That the premises liability case that is the subject of this action occurred in Florence County, State of South Carolina.

8. That this Court has jurisdiction over the parties and the subject matter of this action.

SPECIFIC AVERMENTS

9. That on or about April 9, 2022, Plaintiff was in her home at 816 West Marion St, Apt A, Florence, SC 29501 ("Premises") when a ceiling fan in Plaintiff's living room when a faulty and/or improperly installed ceiling, fell striking her on the head.

10. As a result of the incident, Plaintiff suffered from a painful head injury, and is now facing over $15,000 in medical bills.

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11. That at all times relevant, Defendant Doe was a manager and/or General Manager of Defendant Wyndham, with responsibility for monitoring, and maintaining the Premises to ensure that they were safe and not dangerous to persons such as Plaintiff.

12. That as manager and/or General Manager of Defendant Wyndham, Defendant Doe had power, authority, and responsibility to manage, direct, superintend, restrict, regulate, govern, administer, and/or oversee the management of the Premises to ensure that they were safe and not dangerous to persons such as Plaintiff.

13. That Wyndham Place Apartments is a tenant of, and/or manages the Premises for, Defendant Doe, Defendant Wyndham, Defendant Bahari, and Defendant Darlington, or is a partner with or part of a single business enterprise with Defendant Doe, Defendant Wyndham, Defendant Bahari, and Defendant Darlington.

14. That upon information and belief, Defendant Doe, Defendant Wyndham, Defendant Bahari, and Defendant Darlington have identical or nearly identical ownership, governance, management, office locations, letterhead, equipment, telephone numbers, and other indicia of corporate identity.

15. That upon information and belief, Defendant Doe, Defendant Wyndham, Defendant Bahari, and Defendant Darlington are so intertwined as to constitute a single business enterprise, and/or partnership.

16. That injustice to Plaintiff and/or others would result were this Court to recognize any legal distinction between Defendant Doe, Defendant Wyndham, Defendant Bahari, and Defendant Darlington, when the entities themselves have blurred, ignored, or wholly erased such distinctions.

17. That (a) Defendant Wyndham, (b) Defendant Bahari, (c) Defendant Darlington, and (d)

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Defendant Doe individually, are jointly and severally liable for Plaintiff's damages.

18. That the incident which is the subject of this action occurred in Florence County, State of South Carolina.

19. That this Court has jurisdiction over the parties and the subject matter of this action.

FOR A FIRST CAUSE OF ACTION
(Premises Liability; Negligence)

20. That on or about April 9, 2022, due to the negligence of Defendants, Plaintiff's ceiling fan collapsed and landed atop her on the Premises.

21. That as a natural and foreseeable result of the ceiling fan falling and striking Plaintiff, the ceiling fan collied with her with substantial force, resulting in severe and acute injury.

22. That Defendants knew or should have known that then ceiling fan was wrongfully installed, maintained, and/or repaired.

23. That Defendants took no actions of a reasonable nature to prevent the ceiling fan collapsing.

24. That Defendants did not act as a reasonable person or entity would under the same or similar circumstances.

25. That Defendants either knew or should have known that the ceiling fan presented a danger to persons upon the Premises; or that Defendants created the dangerous condition.

26. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness, wantonness, and acts and/or omissions of the Defendants, as is set forth more fully above, Plaintiff was injured, has endured pain and suffering, has suffered mentally and emotionally, and has incurred, and will incur various medical expenses, and has otherwise been damaged and injured.

27. The fall and resulting injuries and damages to Plaintiff were caused directly and

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proximately by one or more of the following negligent, negligent *per se,* grossly negligent, careless, reckless, willful, wanton and unlawful acts, and/or omissions of the Defendants in any one or more of the following ways:

a. In failing to observe the dangerous condition of on the Premises;

b. In failing to properly keep the Premises monitored and habitable;

c. In failing to appreciate the gravity of the dangers associated with having a faulty ceiling fan;

d. In failing to appreciate the gravity of the dangers associated with having a ceiling fan improperly installed;

e. Failing to supervise in the correct cleaning and maintenance of the Premises;

f. In failing to enact policies that would ensure the safety of licensees and invitees on the Premises;

g. In failing and omitting to take any precaution whatsoever of a reasonable nature to protect this Plaintiff from the dangers on the Premises were the Plaintiff lived;

h. In failing to adequately warn the Plaintiff as to any dangers that may be present on the Premises;

i. In failing to properly maintain the premises;

j. In failing to maintain the premises in compliance with the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. § 27-40-10 *et seq.*; and

k. In any such manner the Plaintiff may discover through the discovery process or trial

28. That as a direct and proximate result of the negligence, gross negligence, carelessness, recklessness, willfulness and wantonness of the Defendants, as is set forth more fully above, Plaintiff has been damaged and injured in the following respects:

a. Plaintiff has been required to expend a significant amount of money for Plaintiff's medical care, treatment and attendant services;

b. Upon information and belief, the nature of the Plaintiff's injuries will require

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Plaintiff to expend a significant amount of money for future medical care, treatment and attendant services;

c. Upon information and belief, the nature of Plaintiff's injuries will deprive Plaintiff of employment opportunities and income in the future; and

d. The pain of Plaintiff's injuries has resulted in Plaintiff's loss of enjoyment of life and change in Plaintiff's personality, all to the permanent detriment of Plaintiff's health and physical well-being.

FOR A SECOND CAUSE OF ACTION
(Negligent Hiring, Training, Supervision and Retention)

29. Plaintiff incorporates by reference the allegations set forth above as if fully set forth herein.

30. Plaintiff is informed and believes that Defendants were negligent, careless, reckless, wanton, and grossly negligent at the time and place hereinabove mentioned in one or more of the following:

a. In failing to have in place policies and procedures to properly hire, train, supervise and/or retain their employees, contractors, and/or subcontractors, and/or if such procedures were in place, in failing to enforce them;

b. In failing to have in place adequate policies or procedures to mandate compliance by their employees, contractors, and/or subcontractors with regulations, policies, procedures and standards related to installation and maintenance on the Premises;

c. In failing to ensure that their employees, contractors, and/or subcontractors had the proper training and experience; and

d. In generally failing to use the degree of care and caution that should have been used under the same or similar circumstances.

31. As a direct and proximate result of one or more of the above-stated negligent hiring, training, supervision, retention, grossly negligent, reckless and willful acts or omissions; complained of, the Plaintiff sustained injuries, including but not limited to the injuries stated in the preceding paragraphs.

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32. That Defendants' acts and omissions, as are set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of the Defendants' conscious indifference to the consequences of such acts and omissions.

33. That because of the Defendants' acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize the Defendants and to deter the Defendants and others from similar behavior.

34. That upon information and belief, Plaintiff is entitled to judgment against the Defendants for actual, compensatory and exemplary or punitive damages for Plaintiff's personal injuries set forth here in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees to which Plaintiff may be entitled to be determined by a jury.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for an amount to be ascertained by the jury at the trial of this action for all damages, punitive and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

[SIGNATURE ON FOLLOWING PAGE]

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Respectfully submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

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Charleston, South Carolina
September 29, 2023

STATE OF SOUTH CAROLINA
IN THE COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS
C.A. NO.: 2023-CP-21-02320

ASZANE CRUZ,
PLAINTIFF,

VS.

ARETE WYNDHAM PROPERTY OWNER, LLC AND
JOHN DOE, ET AL,
DEFENDANTS.

HEARING
BEFORE THE HONORABLE MICHAEL G. NETTLES

WITNESS: ASZANE CRUZ
DATE: MARCH 13, 2024
TIME: 2:04 P.M.
LOCATION: SOUTH CAROLINA CIRCUIT COURT 12

TRANSCRIBER: PAM GRAY

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P R O C E E D I N G S

MS. SHAW: Your Honor, we're here for a damages hearing for the Plaintiff, Aszane Crews. My client is the Plaintiff in this matter. Your Honor, this is a matter that arises out of the incident that happened when Ms. Crews was in her -- living in her quarters at the facility that was owned by the Defendant, and a ceiling fan dropped from the sky onto her and injured her in her abode.

We have sent -- we have filed a complaint on this matter on September 29, 2023. We have served the Defendant, Casa Bahari, on December 4, 2023. We filed for default on this matter January 25, 2024. And, Your Honor, the damage hearing was scheduled for today. And notice of this hearing was sent to Casa Bahari on March 4, 2024.

Just by way of informing The Court, Your Honor, we did serve the Defendants via their registered agent. I will advise The Court that we received an email from what was alleged as counsel for Casa Bahari, but no one has appeared on the record for this matter or otherwise answered. As such, you know, being in a position to advocate on behalf of my client in this matter, we will proceed with the damages hearing at this time.

THE COURT: You may call your first witness.

MS. SHAW: Calling Ms. Cruz, first witness.

THE COURT: Yes, ma'am. Please come forward, and I'm

going to ask if you could approach the Bible over here. Place your left hand on the Bible and face the clerk, as she administers (indiscernible).

THE CLERK: Place your left hand on the Bible and raise your right hand. Do you swear or affirm the testimony you give is the truth, the whole truth, and nothing but the truth so help you God?

MS. CRUZ: Yes.

THE CLERK: You can have a seat. Thank you.

THE COURT: You can have a seat in the witness chair there. I'm going to ask that you pull up real close to that microphone.

THE WITNESS: Okay.

THE COURT: Speak loudly, clearly, and slowly in order for us to hear anything that you have to say. Let's start with your full name, please.

THE WITNESS: It's Aszane Cruz.

THE COURT: Yes.

MS. SHAW: Thank you, Your Honor.

BY MS. SHAW:

Q. All right. Aszane, you just told us who you were. Can you tell us a little about yourself?

A. I'm from Massachusetts. I'm 26. I'm currently in college.

Q. Okay. What are you in college for?

A. I am getting my master's in healthcare administration.

Q. Okay. Awesome. Might need you to speak up a little bit. That's -- so everyone can hear you and the court reporter can get you down on the docket. Were you -- you were born in Massachusetts?
A. Yes.
Q. Okay. What brings you to Florence?
A. My mom. We moved here in 2011.
Q. 2011. How have you been enjoying the city?
A. I like it.
Q. Okay. Different from Massachusetts?
A. Yeah. It's a little bit more slow, but I like it; not too fast.
Q. Where do you live now?
A. I still stay in Florence.
Q. You still stay in Florence. How about a place where they do (indiscernible).
A. In Florence.
Q. In Florence. And where exactly do you live in Florence?
A. Wyndham Place.
Q. Wyndham Place Apartments, okay. Can you tell me a little bit about Wyndham Place?
A. Unprofessional. I feel like they do not care really too much about their tenants. It was a lot of -- to say. That was my first apartment, I wouldn't even recommend someone stay there.

Q. Tell us a little about that.
A. There were many property owners at the time, and I just always came to them verbally and written regarding my apartment because it wasn't really up to par. And I just felt like it was ignored.
Q. Okay. Tell me about a few of those things that you talked to -- to the property owners.
A. Okay.
Q. Were they managing the property?
A. At the time.
Q. Okay. Tell me about a few of those -- few incidents maybe you had, you know, been a witness.
A. Before the ceiling fan incident, I got in contact with the second property owner. I don't know what really went down between the two, but a lot of stuff that -- was going down in the apartment at the time. And then we received another property owner. I don't remember his name too much. And when I told him about the ceiling fan being loose, he just wrote my name on a piece of paper and said, we will have the maintenance guy come take a look at it. And no one came.
Q. Maintenance never came? Did you have the property -- did -- was this the second time you reported that?
A. This was the second time.
Q. Okay. What happened to the first time?
A. No one came.

Q. And then you had a second property manager.
A. Yes.
Q. Okay. Why was there a change in the management; do you know?
A. It was a lot transpiring. There was really three since I've been there for two years. No one really did anything.
Q. Were there issues on the property, like the day ---
A. There were a few incidences where the second property owner was upset with the third property owner and burned down the -- the office. There was a lot of stealing going on from them. There was a lot going on with the tenants.
Q. Are you talking stealing from the tenants or (indiscernible) Okay. Who was stealing from the tenants?
A. The property owners. I was a part of that. I had received a letter on my door one day regarding an eviction. And when I went to the second property owner at the time, she just told me that I had to pay them because I was behind. But I always -- I was always on top of my rent.
Q. So they told you had to pay rent, but you did.
A. (Indiscernible)
Q. So someone had taken the rent? What was the result of that.
A. I just paid. I just paid it.
Q. So the ceiling fan you were talking about is that incident that we're here today for?
A. Yes, ma'am.
Q. Okay. Tell me what happened.

A. I would work -- I work from home. I'm a customer service representative. And that particular day, because my particular apartment did not have AC units, so I had to cool the house with my fans. I also had a fan to plug up. But at that time, I went on my break, and I was just watching TV like I'll normally do. And then I heard something pop, and then the fan had hit my head.

MS. SHAW: May I approach, Your Honor?

THE COURT: Yes.

BY MS. SHAW:

Q. You recognize those, Ms. Cruz?

A. Yes, ma'am.

Q. Tell me what they are.

A. The first page is the fan once I picked this up off the floor and I put it on my couch. And then the second picture was about two or three months after I already went to the third property owner and it still wasn't fixed. This was the end of June, the second picture.

MS. SHAW: Okay. Like to have that admitted as Exhibit A. Also gave you a copy of it.

(Whereupon, the above-described document was marked as Plaintiff's Exhibit A.)

BY MS. SHAW:

Q. Is that the ceiling fan that fell on you, Ms. Cruz?

A. Yes, ma'am.

Q. Okay. Did you sustain any injuries as a result of that falling on you?
A. Yes, ma'am. I had a mild concussion. And I currently suffer from chronic migraines, and now I'm taking a prescription that my doctor gave me.
Q. Do you remember what day this happened?
A. It was April 9th of '22.
Q. Okay. What day of week was that?
A. A Saturday.
Q. So you typically work on Saturday?
A. Yes. My schedule was off Sundays and Wednesdays.
Q. Let me back up a little bit and we can go into those injuries that you were talking about. You recognize those, Ms. Cruz?
A. Yes.
Q. All right. I'll let you look at those for a little bit. Once you have, tell me what they are.
A. These are the medical bills from my neurologist and MUSC when I went to the medical center. And then also when I was still going back and forth to Lake City, so that's my primary care. And then the radiology -- the radiology charges for my test and CAT scan.
Q. Okay. Are all those treatments that you received as a result of the incident?
A. Yes, ma'am.
Q. Okay. Can you tell me how much they are?

A. $16,686.

MS. SHAW: And I'd like that to be admitted as Plaintiff's Exhibit B. And, Your Honor, that is in your binder as Tab 6.

THE COURT: Yes.

(Whereupon, the above-described document was marked as Plaintiff's Exhibit B.)

BY MS. SHAW:

Q. You mentioned you were working during the time of this accident. You were on a break? What kind of work did you do?

A. I was working with unemployment, child support, SSI payments. That's when the pandemic was really high.

Q. Okay. How many hours a week did you work?

A. Forty. I was full-time.

Q. All right. Can you tell me about what you were making? Were you salary? Were you hourly?

A. I was hourly. So there was a price difference. Monday through Friday was $17 and on the weekends was 19.

Q. Did you miss any time from work as a result of this incident?

A. About three weeks.

Q. About three weeks. And when you returned to work, tell me about that.

A. It was hard for me. Being that I was staring at a computer screen, and I was suffering from the migraines. I always

went over my break (indiscernible), my lunch (indiscernible), until they told me I was caught up on them and then they terminated me.

Q. So you were terminated from your position?

A. Yes, ma'am.

Q. And you say that's because ---

A. Of the migraines. I couldn't stare at the screen.

Q. Okay. Are you still having those migraines?

A. I'm currently dealing with one now.

Q. I'm sorry to hear that. Is your -- are you still receiving treatment for that?

A. Yes, ma'am.

Q. With who?

A. With Dr. Hewing.

Q. Is that who you were going to for treatment up until now?

A. That's my neurologist.

MS. SHAW: Okay. Approach, Your Honor?

THE COURT: How much did you make a week?

MS. CRUZ: I will say about 500 a week.

THE COURT: Okay.

BY MS. SHAW:

Q. Recognize that?

A. Yes. That's my termination letter.

Q. So that's your termination letter. And that was approximately when?

A. This was July 6th.
Q. July 6th? Were you able to attain work after you were terminated?
A. It took about two months. My next position, I was hired in September of 2022.
Q. After you were terminated, you were out of work for about two months until you could retain another position?
A. Yes, ma'am.
Q. What were you doing then?
A. Customer Service. But I was still dealing with the insurance company at that time.

MS. SHAW: Your Honor, I'd like to have that admitted as Plaintiff's Exhibit C.

THE COURT: Yes.

MS. SHAW: Thank you for that.

(Whereupon, the above-described document was marked as Plaintiff's Exhibit C.)

BY MS. SHAW:

Q. Is there anything further you'd like to tell The Court in regards to this incident?
A. This was very hard for me. Honestly, it was very hard. I never dealt with a property that -- I never dealt with the property that did not take the tenants' concerns serious. And now that I'm, you know, suffering from migraines, I never really suffered. I can't do certain things that I like to

do, like doing hair and everything. It just is really hard and for them to not even be here today, it's just hard.

Q. Thank you, Ms. Cruz. I don't have any further questions for you. Your Honor may have a few questions that he may want to ask you.

THE COURT: I think you did pretty good. You covered it well. Thank you, ma'am. You may step down.

MS. SHAW: Your Honor, with the evidence presented today, Plaintiff requests the damages reward in favor of her actual damages as well as punitive damages. Certainly the testimony rises to that indication of reckless willful and wanton and cause harm to Ms. Cruz. We ask for judgement in the amount that would be fair to her.

One for her medical damages in the amount of $16,886, which she testified to. After the lost wages, I believe she testified that -- at least -- she was out of work for at least 60 days into the termination and three weeks for treatment, as well as pain and suffering from April 9, 2022 to today, March 12, 2024. That's roughly about 566 days, Your Honor, and even at $1 a day -- you know, if you can account for all of those hours, which is roughly 13,344, you know, even at $1 per hour, that would be that amount.

So we ask, of course, at The Court's discretion, that you award her damages favorable to her as well as punitive damages. Thank you.

THE COURT: Given these matters consideration, I'm going to ask to prepare the order awarding actual damages in the amount of $35,810, $5,000 punitive. And I'll ask that you forward that order to me, and I'll be happy to sign.

MS. SHAW: Thank you, Your Honor.

THE COURT: Thank you. Good luck to you.

MS. CRUZ: Thank you.

(THERE BEING NOTHING QUESTIONS, THIS HEARING CONCLUDED AT 2:21 P.M.)

CERTIFICATE OF TRANSCRIBER

I, Pam Gray, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Florence County, South Carolina, on the 13th day of March, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 15, 2024
Pam Gray

Pam Gray
Certified Transcriber

STATE OF SOUTH CAROLINA
IN THE COUNTY OF FLORENCE
IN THE COURT OF COMMON PLEAS
C.A. NO.: 2023-CP-21-12320

ASZANE CRUZ,
PLAINTIFF,

VS.

ARETE WYNDHAM PROPERTY OWNER, LLC AND
JOHN DOE, ET AL,
DEFENDANTS.

HEARING
BEFORE THE HONORABLE MICHAEL G. NETTLES

DATE: AUGUST 21, 2024
TIME: 10:02 A.M.
LOCATION: SOUTH CAROLINA CIRCUIT COURT 12

TRANSCRIBER: PAM GRAY

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P R O C E E D I N G S

THE COURT: Next case is *Aszane Cruz versus Arete Wyndham Properties*. Take a moment to get settled, and when you get settled, I'll be glad to hear from moving parts. Take your time.

MS. MOORE: Good morning, Your Honor, Mary Harriet Moore for Defendants, Casa Bahari and Arete Wyndham. We have three motions before you, but I think we both agree that the motion to reconsider should be heard first today. So we're seeking a motion to reconsider an April 2024 order for default judgment against just the Defendant, Casa Bahari. And the reason for this motion is that we believe my client, Casa Bahari, should not be held liable for the Plaintiff's injuries.

Just a little bit of background on this case. It's a personal injury case arising out of injury sustained by the Plaintiff on April 9, 2022, and the complaint was filed in September 2023. My client's counsel from Atlanta reached out to Plaintiff's counsel on January 11th via a letter sent via FedEx that included a reported deed showing that my client, Casa Bahari, did not own the property and did not get the property until June 13, 2023. And this incident happened on April 9, 2022. Then on January 16th, they followed up with another email, including that original letter and the reported deed, again requested to be dismissed by the case

because they didn't have control of the property at the time of Plaintiff's injuries.

THE COURT: Who signed the initial order to be reconsidered?

MS. MOORE: The order to be reconsidered?

THE COURT: I mean, there's a motion for reconsideration. Who signed the initial order?

MS. MOORE: I believe you did, Your Honor.

THE COURT: Let's look and see. I just need to make sure it was me. I'm not really in a position to reconsider other people's stuff.

MS. SHAW: If I may, Your Honor. There has not been a motion heard. I believe the set aside should probably be heard first. I think the motion to reconsider was filed just in case you ruled a different way on those motions to set aside.

THE COURT: So there's not been an initial order?

MS. MOORE: There's an order on default judgment. And it is signed by you. It's Exhibit 3 I believe. Let me see. It's Exhibit A to my motion to reconsider.

THE COURT: Okay. All right. Very good. I'll be glad to hear from you any further.

MS. MOORE: The only other issue that we're bringing up to be reconsidered is that the damages hearing was heard on March 13, 2024, and my client did not receive the letter

notifying her of the hearing until March 14, 2024. So we would just say that under Rule 5, they did not receive proper notice.

THE COURT: Yes, ma'am. Be glad to hear from you.

MS. SHAW: Good morning, Your Honor. May it please The Court. So in order for the motion of reconsideration, Your Honor, we must first decide, you know, that there has been satisfactory -- I'm sorry.

THE COURT: That's all right.

MS. SHAW: There's a two-step analysis to determine what The Court should do to -- to rule on this. And before we get to the Wham factors, the moving party must have a satisfactory explanation to show good -- good cause to set aside by default.

Defendant alleges that they sent a letter to us, I believe it was January 13, 2024. That is true, Your Honor. Prior to that damages hearing, Your Honor -- you heard it. I know you don't remember. You hear motions all the time, but it's on the court record. I don't have that transcript, unfortunately.

Prior to hearing that motion, Your Honor, I advised The Court, but we did receive correspondence from the Defendants, and they have not answered or otherwise appeared.

THE COURT: Apparently, there was a damages hearing. What is -- what's the underlying facts about the -- the

lawsuit? Tell me about that.

MS. SHAW: The underlying facts were that my client resided in the -- in the property owned by the Defendants. A ceiling fan fell on top of her. Caused her trauma to her head, concussion, what have you.

THE COURT: I vaguely remember that. What was the -- what was the amount of damage?

MS. SHAW: I believe that it was roughly 37,000, Your Honor, 37,500.

THE COURT: And her injuries were what again?

MS. SHAW: Her injuries were to her head. She had a laceration on her head as well as concussion. Roughly $13,000 in damages, lost wages, loss of a job for her that day.

THE COURT: Okay. And if I understand it, and correct me if I'm wrong, the -- not only was there an order of default, but there was an order setting damages.

MS. SHAW: It was an order setting damages. Yes, Your Honor.

THE COURT: All right. Now, doesn't that raise the standard of you to that elusive concept of excusable neglect, rather than good cause? That there's a final order?

MS. SHAW: Well, Your Honor, even if you were to look at excusable neglect, that -- we sent that -- we filed ---

THE COURT: Excusable neglect is almost never -- I mean,

I think the last excusable neglect was a hurricane hitting the law office in Hilton Head and blowing it away. That was excusable neglect, which is a real high bar.

MS. SHAW: Yes, Your Honor. And, honestly, I -- we -- the answer was due January 2nd, or January 3rd for Casa Bahari. Those two -- three parties here. They then sent that letter, giving them -- giving themselves a deadline to respond within ten days. They told -- in that letter they indicate -- and I believe that's Defendant's Exhibit B, saying, you know, do not dismiss this motion. Then in ten days we will answer. Still didn't answer. We waited past the deadline to file the -- past January 2nd when they were supposed to answer. We waited after that ten days until we filed default. It wasn't until March, after the damages hearing, that the Defendants appeared, filed a motion to set aside default. As far as the notice goes, Your Honor, as per the rules, we sent notice to them. I believe that was on March 1, 2024.

THE COURT: They filed a motion to set aside the default after the judgment was in?

MS. SHAW: After the judgement was in, Your Honor.

THE COURT: And after the damages hearing.

MS. SHAW: And after the damages hearing.

THE COURT: Okay. Very good. What is your position with regards to the Wham factors?

MS. SHAW: I believe we don't reach the Wham factors in this matter, Your Honor. That they must show good cause as to why they should not be held in default. They have none. They had an opportunity to respond not once, but twice. Failed to do so. Didn't do anything until two months later -- over two months later.

THE COURT: And the other Wham factors?

MS. SHAW: One second, Your Honor. I'll see what -- the timing -- your motion -- the timing. Your Honor, I think I've addressed that. Their defense, Your Honor? I mean, they had -- they had the opportunity that's still available to them, had they answered.

Even if they had one, I don't say that they don't have -- that their arguments for the Wham factors are without merit. But, Your Honor, we would have to get there, and we simply haven't -- haven't -- they haven't established good cause.

I will say, I do believe it prejudices the client, Your Honor. They have -- again timing here. They had the option to -- they had a duty to respond on behalf of their client. They did not. This case was filed in September. We are now in -- almost in September of another year. This drags out everything. They had the opportunity to do so, they just simply didn't do it.

As far as their claim for ownership, Your Honor, you

know, I don't know any of it. That would have been done in discovery had they answered. They failed to do so, and they haven't shown good cause as to why they didn't answer. Thank you, Your Honor.

THE COURT: Would you like to say anything?

MS. MOORE: Yes, Your Honor. I think it's important to point out that in this complaint she sued three defendants, Casa Buhari, Arete Wyndham, and then Darlington 48. So Darlington 48 was the one that owned the property at the time that her client was allegedly injured.

And she did know that because Casa Bahari and Wyndham's counsel from Atlanta sent her a letter before she filed her motion for entry of default, with the recorded deed showing that they got the property on June 13, 2023, and that this accident happened on April 9, 2022.

So I think that -- that our good cause is that we did not, either Casa Bahari or Wyndham -- and I think it's important to note that this is only -- they've only moved for default judgement as to Casa Bahari. We have a motion to set aside the injury of default towards Wyndham, but they haven't gotten a default judgment against Wyndham. They've also put Darlington 48 into default, and they've moved for a motion for damages hearing on Darlington 48.

So essentially they're getting like three recoveries from these defendants when Darlington 48 was the one that

owned the property at the time of Plaintiff's injuries. For the Wham factors, it's ---

THE COURT: Were they sued and they did not answer?

MS. MOORE: Correct. I mean, we can't deny that. But we did give them the information that they needed, that we were not the owner at the time of the Plaintiff's injuries, prior to them filing the motion for entry of default. Twice.

THE COURT: These were lawyers that sent the letter?

MS. MOORE: Yes, in Atlanta. So we ---

THE COURT: They received the complaint. They just didn't answer?

MS. MOORE: Correct. This is an Atlanta firm that we were not involved in until after they had the default judgment.

THE COURT: I don't know how they do it in Georgia or Atlanta, but you know, the summons and complaint tells them what they're supposed to do, the summons in particular. They aren't getting three separate ??recovers it's joint and several.

MS. MOORE: Well, the one issue that I point out is that in this deed that we provided to them, Casa Barahi and Wyndham own it. I think it's like 60 percent/40 percent ownership.

THE COURT: Right.

MS. MOORE: So this judgment that they've only got

against one Defendant, I'm not sure how -- if it was to move forward -- I mean, we think it should be reconsidered, obviously -- how they're going to go, then get a default against the other one, and then have another damages hearing when there's been this default judgment. But they only moved against one Defendant when both of them were in default at the time. It's just a little bit of a confusing situation, but ---

THE COURT: I believe you are right.

MS. SHAW: If I may, Your Honor. Everyone was -- to -- put on notice. No one answered. Everyone's had a default judgment placed on them. I mean, not -- well -- judgement placed on them. Everyone has been filed to be entered into default. I believe, Casa Bahari -- all three defendants are at this time.

We actually have a damages hearing set for this court in September as to (indiscernible) Wyndham as well as Darlington 48. No one answered. And as to good cause -- good cause as to why they didn't answer. Good cause is not to Defendants' claims that they did not own the property. Again, I still -- I still can't say that that's the answer, Your Honor. And people change ownerships for reasons unknown ---

THE COURT: The fact that -- I personally don't think that you're entitled to another damages hearing for -- I think the damages were for a concrete entity, and we've

already established what that is.

As far as what the liability is, that's a different thing, and how they divide it. Why do you think you're entitled to another damages hearing?

MS. SHAW: Your Honor, these -- they're three separate parties. We allege -- I believe that Wyndham managed the property, Casa Bahari and Darlington 48 own the property.

MS. MOORE: That deed that we provided shows that Darlington 48 transferred the property to Casa Bahari and Arete Wyndham. So they did not own the property at the time of the injuries.

THE COURT: But that was not pled. We've already gone through a default. We've already gone through a damages hearing.

MS. MOORE: Yes, for one Defendant. I'm not aware that there's a damages hearing set for Wyndham. I know there is one for Darlington 48, but we have the motion to set aside injury of default as to Wyndham pending, as well.

THE COURT: So there's not a judgment against Wyndham?

MS. MOORE: No. The only judgment is against Casa Bahari.

THE COURT: Is that correct?

MS. SHAW: That's correct, Your Honor.

THE COURT: Okay. Well. There's not a motion to reconsider on behalf of Casa Bahari?

MS. MOORE: There is a motion to reconsider on behalf of Casa Bahari, and then there's the motion to set aside injury of default as to Wyndham. And there's one to Casa Bahari as well, because I believe what happened is y'all had the damages hearing. We filed that motion, and then after we filed the motion, but before it got scheduled, you issued your order for default judgement. If I'm remembering correctly.

MS. SHAW: I don't think -- yeah, I think you entered your order, Your Honor, honestly before they filed a motion, and I believe that was April 5th when the motion was filed.

THE COURT: It seems like I was not -- I certainly -- I can't rule on this today. It's so convoluted. And I don't know exactly what the situation is, but it appears as if some of them have just been held in default, and one there's already been a judgment on.

I think that employs two different standards of review as to whether it can be set aside. The one with Casa Bahari, I would think would be excusable neglect. The other you would examine the issues of good cause and that sort of thing which is a lower standard.

I'm going to ask that both of y'all submit proposed orders set out in a linear fashion, what transpired, and what your position is, what the order should reflect as to the analysis to be applied to each, individual Defendant. And

I'll, at that time, have an opportunity to study all of it and figure out the right thing to do.

But with regard to the case that there's already been a default judgment entered, I think there's very little chance that can be undone. As far as the others, we'll need -- and I might need -- y'all submit those orders, and it might be that we would need to get on a WebEx hearing and have some discussions about some of these factors with regard to each one of them. Let's do that. So y'all submit proposed orders. How long do you need to do that?

MS. SHAW: Ten days is good for me, Your Honor.

MS. MOORE: That works for me.

THE COURT. Very good. Thank you.

MS. SHAW: Thank you, Your Honor.

MS. MOORE: Thank you, Your Honor.

(THERE BEING NOTHING QUESTIONS, THIS HEARING CONCLUDED AT 10:21 A.M.)

CERTIFICATE OF TRANSCRIBER

I, Pam Gray, a court-approved transcriber, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Florence County, South Carolina, on the 21st day of August, 2024.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 15, 2024

Pam Gray

Pam Gray
Certified Transcriber

ELECTRONICALLY FILED - 2024 Jan 25 4:01 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).	**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT**

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Casa Bahari, LLC.

INTRODUCTION AND RELEVANT FACTS

1. Plaintiff brought this action against Defendant Casa Bahari, LLC ("Defendant") as a result of injuries suffered on Defendant's property on April 9, 2022.
2. Plaintiff served the Summons and Complaint on Defendant on December 4, 2023, as shown by the Affidavits of Service on File with this Court. **Exhibit A**.
3. Defendant's Answer or other responsive pleading was due on or about January 3, 2024.
4. As of the date of this Motion, Defendant has failed to Answer or otherwise responsively plead.
5. Plaintiff is, therefore, entitled to entry of default.

ELECTRONICALLY FILED - 2024 Jan 25 4:01 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

ARGUMENT AND AUTHORITIES

6. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

7. Rule 55(b) permits the court to enter default judgment against a party against whom default has been entered. SCRCP 55(b)(1).

8. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney ‘s sworn affidavit, attached as **Exhibit B**.

9. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

10. Upon information and belief, Defendant is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto. **Exhibit C**.

11. Because Defendant did not file or serve an Answer or responsive pleading within the time-frame permitted by the Rules of Civil Procedure, Plaintiff is entitled to Entry of Default.

PRAYER

12. For the reasons set forth above, Plaintiff asks the Court to enter Default against Defendant Casa Bahari, LLC by executing an Order in substantially the same form as **Exhibit D**.

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2024 Jan 25 4:01 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 25, 2024

ELECTRONICALLY FILED - 2024 Jan 12 4:44 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320
ELECTRONICALLY FILED - 2024 Jan 25 4:01 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR FLORENCE COUNTY

ASZANE CRUZ

Plaintiff/Petitioner

vs.

ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS; ET AL

Defendant/Respondent

DOCKET NO: **2023CP2102320**
FILING DATE: **09/29/2023**

AFFIDAVIT OF SERVICE OF:
SUMMONS; COMPLAINT; COVER LETTER; PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT CASA BAHARI, LLC; PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT CASA BAHARI, LLC; PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT CASA BAHARI, LLC

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the **4th day of December, 2023**, at **10:30 AM**, at the address of **7901 4th Street North suite 300, St. Petersburg, Pinellas County, FL 33702**; this affiant served the above described documents upon **Casa Bahari, LLC c/o REGISTERED AGENTS INC., REGISTERED AGENT** by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with **Corey Frank**, **I delivered the documents to Corey Frank who identified themselves as the person authorized to accept with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white male contact 25-35 years of age, 6'2"-6'6" tall and weighing 200-240 lbs.**.

Date: 12/6/23

Joseph Daly, Reg. # APS 59242, Pinellas County

State of FL County of Hillsborough

SUBSCRIBED AND SWORN to before me this 6 day of Dec, 2023

NOTARY PUBLIC in and for the State of **Florida**

My commission expires Deborah C Smith

DEBORAH C. SMITH
MY COMMISSION # HH 454478
EXPIRES: November 9, 2027

by means of (✓) physical presence or ( ) online notarization

REF: **REF-14312300**
FOR: **Poulin Willey Anastopoulo LLC**

ORIGINAL AFFIDAVIT OF SERVICE

Tracking #: **0119313196**

Exhibit B

ELECTRONICALLY FILED - 2024 Jan 25 4:01 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).	**AFFIDAVIT OF INDIA D. SHAW**

COMES NOW, the affiant, India D. Shaw, and first being duly sworn upon his oath under the pains and penalties of perjury now states the following:

1. I am the above-named affiant, India D. Shaw .

2. I, India D. Shaw, am an attorney with Poulin | Willey | Anastopoulo, LLC.

3. On December 4, 2023, Defendant Casa Bahari, LLC was properly served with the Summons and Complaint in this matter as evidenced by the Affidavit of Service on file with this Court.

5. Upon information and belief, Defendant Casa Bahari, LLC is neither an infant nor incompetent adult.

7. As of today's date, January 25, 2024, Defendant Casa Bahari, LLC has failed to file a responsive pleading.

Signature of Affiant

India D. Shaw, ESQ.

SWORN BEFORE ME THIS 25th day of January 2024.

Janet Heaslip

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA
My commission expires: 11th March, 2031

JANET HEASLIP
Notary Public-State of South Carolina
My Commission Expires
March 11, 2031

Exhibit C

ELECTRONICALLY FILED - 2024 Jan 25 4:01 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).

AFFIDAVIT OF NON-MILITARY SERVICE

Personally appeared before me the undersigned attorney, who first being duly sworn, deposes and says:

That they are familiar with the provisions of 50 App. Section 520, Civil Relief Act of 1940, and to induce the Court to enter a default judgment against Defendant Casa Bahari, LLC, represents to the Court that from their file in this matter, and on information and belief based on the hereinafter enumerated facts, Defendant Casa Bahari, LLC is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto. The source of information on which said beliefs are based is as follows: Research made by the Anastopoulo Law Firm, LLC and Aszane Cruz, Plaintiff herein.

Signature of Affiant:

India D. Shaw, ESQ.

SWORN BEFORE ME THIS 25th day of January 2024.

Janet Heaslip

NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA

My commission expires: 11th March, 2031

JANET HEASLIP
Notary Public-State of South Carolina
My Commission Expires
March 11, 2031

ELECTRONICALLY FILED - 2024 Jan 31 1:49 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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(s), 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(s).	**PLAINTIFF'S REQUEST FOR HEARING ON DAMAGES**

COMES NOW the Plaintiff, Aszane Cruz, by and through undersigned counsel, hereby respectfully requests a hearing on damages pursuant to Rule 55, based upon Defendant Casa Bahari, LLC failure to answer the complaint filed by Plaintiff as required by the South Carolina of Civil Procedure. In support of this request, Plaintiff shows as follows:

1. On January 25, 2024, Plaintiff filed a Request for Entry of Default as to Defendant Casa Bahari, LLC.
2. On January 25, 2024, Default was entered by the Clerk of Court as to Defendant Casa Bahari, LLC.
3. As of the date of this filing, Defendant Casa Bahari, LLC has failed to plead or otherwise defend the claims asserted by Plaintiff as required by the Federal Rules of Civil Procedure. No extension to the response deadline was either requested or granted.
4. Therefore, a hearing to determine the amount of unliquidated damages is proper

WHEREFORE, Plaintiff hereby requests that this court conduct a hearing to determine the amount.

ELECTRONICALLY FILED - 2024 Jan 31 1:49 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 31, 2024

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

ROSEN | HAGOOD

James A. Bruorton, IV
cbruorton@rosenhagood.com

March 25, 2024

VIA EMAIL ONLY:
The Honorable Michael Nettles
181 North Irby Street, Suite 3610
Florence, South Carolina 29501

Re: *Aszane Cruz v. Arete Wyndham Property Owner, LLC, et al.*
Case No.: 2023-CP-21-02320

Dear Judge Nettles:

Mary Harriet Moore and I represent Defendant Arete Wyndham Property Owner, LLC and Defendant Casa Bahari, LLC. We have recently filed notice of appearances on behalf of those defendants and will be filing responsive pleadings as well as motions to set aside the entries of default and/or to vacate default judgments. We are informed that on March 13, 2024, at 2:00 p.m. a damages hearing was held in front of you in Courtroom 3A at 181 North Irby Street, Florence, South Carolin 29501 related to Plaintiff's Motion for Damages Hearing as to Defendant Casa Bahari, LLC.

However, our client, Casa Bahari, LLC did not receive notice of the damages hearing until March 14, 2024 – one day after the damages hearing was held. The letter notifying Defendant Casa Bahari, LLC is attached hereto as "**Exhibit A**." Pursuant to SCRCP 5(a), "notice of any trial or hearing on unliquidated damages shall also be given to parties in default." *See also Roche v. Young Bros Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 901 (1995) ("However, when the relief which is sought is unliquidated damages, Rule 5(a), specifically provides 'notice of any trial or hearing on unliquidated damages *shall* also be given to parties in default.' . . . Young Brothers did not receive notice of the damages hearing as required by Rule 5(a), SCRCP. We, therefore, reverse the trial judge and remand to the circuit court for a new hearing on damages." (emphasis in original)).

As such, we are respectfully requesting that any default judgment being considered by this Court be delayed until such time as Defendant Casa Bahari, LLC has filed its responsive pleadings and/or has been heard at a properly noticed damages hearing. If you have any questions or need anything further from us, please contact me at 843-266-8119 or cbruorton@rosenhagood.com or Mary Harriet Moore at 843-266-8138 or mhmoore@rosenhagood.com. We appreciate your attention to this matter.

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully,

s/ James A. Bruorton, IV

James A. Bruorton, IV

cc: India Shaw, Esquire (via email only)
Lane Jefferies, Esquire (via email only)
Mary Harriet Moore, Esquire (via email only)

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

EXHIBIT A

SE REGION: (803) 222-2222
WWW.POULINWILLEY.COM

INDIA SHAW*
TEAMSHAW@POULINWILLEY.COM

* LICENSED: SC, DC

POULIN | WILLEY
TRIAL LAWYERS

SC LOCATIONS:
AIKEN
CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
HAMPTON
LADSON
LEXINGTON
MYRTLE BEACH
ORANGEBURG
ROCK HILL

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

C05 P1 T1 B1 278
Casa Bahari, Llc
6650 Rivers Ave Ste 100
North Charleston, SC 29406-4809

6650 Rivers Ave Ste. 100
Charleston, SC 29406

RE: Cruz, Aszane v. Wyndam Place (Florence)
Case No.: 2023CP2102320

To Whom It May Concern:

We hope this letter finds you well. On March 13, 2024 at 2:00 pm, you are required to appear at 181 North Irby Street, Florence, SC 29501 in Courtroom 3A for a Damages Hearing in front of the Honorable Judge Michael Nettles. Enclosed are the following documents:

1. Motion for Default
2. Motion to Request Hearing on Damages

Sincerely,

s/Ashna Divekar
Ashna Divekar
Litigation Paralegal

Enclosures

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).

PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Casa Bahari, LLC.

INTRODUCTION AND RELEVANT FACTS

1. Plaintiff brought this action against Defendant Casa Bahari, LLC ("Defendant") as a result of injuries suffered on Defendant's property on April 9, 2022.
2. Plaintiff served the Summons and Complaint on Defendant on December 4, 2023, as shown by the Affidavits of Service on File with this Court. **Exhibit A**.
3. Defendant's Answer or other responsive pleading was due on or about January 3, 2024.
4. As of the date of this Motion, Defendant has failed to Answer or otherwise responsively plead.
5. Plaintiff is, therefore, entitled to entry of default.

ELECTRONICALLY FILED - 2024 Mar 25 04:18 PM - FLORENCE COMMON PLEAS - CASE#2023CP2100320

ARGUMENT AND AUTHORITIES

6. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

7. Rule 55(b) permits the court to enter default judgment against a party against whom default has been entered. SCRCP 55(b)(1).

8. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney 's sworn affidavit, attached as **Exhibit B**.

9. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

10. Upon information and belief, Defendant is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto. **Exhibit C**.

11. Because Defendant did not file or serve an Answer or responsive pleading within the time-frame permitted by the Rules of Civil Procedure, Plaintiff is entitled to Entry of Default.

PRAYER

12. For the reasons set forth above, Plaintiff asks the Court to enter Default against Defendant Casa Bahari, LLC by executing an Order in substantially the same form as **Exhibit D**.

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 25, 2024

ELECTRONICALLY FILED - 2024 Mar 25 3:48 PM - FLORENCE COMMON PLEAS - CASE#2023CP2102320

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(s), 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(s).	**PLAINTIFF'S REQUEST FOR HEARING ON DAMAGES**

COMES NOW the Plaintiff, Aszane Cruz, by and through undersigned counsel, hereby respectfully requests a hearing on damages pursuant to Rule 55, based upon Defendant Casa Bahari, LLC failure to answer the complaint filed by Plaintiff as required by the South Carolina of Civil Procedure. In support of this request, Plaintiff shows as follows:

1. On January 25, 2024, Plaintiff filed a Request for Entry of Default as to Defendant Casa Bahari, LLC.
2. On January 25, 2024, Default was entered by the Clerk of Court as to Defendant Casa Bahari, LLC.
3. As of the date of this filing, Defendant Casa Bahari, LLC has failed to plead or otherwise defend the claims asserted by Plaintiff as required by the Federal Rules of Civil Procedure. No extension to the response deadline was either requested or granted.
4. Therefore, a hearing to determine the amount of unliquidated damages is proper

WHEREFORE, Plaintiff hereby requests that this court conduct a hearing to determine the amount.

ELECTRONICALLY FILED - 2024 Mar 25 3:18 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
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Charleston, South Carolina
January 31, 2024

ELECTRONICALLY FILED - 2024 Mar 25 6:13 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ASZANE CRUZ, Plaintiff, vs. 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 Defendants.	IN THE COURT OF COMMON PLEAS TWELFTH JUDICIAL CIRCUIT CASE NO. 2023-CP-21-02320 **MOTION TO SET ASIDE ENTRY OF DEFAULT AGAINST DEFENDANT CASA BAHARI, LLC**

TO: INDIA SHAW, ESQUIRE, AND LANE JEFFERIES, ESQUIRE, ATTORNEYS FOR PLAINTIFF

PLEASE TAKE NOTICE, that Defendant Casa Bahari, LLC ("Casa Bahari"), pursuant to Rule 55(c) of the South Carolina Rules of Civil Procedure, hereby moves the Court to set aside the entry of default against Defendant Casa Bahari because (1) Defendant Casa Bahari has established "good cause" and (2) the *Wham* factors weigh in favor of Defendant Casa Bahari. Defendant Casa Bahari's motion is made on the following grounds:

FACTS AND PROCEDURAL POSTURE

1. Plaintiff Aszane Cruz ("Plaintiff") filed her Summons and Complaint against the above-named defendants on September 29, 2023. In her Complaint, Plaintiff alleged causes of action for premises liability/negligence and negligent hiring, training, and supervision against all defendants, including Defendant Casa Bahari, related to a personal injury that was allegedly

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sustained by the Plaintiff on or around April 9, 2022, at 816 West Marion Street, Apt. A, Florence, South Carolina, 29501 (hereinafter "Premises").

2. Plaintiff served the Summons and Complaint on Defendant Casa Bahari through its registered agent, Registered Agents, Inc., via Process Server on December 4, 2023.

3. On January 11, 2024, Defendant Casa Bahari, through its counsel in Atlanta, Georgia, sent a letter to Plaintiff's counsel via FedEx advising Plaintiff that Defendant Casa Bahari did not own the property on the date of Plaintiff's alleged incident and requesting Defendant Casa Bahari be dismissed from the action. In the letter, counsel for Defendant Casa Bahari included a true and correct copy of the recorded Warranty Deed showing that Defendant Casa Bahari did not acquire the Premises until June 13, 2023, from Defendant Darlington 48 Unit, LLC. A copy of that letter, the FedEx shipping label, and the recorded deed is attached hereto as "**Exhibit A**."

4. On January 12, 2024, Plaintiff filed an Affidavit of Service certifying that the Summons and Complaint was served on Defendant Casa Bahari through its registered agent, via Process Server on December 4, 2023.

5. On January 16, 2024, counsel for Defendant Casa Bahari sent the same letter via email to counsel for Plaintiff again requesting for Defendant Casa Bahari to be dismissed from the action and including a copy of the recorded deed. A copy of the email is attached hereto as "**Exhibit B**."

6. Despite having this information, Plaintiff filed a Motion for Entry of Default as to Defendant Casa Bahari on January 25, 2024, and the Clerk of Court filed an Entry of Default as to Defendant Casa Bahari on that same day – January 25, 2024.

7. On January 31, 2024, Plaintiff filed a Motion for Damages Hearing.

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8. Upon information and belief, a damages hearing was held on March 13, 2024, before Judge Nettles. Plaintiff did not notify Defendant Casa Bahari of the damages hearing prior to March 13, 2024. Defendant Casa Bahari received a letter from Plaintiff's counsel on March 14, 2024, notifying Defendant Casa Bahari that it was required to attend a damages hearing on March 13, 2024, at 2:00 p.m. before the Honorable Judge Michael Nettles. A copy of that letter is attached hereto as "**Exhibit C**."

9. For the reasons set forth herein, the Entry of Default as to Defendant Casa Bahari should be set aside.

LEGAL STANDARD

10. Rule 55(c) of the South Carolina Rules of Civil Procedure allows a court to set aside an entry of default for "good cause shown." The good cause "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). The decision as to whether to set aside an entry of default is solely within the sound discretion of the trial court. *See Bage, LLC v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 465, 646 S.E.2d 153, 156 (Ct. App. 2007); *Hill v. Dotts*, 345 S.C. 304, 307, 547 S.E.2d 894, 896 (2001); *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989).

11. "Once a party has put forth a satisfactory explanation for the default, 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." *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). See also *In re Estate of Weeks*, 495 S.E.2d 454, 459 (Ct. App. 1997) ("The factors the judge should consider in

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deciding whether to set aside an entry of default are (1) 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."). Rule 55(c) is "liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 463 S.E.2d 636, 638 (Ct. App. 1995).

LEGAL ARGUMENT

12. Defendant Casa Bahari has good cause to set aside the entry of default. On or around January 11, 2024, and January 16, 2024, counsel for Defendant Casa Bahari notified counsel for Plaintiff that it was not the owner of the Premises at the time of Plaintiff's alleged injuries. He provided counsel for Plaintiff with a deed recorded in the Florence County Register of Deeds Book No. 1053, page 1176 showing that Defendant Darlington 48 Unit, LLC transferred the Premises to Defendant Casa Bahari and Defendant Arete Wyndham Property Owner, LLC (hereinafter "Wyndham") on June 13, 2023. The incident alleged in Plaintiff's Complaint occurred on April 9, 2022.

13. Counsel for Defendant Casa Bahari provided counsel for Plaintiff with the information it needed to pursue Plaintiff's claims against the correct parties. Moreover, pursuant to Rule 11, SCRCP, "[t]he written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay." Here, counsel for Plaintiff knew that Defendant Casa Bahari lacked ownership, possession, or control over the subject premises yet continued to with a Motion for Entry of Default. Thus, the "good cause" standard is met here as Defendant Casa Bahari has provided reasons why, in the interest of justice, the Entry of Default should be set aside. Specifically, Plaintiff was notified that Defendant Casa Bahari was not the owner of the Premises at the time

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Plaintiff allegedly suffered injuries and therefore Plaintiff lacks standing to bring a premises liability/negligence and negligent hiring, supervision, and training claims against Defendant Casa Bahari.

14. Because Defendant Casa Bahari has set forth "good cause," the next step is for the Court to analyze the *Wham* factors – (1) the time of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if the relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989). Here, all of the *Wham* factors weigh heavily in favor of Defendant Casa Bhari. First, Defendant Casa Bahari is making this motion within two months from the Entry of Default. Thus, an insubstantial amount of time has passed since the Entry of Default.

15. Second, Defendant Casa Bahari has meritorious defenses and denies liability as to Plaintiff's claims against it. To prove negligence in a premises liability cause of action, a plaintiff must prove: "(1) a duty of care owed by defendant to plaintiff; (2) defendant's breach of that duty by a negligence act or omission; and (3) damage proximately resulting from the breach of duty." *Singleton v. Sherer*, 377 S.C. 185, 200, 659 S.E.2d 196, 204 (Ct. App. 2008). "Such a premises liability theory is not dependent on proof of ownership, but on proof of possession and control." *Sheppard v. CSX Transp., Inc.*, 2002 WL 34378297 (D.S.C. Nov. 8, 2002); *see also Hess v. Textron Automotive Exteriors, Inc.*, 245 Ga.App. 264, 536 S.E.2d 291, 292 (Ga.App. 2000) ("[L]iability depends upon possession and control of the premises . . . and possession means having personal charge of or exercising the rights of management or control over the property in question."); *Kraft General Foods, Inc. v. Maxwell*, 219 Ga.App. 211, 464 S.E.2d 639, 641 (Ga.App. 1995) ("Liability for injuries occurring on one's premises is governed by possession and control of the premises.").

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16. It is clear, and Plaintiff's counsel knew, prior to filing its Motion for Entry of Default, that Defendant Casa Bahari had neither possession nor control of the Premises at the time of Plaintiff's alleged injuries. Thus, it is clear that Plaintiff does not have standing to bring a claim against Defendant Casa Bahari for premises liability/negligence and negligent hiring, training, and supervision which constitutes a meritorious defense.

17. Finally, Plaintiff will not suffer any prejudice by setting aside the Entry of Default against Defendant Casa Bahari. In fact, it is the quite opposite. If the Entry of Default is not set aside, Defendant Casa Bahari could potentially be liable for a judgment relating to a property that it did not even own, possess, or control. On the other hand, Plaintiff will suffer no prejudice. In her Complaint, Plaintiff named Defendant Darlington 48 Unit, LLC – the owner of the Premises at the time of Plaintiff's alleged injuries – as a defendant. Thus, Plaintiff will not be prejudiced by having to refile a suit against the correct party nor will Plaintiff have any concerns regarding any applicable statutes of limitation.

18. Because Defendant Casa Bahari has established "good cause" and because all three of the *Wham* factors weigh in favor of Defendant Casa Bahari, the Entry of Default should be set aside.

CONCLUSION

19. Based on the foregoing, Defendant Casa Bahari respectfully requests that the Entry of Default be lifted.

[SIGNATURE ON FOLLOWING PAGE]

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ROSEN HAGOOD, LLC

By: *s/ Mary Harriet Moore*
James A. Bruorton, IV (17222)
Mary Harriet Moore (105312)
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
cbruorton@rosenhagood.com
mhmoore@rosenhagood.com

ATTORNEYS FOR DEFENDANT CASA BAHARI, LLC

Charleston, South Carolina
March 25, 2024

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EXHIBIT A

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ROBINSON FRANZMAN LLP

TODD N. ROBINSON
DIRECT DIAL: 470-990-9055
E-MAIL: *todd@rfllplaw.com*

January 11, 2024

VIA FEDEX
VIA EMAIL(TEAMSHAW@POULINWILLEY.COM)

India D. Shaw, Esq.
32 Ann Street
Charleston, South Carolina 29403

Re: Cruz, Aszane vs. Wyndham Place et al., 12th Judicial Circuit of Florence County, South Carolina, Case No. 2023-CP-21-02320 (the "Civil Action")

Dear Attorney Shaw:

The undersigned and this law firm represent Arete Wyndham Property Owner LLC d/b/a Wyndham Place Apartments and Casa Bahari LLC ("**Current Owners**") with respect to the matter addressed herein. You named the Current Owners as defendants in the above-described Civil Action, which relates to a personal injury alleged that was allegedly sustained by your client on or about April 9, 2022, at certain premises located at 816 West Marion St, Apt A, Florence SC 29501 (the "**Premises**"). The purpose of this letter is to inform you that on the date of the alleged injury, the Current Owners were not the owners of the Premises. The Current Owners acquired the Premises on June 13, 2023, by Warranty Deed from Darlington 48 Unit LLC. A true and correct of the recorded Warranty Deed is enclosed herewith. Accordingly, we request and demand that you promptly dismiss the Current Owners from the Civil Action and provide the undersigned with evidence of such dismissal within ten (10) days from the date of this letter. If the Current Owners are forced to retain litigation counsel to answer the Civil Action, the Current Owners will petition the Court, upon the Court's dismissal of the Current Owners, to award to the Current Owners their costs of pursuing such dismissal.

Please feel free to contact the undersigned to discuss this matter.

Sincerely,

Todd N. Robinson

TNR/mw

Enclosure

Florence County Recording Page

Florence Clerk of Court
Doris Poulos O'Hara
180 North Irby Street MSC-E
Florence, SC 29501
(843) 665-3031

File Number : ***2023-00007573***

Book : ***1053*** **Page :** ***1176***

Doc ID - 008413880005

On (Recorded Date) : **6/15/2023**
At (Recorded Time) : 4:11:00 PM

Recording Pages : 5
Recording Fee : $12,965.00

Please keep this Cover Page with the Original Document

This sheet is now part of this document, please leave attached

Index Type : **DEEDS**
Type of Instrument : **DEED**
Type of Transaction: **Deeds**

First GRANTOR

DARLINGTON 48 UNIT LLC

First GRANTEE

CASA BAHARI LLC

Received From :
WEEKS AND IRVINE LLC
8086-B RIVERS AVE
NORTH CHARLESTON, SC

Return To :
WEEKS AND IRVINE LLC
8086-B RIVERS AVE
NORTH CHARLESTON, SC

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The attached document including this Cover Page was recorded in the County Recorder's office of Florence County, South Carolina

FILE NO: 2023-174

PREPARED BY:

FLORENCE LAW FIRM, LLC
62 COLUMBUS STREET
CHARLESTON, SC 29403

PROPERTY DESIGNATED AS: 90060-12-009

SPLIT FROM: _____

BY FLORENCE COUNTY ASSESSOR'S OFFICE

FILED
2023 JUN 15 PM 4:12
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

00103

SPACE ABOVE THIS LINE RESERVED FOR RECORDING INFORMATION

THE STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF FLORENCE)

KNOW ALL MEN BY THESE PRESENTS, That, **Darlington 48 Unit, LLC**, herein referred to as the Grantor, for and in consideration of the sum of **Three Million Five Hundred Thousand and 00/100 Dollars ($3,500,000.00)** to it paid by **Casa Bahari, LLC, a Florida limited liability company, and Arete Wyndham Property Owner, LLC, a South Carolina limited liability company**, hereinafter Grantees, in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said **Casa Bahari, LLC, a Florida limited liability company, an undivided 56.97% interest and Arete Wyndham Property Owner, LLC, a South Carolina limited liability company, an undivided 43.03% interest,** in and to the following described property:

ALL that certain piece, parcel or tract of land, with all the improvements thereon, situate, lying and being in the City of Florence, County of Florence, State of South Carolina, containing 3.996 acres and being more particularly shown and delineated on a plat prepared for Merriman, LLC by Cox and Dinkins, Inc., dated November 11, 1998 and recorded in the Office of the Register of Deeds for Florence County, South Carolina as Exhibit B in Deed recorded as Book B577 at Page 0508, and shown thereon as having the following boundaries and measurements to wit: Beginning at a PK Nail and Cap at the intersection of the southern right of way of West Marion Street and western right of way of North Harrell Street, the point of beginning (POB); thence running S01-40-46E along the western right of way of North Harrell Street for a distance of 367.00 feet to a PK Nail and Cap; thence turning and running S43-36-38W along the northwestern right of way of West Darlington Street for a distance of 35.00 feet to a 1/2 rebar; thence turning and running S89-18-07W along the northern right of way of West Darlington Street for a distance of 417.40 feet to a 1/2 inch rebar, thence turning and running N03-10-04W along Lots 1 and 34, Block A of Sunset Park Subdivision for a distance of 388.00 feet to a 1/2 inc rebar, thence turning and running N88-45-00E along the southern right of way of West Marion Street for a distance of 452.30 feet to a PK Nail and Cap, being the point of beginning.

Being the same property conveyed unto Darlington 48 Unit, LLC, by deed of Tricounty Weatherization Group, LLC, dated April 19, 2018 and recorded on April 25, 2018 in Book 743 at Page 402 in the ROD Office for Florence County, and re-recorded on August 6, 2018 in Book 757 at Page 1335 in the ROD Office for Florence County.

STATE FEE 9,100.00
COUNTY FEE 3,850.00

PARCEL ID NUMBER: 90060-12-009

Weeks & Irvine, LLC
8086 Rivers Avenue
2nd Floor
North Charleston, SC 29406

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GRANTEE'S ADDRESS: 451 Springfield Road, Mount Pleasant SC 29464

This conveyance is made subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said **Casa Bahari, LLC, a Florida limited liability company, an undivided 56.97% interest and Arete Wyndham Property Owner, LLC, a South Carolina limited liability company, an undivided 43.03% interest**, their successors and assigns forever.

AND THE GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantees, their successors and assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

REMAINDER OF PAGE INTENTIONALLY BLANK, SIGNATURE BLOCK ON FOLLOWING PAGE

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WITNESS My Hand and Seal this 13th day of **June, 2023**.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witness No. 1

Witness No. 2/Notary

Darlington 48 Unit, LLC
a South Carolina limited liability company

By: John Q. Florence
Its: Authorized Agent

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 13th day of **June, 2023,** by the Grantor(s).

SWORN to before me this 13th day of **June, 2023**

(L.S.)
Notary Public for South Carolina
Commission Expires: 7-23-28

JENNIFER L. MERKEL
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires
07-23-2028

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STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF FLORENCE)

Date of Transfer of Title
June 14, 2023

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 805 West Darlington Street, Florence, SC 29501, bearing County Tax Map Number 90060-12-009, was transferred by Darlington 48 Unit, LLC TO Arete Wyndham Property Owner, LLC and Casa Bahari, LLC on June 13, 2023.
3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

If exempt under exemption #14, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ____ or No ____. This realty was purchased with the funds of the principal.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $3,500,000.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract agreement between the lien holder and the buyer existing before the transfer.) If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.
6. The DEED Recording Fee is computed as follows:
   a. Place the amount listed in item 4 above here: $3,500,000.00
   b. Place the amount listed in item 5 above here: $0.00 (if no amount listed, place zero here.)
   c. Subtract line 6(b) from line 6(a) and place result here: $3,500,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is $12,950.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantee.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Arete Wyndham Property Owner, LLC

By: _____
Its Authorized Signor

SWORN to before me this the 14th day of June, 2023.

_____
Notary Public
PRINTED NAME: Mark W Weeks

My Commission Expires: 1/11/25

(SEAL)

MARK W. WEEKS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 01/11/2029

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00107

ORIGIN ID:QFEA (470) 990-9047
ROBINSON FRANZMAN LLP

191 PEACHTREE ST NE
STE 2600
ATLANTA, GA 30303
UNITED STATES US

SHIP DATE: 16JAN24
ACTWGT: 0.25 LB
CAD: 254071013/INET4660

BILL SENDER

TO **INDIA D SHAW, ESQ.**

32 ANN ST

CHARLESTON SC 29403

(470) 990-9054

INV:
PO:
REF:
DEPT:

583J3/B014/9AE3

J234023101501uv

FedEx Express

WED - 17 JAN 10:30A

PRIORITY OVERNIGHT

TRK# 0201 **7748 2602 1939**

X6 RBWA

29403
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SC-US

After printing this label:
1. Use the 'Print' button on this page to print your label to your laser or inkjet printer.
2. Fold the printed page along the horizontal line.
3. Place label in shipping pouch and affix it to your shipment so that the barcode portion of the label can be read and scanned.

Warning: Use only the printed original label for shipping. Using a photocopy of this label for shipping purposes is fraudulent and could result in additional billing charges, along with the cancellation of your FedEx account number.
Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery,misdelivery,or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental,consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss.Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

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FedEx Shipment Receipt

Address Information

Ship to:	**Ship from:**
India D Shaw, Esq.	Robinson Franzman LLP
32 ANN ST	191 Peachtree St NE Ste 2600
CHARLESTON, SC 29403-6212 US 4709909054	Atlanta, GA 30303 US 4709909047

Shipment Information:
Tracking no.: 774826021939
Ship date: 01/16/2024
Estimated shipping charges: 25.67 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.25 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: RF Account-460
Your reference:
P.O. no.:
Invoice no.:
Department no.:

Thank you for shipping online with FedEx ShipManager at fedex.com.

Please Note

FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

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EXHIBIT B

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From: Tyler Lavender
To: TEAMSHAW@POULINWILLEY.COM
Cc: Todd Robinson; Michael Wing; Kimberly Calhoun
Subject: Cruz, Aszane vs. Wyndham Place, Case No. 2023-CP-21-02320
Date: Tuesday, January 16, 2024 9:39:23 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
1.11.24 - Letter to Counsel Demanding Dismissal - Wyndham Place Apts and Casa Bahari (FINAL).docx
Wyndham and Casa Bahari Deed.pdf

Good morning,

Our firm represents Arete Wyndham Property Owner LLC and Casa Bahari LLC with respect to this matter. This communication is to inform you that neither of our clients were owners of the property at the time of the alleged incident and to request that our clients be dismissed from the action. Please find our full response to your client's complaint attached, along with a copy of the deed to the property in question.

Thank you,

Tyler C. Lavender
Associate
Robinson Franzman LLP

404-255-2503
770-880-6418
tyler@rfllplaw.com
www.rfllplaw.com
191 Peachtree Street, N.E., Ste. 2600 Atlanta, Georgia 30303

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EXHIBIT C

SE REGION: (803) 222-2222
WWW.POULINWILLEY.COM

INDIA SHAW*
TEAMSHAW@POULINWILLEY.COM

* LICENSED: SC, DC

POULIN | WILLEY
TRIAL LAWYERS

SC LOCATIONS:
AIKEN
CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
HAMPTON
LADSON
LEXINGTON
MYRTLE BEACH
ORANGEBURG
ROCK HILL

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C05 P1 T1 B1 278
Casa Bahari, Llc
6650 Rivers Ave Ste 100
North Charleston, SC 29406-4809

6650 Rivers Ave Ste. 100
Charleston, SC 29406

RE: Cruz, Aszane v. Wyndam Place (Florence)
Case No.: 2023CP2102320

To Whom It May Concern:

We hope this letter finds you well. On March 13, 2024 at 2:00 pm, you are required to appear at 181 North Irby Street, Florence, SC 29501 in Courtroom 3A for a Damages Hearing in front of the Honorable Judge Michael Nettles. Enclosed are the following documents:

1. Motion for Default
2. Motion to Request Hearing on Damages

Sincerely,

s/Ashna Divekar
Ashna Divekar
Litigation Paralegal

Enclosures

ELECTRONICALLY FILED - 2024 Mar 25 9:13 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).

PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Casa Bahari, LLC.

INTRODUCTION AND RELEVANT FACTS

1. Plaintiff brought this action against Defendant Casa Bahari, LLC ("Defendant") as a result of injuries suffered on Defendant's property on April 9, 2022.
2. Plaintiff served the Summons and Complaint on Defendant on December 4, 2023, as shown by the Affidavits of Service on File with this Court. **Exhibit A**.
3. Defendant's Answer or other responsive pleading was due on or about January 3, 2024.
4. As of the date of this Motion, Defendant has failed to Answer or otherwise responsively plead.
5. Plaintiff is, therefore, entitled to entry of default.

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ARGUMENT AND AUTHORITIES

6. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

7. Rule 55(b) permits the court to enter default judgment against a party against whom default has been entered. SCRCP 55(b)(1).

8. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney 's sworn affidavit, attached as **Exhibit B**.

9. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

10. Upon information and belief, Defendant is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto. **Exhibit C**.

11. Because Defendant did not file or serve an Answer or responsive pleading within the time-frame permitted by the Rules of Civil Procedure, Plaintiff is entitled to Entry of Default.

PRAYER

12. For the reasons set forth above, Plaintiff asks the Court to enter Default against Defendant Casa Bahari, LLC by executing an Order in substantially the same form as **Exhibit D**.

[SIGNATURE ON FOLLOWING PAGE]

ELECTRONICALLY FILED - 2024 Mar 25 6:13 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 25, 2024

ELECTRONICALLY FILED - 2024 Mar 25 6:43 PM - FLORENCE COMMON PLEAS - CASE#2023CP2102320

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(s), 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(s).	**PLAINTIFF'S REQUEST FOR HEARING ON DAMAGES**

COMES NOW the Plaintiff, Aszane Cruz, by and through undersigned counsel, hereby respectfully requests a hearing on damages pursuant to Rule 55, based upon Defendant Casa Bahari, LLC failure to answer the complaint filed by Plaintiff as required by the South Carolina of Civil Procedure. In support of this request, Plaintiff shows as follows:

1. On January 25, 2024, Plaintiff filed a Request for Entry of Default as to Defendant Casa Bahari, LLC.
2. On January 25, 2024, Default was entered by the Clerk of Court as to Defendant Casa Bahari, LLC.
3. As of the date of this filing, Defendant Casa Bahari, LLC has failed to plead or otherwise defend the claims asserted by Plaintiff as required by the Federal Rules of Civil Procedure. No extension to the response deadline was either requested or granted.
4. Therefore, a hearing to determine the amount of unliquidated damages is proper

WHEREFORE, Plaintiff hereby requests that this court conduct a hearing to determine the amount.

ELECTRONICALLY FILED - 2024 Mar 25 6:13 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 31, 2024

ELECTRONICALLY FILED - 2024 Apr 05 2:24 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

STATE OF SOUTH CAROLINA COUNTY OF FLORENCE ASZANE CRUZ, Plaintiff, vs. 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, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT CASE NO.: 2023-CP-21-02320 **DEFENDANT CASA BAHARI, LLC'S MOTION TO RECONSIDER**

TO: INDIA SHAW, ESQUIRE, AND LANE JEFFERIES, ESQUIRE, ATTORNEYS FOR PLAINTIFF ASZANE CRUZ

PLEASE TAKE NOTICE that Defendant Casa Bahari, LLC ("Casa Bahari"), by and through its undersigned counsel, pursuant to S.C. R. Civ. Pro. 59, hereby moves the Court to alter, amend, or reconsider the Court's order filed April 2, 2024. A copy of the order is attached hereto as "**Exhibit A**."

In support of its motion, Defendant Casa Bahari respectfully submits:

1. On September 29, 2023, Plaintiff Aszane Cruz ("Plaintiff") filed this action against Defendants Arete Wyndham Property Owner, LLC, Casa Bahari, LLC, Darlington 48 Unit, LLC, and John Doe, individually and as manager of Arete Wyndham, Property Owner, LLC. In her Complaint, Plaintiff alleged causes of action for premises liability/negligence and negligent hiring, training, and supervision against all defendants, including Defendant Casa Bahari, related to a

ELECTRONICALLY FILED - 2024 Apr 05 2:24 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

personal injury that was allegedly sustained by Plaintiff on or around April 9, 2022, at 816 West Marion Street, Apt. A, Florence, South Carolina, 29501 (hereinafter "Premises").

2. Plaintiff served the Summons and Complaint on Defendant Casa Bahari through its registered agent, Registered Agents, Inc., via Process Server on December 4, 2023.

3. On January 11, 2024, Defendant Casa Bahari, through its counsel in Atlanta, Georgia, sent a letter to Plaintiff's counsel via FedEx advising Plaintiff that Defendant Casa Bahari did not own the property on the date of Plaintiff's alleged incident and requesting Defendant Casa Bahari be dismissed from the action. In the letter, counsel for Defendant Casa Bahari included a true and correct copy of the recorded Warranty Deed showing that Defendant Casa Bahari did not acquire the Premises until June 13, 2023, from Defendant Darlington 48 Unit, LLC. A copy of that letter, the FedEx shipping label, and the recorded deed is attached hereto as "**Exhibit B**."

4. On January 12, 2024, Plaintiff filed an Affidavit of Service certifying that the Summons and Complaint were served on Defendant Casa Bahari through its registered agent, via Process Server, on December 4, 2023.

5. On January 16, 2024, counsel for Defendant Casa Bahari sent the same letter via email to counsel for Plaintiff again requesting for Defendant Casa Bahari to be dismissed from the action and including a copy of the recorded deed. A copy of that email is attached hereto as "**Exhibit C**."

6. Despite having this information, Plaintiff filed a Motion for Entry of Default as to Defendant Casa Bahari on January 25, 2024, and the Clerk of Court filed an Entry of Default as to Defendant Casa Bahari on that same day – January 25, 2024.

7. On January 31, 2024, Plaintiff filed a Motion for Damages Hearing.

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8. A damages hearing was held on March 13, 2024, before the Honorable Judge Michael Nettles. Plaintiff did not notify Defendant Casa Bahari of the damages hearing prior to March 13, 2024. Defendant Casa Bahari received a letter from Plaintiff's counsel on March 14, 2024, notifying Defendant Casa Bahari that it was required to attend a damages hearing on March 13, 2024, at 2:00 p.m. before the Honorable Judge Michael Nettles. A copy of that letter is attached hereto as "**Exhibit D**."

9. On April 2, 2024, this Court issued a Form 4 Order and Written Order granting Plaintiff's Motion for Default Judgment and entering judgment in favor of Plaintiff totaling $40,686.00.

10. For the reasons set forth herein, Defendant Casa Bahari respectfully requests the Court to alter, amend, or reconsider the Court's order filed April 2, 2024.

LEGAL ARGUMENT

I. The Court's Order incorrectly finds that Plaintiff was injured as a result of the negligent actions of Defendant Casa Bahari and that Plaintiff was entitled to default judgment against Defendant Casa Bahari.

11. "Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Pursuant to Rule 60(b), "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; [and] (5) the judgment has been satisfied, released, or discharged, or a

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prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." SCRCP 60(b).

12. "[C]ourts 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." *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 567, 274 S.E.2d 290, 292 (1981). "The [c]ourt does not attempt . . . to decide the case on its merits, but only decided whether a prima facie showing has been made of a meritorious defense." *Lanier v. Lanier*, 251 S.C. 117, 119, 160 S.E.2d 558, 559 (1968). "When a party has made 'a good faith mistake of fact' and has not attempted 'to thwart the judicial system,' the court has a basis to vacate a default judgment." *Ex parte Trustgard Insurance Co.*, 2023 WL 5944276 (Ct. App. Sept. 13, 2023) (quoting *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986)).

13. This Court incorrectly found that Defendant Casa Bahari was responsible for Plaintiff's injuries and the default judgment should be vacated. On or around January 11, 2024, and January 16, 2024, counsel for Defendant Casa Bahari notified counsel for Plaintiff that it was not the owner of the Premises at the time of Plaintiff's alleged injuries. He provided counsel for Plaintiff with a deed recorded in the Florence County Register of Deeds Book No. 1053, page 1176 showing that Defendant Darlington 48 Unit, LLC transferred the Premises to Defendant Casa Bahari and Defendant Arete Wyndham Property Owner, LLC (hereinafter "Wyndham") on June 13, 2023. The incident alleged in Plaintiff's Complaint occurred on April 9, 2022.

14. Counsel for Defendant Casa Bahari provided counsel for Plaintiff with information it needed to pursue Plaintiff's claims against the correct parties. Moreover, pursuant to Rule 11, SCRCP, "[t]he written or electronic signature of any attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge,

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information and belief there is good ground to support it; and that it is not interposed for delay." Here, counsel for Plaintiff knew that Defendant Casa Bahari lacked ownership, possession, or control over the subject premises yet continued with a Motion for Entry of Default and thereafter a Motion for Default Judgment. Thus, Defendant Casa Bahari has met the standard in Rule 60(b) and has provided reasons why, in the interest of justice, the default judgment should be vacated. Specifically, Plaintiff was notified that Defendant Casa Bahari was not the owner of the Premises at the time Plaintiff allegedly suffered injuries and therefore Plaintiff lacks standing to bring a premises liability/negligence and negligent hiring, supervision, and training claims against Defendant Casa Bahari.

15. As such, Defendant Casa Bahari has shown that it has met the standard under Rule 60(b). Specifically, the court should reconsider its April 2, 2024, Order and relieve Defendant Casa Bahari from the default judgment because of (1) mistake; (2) fraud, misrepresentation, or misconduct of an adverse party; and (3) because it is no longer equitable that the default judgment should have prospective application and, therefore, the Court erred in entering default judgment against Defendant Casa Bahari. Defendant Casa Bahari respectfully requests the Court to reconsider its April 2, 2024, Order and to vacate the default judgment.

II. The Court's Order incorrectly finds that Defendant Casa Bahari was properly notified of the damages hearing.

16. "[N]otice of any trial or hearing on unliquidated damages shall also be given to parties in default." S.C. R. CIV. PRO. 5(a). "[W]hen the relief which is sought is unliquidated damages, Rule 5(a), specifically provides 'notice of any trial or hearing on unliquidated damages shall also be given to parties in default.'" *Roche v. Young Bros. Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 901 (1995). In *Roche*, Chief Justice Toal reversed the trial judge and

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remanded the cases to the circuit court for a new damages hearing because "Young Brothers did not received notice of the damages hearing as required by Rule 5(a), SCRCP." *Id*.

17. Here, the Court's Order wrongfully concluded that Defendant Casa Bahari was notified of the damages hearing.

18. Defendant Casa Bahari did not receive notice of the March 13, 2024, damages hearing until March 14, 2024 – one day after the damages hearing was held. The letter notifying Defendant Casa Bahari is attached hereto as "**Exhibit D**."

19. Moreover, upon information and belief, no Affidavit of Service, Certificate of Service, or Affidavit of Mailing was filed with the Court providing that Defendant Casa Bahari was properly served prior to the damages hearing on March 13, 2024.

20. Because Defendant Casa Bahari was not properly notified of the damages hearing, the Court's Order erroneously entered a default judgment in favor of Plaintiff and any default judgment should be vacated until Defendant Casa Bahari has been heard at a properly noticed hearing.

CONCLUSION

21. Based on the forgoing reasons and authority, Defendant Casa Bahari respectfully requests that this Court reconsider its Order granting Plaintiff's Motion for Default Judgment and issue a new order denying Plaintiff's Motion in full.

[SIGNATURE ON FOLLOWING PAGE]

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ROSEN HAGOOD, LLC

By: *s/ Mary Harriet Moore*
James A. Bruorton, IV (17222)
Mary Harriet Moore (105312)
40 Calhoun Street, Suite 450
Charleston, SC 29401
(843) 577-6726
cbruorton@rosenhagood.com
mhmoore@rosenhagood.com

ATTORNEYS FOR DEFENDANT CASA BAHARI, LLC

Charleston, South Carolina
April 5, 2024

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EXHIBIT A

ELECTRONICALLY FILED - 2024-04-05 12:24:57 - FLORENCE - COMMON PLEAS - CASE# 2023CP2102320

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, Defendants.	**ORDER ON DEFAULT JUDGMENT**

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

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Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

FILED ELECTRONICALLY 2022-04-05 12:24:57 PM - FLORENCE - COMMON PLEAS - CASE# 2022CP2101233

shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

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3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

00131

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

ELECTRONICALLY FILED – 2024 Apr 05 12:46 PM – FLORENCE – COMMON PLEAS – CASE# 2023CP2102320

		$ 00132

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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

ELECTRONICALLY FILED – 2022 Apr 05 12:24 PM – FILED REENCE – COMMON PLEAS – CASE# 2022CP2102320

ELECTRONICALLY FILED – 2022-04-05 12:24:36 PM – FILED – GREENVILLE – COMMON PLEAS – CASE# 2022CP2102332

ELECTRONICALLY FILED – 2022-04-05 12:24:36 PM – FLORENCE – COMMON PLEAS – CASE# 2022CP2101233

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

ELECTRONICALLY FILED – 2022-04-05 12:24:36 PM – FILED REFERENCE – COMMON PLEAS – CASE # 2022CP2102320

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

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EXHIBIT B

ELECTRONICALLY FILED - 2024 Apr 05 2:24 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

ROBINSON FRANZMAN LLP

TODD N. ROBINSON
DIRECT DIAL: 470-990-9055
E-MAIL: *todd@rfllplaw.com*

January 11, 2024

VIA FEDEX
VIA EMAIL(TEAMSHAW@POULINWILLEY.COM)

India D. Shaw, Esq.
32 Ann Street
Charleston, South Carolina 29403

Re: Cruz, Aszane vs. Wyndham Place et al., 12th Judicial Circuit of Florence County, South Carolina, Case No. 2023-CP-21-02320 (the "Civil Action")

Dear Attorney Shaw:

The undersigned and this law firm represent Arete Wyndham Property Owner LLC d/b/a Wyndham Place Apartments and Casa Bahari LLC ("**Current Owners**") with respect to the matter addressed herein. You named the Current Owners as defendants in the above-described Civil Action, which relates to a personal injury alleged that was allegedly sustained by your client on or about April 9, 2022, at certain premises located at 816 West Marion St, Apt A, Florence SC 29501 (the "**Premises**"). The purpose of this letter is to inform you that on the date of the alleged injury, the Current Owners were not the owners of the Premises. The Current Owners acquired the Premises on June 13, 2023, by Warranty Deed from Darlington 48 Unit LLC. A true and correct of the recorded Warranty Deed is enclosed herewith. Accordingly, we request and demand that you promptly dismiss the Current Owners from the Civil Action and provide the undersigned with evidence of such dismissal within ten (10) days from the date of this letter. If the Current Owners are forced to retain litigation counsel to answer the Civil Action, the Current Owners will petition the Court, upon the Court's dismissal of the Current Owners, to award to the Current Owners their costs of pursuing such dismissal.

Please feel free to contact the undersigned to discuss this matter.

Sincerely,

Todd N. Robinson

TNR/mw

Enclosure

Florence County Recording Page

Florence Clerk of Court
Doris Poulos O'Hara
180 North Irby Street MSC-E
Florence, SC 29501
(843) 665-3031

File Number : ***2023-00007573***

Book : ***1053*** **Page :** ***1176***

Doc ID - 008413880005

On (Recorded Date) : **6/15/2023**
At (Recorded Time) : 4:11:00 PM

Recording Pages : 5
Recording Fee : $12,965.00

Please keep this Cover Page with the Original Document

This sheet is now part of this document, please leave attached

Index Type : **DEEDS**
Type of Instrument : **DEED**
Type of Transaction: **Deeds**

First GRANTOR

DARLINGTON 48 UNIT LLC

First GRANTEE

CASA BAHARI LLC

Received From :
WEEKS AND IRVINE LLC
8086-B RIVERS AVE
NORTH CHARLESTON, SC

Return To :
WEEKS AND IRVINE LLC
8086-B RIVERS AVE
NORTH CHARLESTON, SC

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The attached document including this Cover Page was recorded in the County Recorder's office of Florence County, South Carolina

FILE NO: 2023-174

PREPARED BY:

FLORENCE LAW FIRM, LLC
62 COLUMBUS STREET
CHARLESTON, SC 29403

PROPERTY DESIGNATED AS: 90060-12-009

SPLIT FROM: _____

BY FLORENCE COUNTY ASSESSOR'S OFFICE

FILED
2023 JUN 15 PM 4:12
DORIS POULOS O'HARA
CCCP & GS
FLORENCE COUNTY, SC

00140

SPACE ABOVE THIS LINE RESERVED FOR RECORDING INFORMATION

THE STATE OF SOUTH CAROLINA)
) TITLE TO REAL ESTATE
COUNTY OF FLORENCE)

KNOW ALL MEN BY THESE PRESENTS, That, **Darlington 48 Unit, LLC**, herein referred to as the Grantor, for and in consideration of the sum of **Three Million Five Hundred Thousand and 00/100 Dollars ($3,500,000.00)** to it paid by **Casa Bahari, LLC, a Florida limited liability company, and Arete Wyndham Property Owner, LLC, a South Carolina limited liability company**, hereinafter Grantees, in the State aforesaid, the receipt and sufficiency whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said **Casa Bahari, LLC, a Florida limited liability company, an undivided 56.97% interest and Arete Wyndham Property Owner, LLC, a South Carolina limited liability company, an undivided 43.03% interest,** in and to the following described property:

ALL that certain piece, parcel or tract of land, with all the improvements thereon, situate, lying and being in the City of Florence, County of Florence, State of South Carolina, containing 3.996 acres and being more particularly shown and delineated on a plat prepared for Merriman, LLC by Cox and Dinkins, Inc., dated November 11, 1998 and recorded in the Office of the Register of Deeds for Florence County, South Carolina as Exhibit B in Deed recorded as Book B577 at Page 0508, and shown thereon as having the following boundaries and measurements to wit: Beginning at a PK Nail and Cap at the intersection of the southern right of way of West Marion Street and western right of way of North Harrell Street, the point of beginning (POB); thence running S01-40-46E along the western right of way of North Harrell Street for a distance of 367.00 feet to a PK Nail and Cap; thence turning and running S43-36-38W along the northwestern right of way of West Darlington Street for a distance of 35.00 feet to a 1/2 rebar; thence turning and running S89-18-07W along the northern right of way of West Darlington Street for a distance of 417.40 feet to a 1/2 inch rebar, thence turning and running N03-10-04W along Lots 1 and 34, Block A of Sunset Park Subdivision for a distance of 388.00 feet to a 1/2 inc rebar, thence turning and running N88-45-00E along the southern right of way of West Marion Street for a distance of 452.30 feet to a PK Nail and Cap, being the point of beginning.

Being the same property conveyed unto Darlington 48 Unit, LLC, by deed of Tricounty Weatherization Group, LLC, dated April 19, 2018 and recorded on April 25, 2018 in Book 743 at Page 402 in the ROD Office for Florence County, and re-recorded on August 6, 2018 in Book 757 at Page 1335 in the ROD Office for Florence County.

STATE FEE 9,100.00
COUNTY FEE 3,850.00

PARCEL ID NUMBER: 90060-12-009

Weeks & Irvine, LLC
8086 Rivers Avenue
2nd Floor
North Charleston, SC 29406

ELECTRONICALLY FILED - 2024 Apr 05 2:24 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

GRANTEE'S ADDRESS: 451 Springfield Road, Mount Pleasant SC 29464

This conveyance is made subject to easements, restrictions, covenants, and conditions of record, including matters shown on recorded plats.

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging, or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said **Casa Bahari, LLC, a Florida limited liability company, an undivided 56.97% interest and Arete Wyndham Property Owner, LLC, a South Carolina limited liability company, an undivided 43.03% interest**, their successors and assigns forever.

AND THE GRANTOR does hereby bind itself, its successors and assigns, to warrant and forever defend all and singular the said premises unto the said Grantees, their successors and assigns, against the Grantor and the Grantor's successors and assigns and against every person whomsoever lawfully claiming or to claim, the same or any part thereof.

REMAINDER OF PAGE INTENTIONALLY BLANK, SIGNATURE BLOCK ON FOLLOWING PAGE

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ELECTRONICALLY FILED - 2024 Apr 05 2:24 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

WITNESS My Hand and Seal this 13th day of **June, 2023**.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

Witness No. 1

Witness No. 2/Notary

Darlington 48 Unit, LLC
a South Carolina limited liability company

By: John Q. Florence
Its: Authorized Agent

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 13th day of **June, 2023,** by the Grantor(s).

SWORN to before me this 13th day of **June, 2023**

(L.S.)
Notary Public for South Carolina
Commission Expires: 7-23-28

JENNIFER L. MERKEL
NOTARY PUBLIC
STATE OF SOUTH CAROLINA
My Commission Expires
07-23-2028

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STATE OF SOUTH CAROLINA)
) **AFFIDAVIT**
COUNTY OF FLORENCE)

Date of Transfer of Title
June 14, 2023

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred is located at 805 West Darlington Street, Florence, SC 29501, bearing County Tax Map Number 90060-12-009, was transferred by Darlington 48 Unit, LLC TO Arete Wyndham Property Owner, LLC and Casa Bahari, LLC on June 13, 2023.
3. Check one of the following: The deed is:
   a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
   b. ___ subject to the deed recording fee as a transfer between a corporation, a partnership or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
   c. ___ EXEMPT from the deed recording fee because _____. (Explanation, if required: n/a If exempt, please skip items 4-6 and go to Item No. 7 of this affidavit.

If exempt under exemption #14, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes ____ or No ____. This realty was purchased with the funds of the principal.

4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
   a. X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of $3,500,000.00.
   b. ___ The fee is computed on the fair market value of the realty, which is $_____.
   c. ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is $_____.

5. Check YES ☐ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after the transfer. (This includes, pursuant to Code Section 12-59-140(E)(6), any lien or encumbrance on realty in possession of a forfeited land commission which may subsequently be waived or reduced after the transfer under a signed contract agreement between the lien holder and the buyer existing before the transfer.) If "YES", the amount of the outstanding balance of this lien or encumbrance is $_____.
6. The DEED Recording Fee is computed as follows:
   a. Place the amount listed in item 4 above here: $3,500,000.00
   b. Place the amount listed in item 5 above here: $0.00 (if no amount listed, place zero here.)
   c. Subtract line 6(b) from line 6(a) and place result here: $3,500,000.00
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: $12,950.00.
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as Grantee.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Arete Wyndham Property Owner, LLC

By: _____
Its Authorized Signor

SWORN to before me this the 14th day of June, 2023.

_____
Notary Public
PRINTED NAME: Mark W Weeks

My Commission Expires: 1/11/25

(SEAL)

MARK W. WEEKS NOTARY PUBLIC SOUTH CAROLINA My Comm. Exp. 01/11/2029

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00144

ORIGIN ID:QFEA (470) 990-9047
ROBINSON FRANZMAN LLP

191 PEACHTREE ST NE
STE 2600
ATLANTA, GA 30303
UNITED STATES US

SHIP DATE: 16JAN24
ACTWGT: 0.25 LB
CAD: 254071013/INET4660

BILL SENDER

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32 ANN ST

CHARLESTON SC 29403

(470) 990-9054

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PO:
REF:
DEPT:

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J234023101501uv

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PRIORITY OVERNIGHT

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Use of this system constitutes your agreement to the service conditions in the current FedEx Service Guide, available on fedex.com.FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery,misdelivery,or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim.Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental,consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss.Maximum for items of extraordinary value is $1,000, e.g. jewelry, precious metals, negotiable instruments and other items listed in our ServiceGuide. Written claims must be filed within strict time limits, see current FedEx Service Guide.

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Ship to:	**Ship from:**
India D Shaw, Esq.	Robinson Franzman LLP
32 ANN ST	191 Peachtree St NE Ste 2600
CHARLESTON, SC 29403-6212 US 4709909054	Atlanta, GA 30303 US 4709909047

Shipment Information:
Tracking no.: 774826021939
Ship date: 01/16/2024
Estimated shipping charges: 25.67 USD

Package Information
Pricing option: FedEx Standard Rate
Service type: Priority Overnight
Package type: FedEx Envelope
Number of packages: 1
Total weight: 0.25 LBS
Declared Value: 0.00 USD
Special Services:
Pickup/Drop-off: Drop off package at FedEx location

Billing Information:
Bill transportation to: RF Account-460
Your reference:
P.O. no.:
Invoice no.:
Department no.:

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FedEx will not be responsible for any claim in excess of $100 per package, whether the result of loss, damage, delay, non-delivery, misdelivery, or misinformation, unless you declare a higher value, pay an additional charge, document your actual loss and file a timely claim. Limitations found in the current FedEx Service Guide apply. Your right to recover from FedEx for any loss, including intrinsic value of the package, loss of sales, income interest, profit, attorney's fees, costs, and other forms of damage whether direct, incidental, consequential, or special is limited to the greater of $100 or the authorized declared value. Recovery cannot exceed actual documented loss. Maximum for items of extraordinary value is $1000, e.g., jewelry, precious metals, negotiable instruments and other items listed in our Service Guide. Written claims must be filed within strict time limits; Consult the applicable FedEx Service Guide for details.
The estimated shipping charge may be different than the actual charges for your shipment. Differences may occur based on actual weight, dimensions, and other factors. Consult the applicable FedEx Service Guide or the FedEx Rate Sheets for details on how shipping charges are calculated.

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EXHIBIT C

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From: Tyler Lavender
To: TEAMSHAW@POULINWILLEY.COM
Cc: Todd Robinson; Michael Wing; Kimberly Calhoun
Subject: Cruz, Aszane vs. Wyndham Place, Case No. 2023-CP-21-02320
Date: Tuesday, January 16, 2024 9:39:23 AM
Attachments: image001.png
image002.png
image003.png
image004.png
image005.png
1.11.24 - Letter to Counsel Demanding Dismissal - Wyndham Place Apts and Casa Bahari (FINAL).docx
Wyndham and Casa Bahari Deed.pdf

Good morning,

Our firm represents Arete Wyndham Property Owner LLC and Casa Bahari LLC with respect to this matter. This communication is to inform you that neither of our clients were owners of the property at the time of the alleged incident and to request that our clients be dismissed from the action. Please find our full response to your client's complaint attached, along with a copy of the deed to the property in question.

Thank you,

Tyler C. Lavender
Associate
Robinson Franzman LLP

404-255-2503
770-880-6418
tyler@rfllplaw.com
www.rfllplaw.com
191 Peachtree Street, N.E., Ste. 2600 Atlanta, Georgia 30303

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EXHIBIT D

SE REGION: (803) 222-2222
WWW.POULINWILLEY.COM

INDIA SHAW*
TEAMSHAW@POULINWILLEY.COM

* LICENSED: SC, DC

POULIN | WILLEY
TRIAL LAWYERS

SC LOCATIONS:
AIKEN
CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
HAMPTON
LADSON
LEXINGTON
MYRTLE BEACH
ORANGEBURG
ROCK HILL

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C05 P1 T1 B1 278
Casa Bahari, Llc
6650 Rivers Ave Ste 100
North Charleston, SC 29406-4809

6650 Rivers Ave Ste. 100
Charleston, SC 29406

RE: Cruz, Aszane v. Wyndam Place (Florence)
Case No.: *2023CP2102320*

To Whom It May Concern:

We hope this letter finds you well. On March 13, 2024 at 2:00 pm, you are required to appear at 181 North Irby Street, Florence, SC 29501 in Courtroom 3A for a Damages Hearing in front of the Honorable Judge Michael Nettles. Enclosed are the following documents:

1. Motion for Default
2. Motion to Request Hearing on Damages

Sincerely,

s/Ashna Divekar
Ashna Divekar
Litigation Paralegal

Enclosures

ELECTRONICALLY FILED - 2024 Jan 05 2:24 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

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(s).	**PLAINTIFF'S MOTION FOR ENTRY OF DEFAULT**

COMES NOW the Plaintiff, by and through undersigned counsel, who asks the Clerk of Court to enter default against the Defendant Casa Bahari, LLC.

INTRODUCTION AND RELEVANT FACTS

1. Plaintiff brought this action against Defendant Casa Bahari, LLC ("Defendant") as a result of injuries suffered on Defendant's property on April 9, 2022.
2. Plaintiff served the Summons and Complaint on Defendant on December 4, 2023, as shown by the Affidavits of Service on File with this Court. **Exhibit A**.
3. Defendant's Answer or other responsive pleading was due on or about January 3, 2024.
4. As of the date of this Motion, Defendant has failed to Answer or otherwise responsively plead.
5. Plaintiff is, therefore, entitled to entry of default.

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ARGUMENT AND AUTHORITIES

6. Rule 55(a) directs the Clerk of the Court to enter default against a party who has not filed a responsive pleading or otherwise defended the suit. SCRCP 55(a).

7. Rule 55(b) permits the court to enter default judgment against a party against whom default has been entered. SCRCP 55(b)(1).

8. Plaintiff meets the procedural requirements for obtaining an entry of default as demonstrated by attorney 's sworn affidavit, attached as **Exhibit B**.

9. Plaintiff does not seek affirmative relief against an infant, an incompetent person, or the State of South Carolina.

10. Upon information and belief, Defendant is not in the Military Service of the United States and is not entitled to the protection of the Civil Relief Act of 1940 and Amendments thereto. **Exhibit C**.

11. Because Defendant did not file or serve an Answer or responsive pleading within the time-frame permitted by the Rules of Civil Procedure, Plaintiff is entitled to Entry of Default.

PRAYER

12. For the reasons set forth above, Plaintiff asks the Court to enter Default against Defendant Casa Bahari, LLC by executing an Order in substantially the same form as **Exhibit D**.

[SIGNATURE ON FOLLOWING PAGE]

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Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 25, 2024

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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(s), 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(s).	**PLAINTIFF'S REQUEST FOR HEARING ON DAMAGES**

COMES NOW the Plaintiff, Aszane Cruz, by and through undersigned counsel, hereby respectfully requests a hearing on damages pursuant to Rule 55, based upon Defendant Casa Bahari, LLC failure to answer the complaint filed by Plaintiff as required by the South Carolina of Civil Procedure. In support of this request, Plaintiff shows as follows:

1. On January 25, 2024, Plaintiff filed a Request for Entry of Default as to Defendant Casa Bahari, LLC.
2. On January 25, 2024, Default was entered by the Clerk of Court as to Defendant Casa Bahari, LLC.
3. As of the date of this filing, Defendant Casa Bahari, LLC has failed to plead or otherwise defend the claims asserted by Plaintiff as required by the Federal Rules of Civil Procedure. No extension to the response deadline was either requested or granted.
4. Therefore, a hearing to determine the amount of unliquidated damages is proper

WHEREFORE, Plaintiff hereby requests that this court conduct a hearing to determine the amount.

ELECTRONICALLY FILED - 2024 Jan 05 2:24 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com

Charleston, South Carolina
January 31, 2024

ELECTRONICALLY FILED - 2024 Aug 20 12:36 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

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.	**MEMO IN OPPOSITION TO DEFENDANT CASA BAHARI LLC'S MOTION TO RECONSIDER**

The question presented is whether a Defendant's default was properly found and held. The answer is yes. To be clear, when revisiting the entry of default the prerequisite to considering the Wham factors, defendant must first "put forth a satisfactory explanation for the default." *Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 681 S.E.2d 885, 888 (S.C. 2009). Here, Defendant failed to do so. Instead, Defendant offered as an excuse exactly the sort of thing that our appellate courts hold is not good cause.

The only explanation offered by Defendant for failing to timely answer the Complaint was that they "sent a letter". In other words, Defendant failed to timely answer.

THE COURT PROPERLY FOUND PLANITFF WAS ENTITLED TO DEFAULT JUDGMENT AGAINST DEFENDNANT CASA BAHARI

"A defendant shall serve his answer within 30 days after the service of the complaint upon him." Defendant was served with summons and complaint December 4, 2023. Making the

ELECTRONICALLY FILED - 2024 Aug 20 12:36 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

effective response for the Defendant January 3, 2024.

As the Defendant notes, they not only received notice of the summons and complaint, but rather than answering, they sent correspondence to Plaintiff's Counsel. The correspondence, from a firm in Georgia, purporting to be Counsel for the Defendant. Furthermore, it is worth noting that the correspondence indicates that the individual who communicated with Plaintiff's Counsel missed their own deadline, stating that they would retain counsel and respond within ten (10) days. This did not happen, and as a result, the Plaintiff filed for Default against Defendant Casa Bahari on January 25, 2024.

> Warranty Deed from Darlington 48 Unit LLC. A true and correct of the recorded Warranty Deed is enclosed herewith. Accordingly, we request and demand that you promptly dismiss the Current Owners from the Civil Action and provide the undersigned with evidence of such dismissal within ten (10) days from the date of this letter. If the Current Owners are forced to retain litigation counsel to answer the Civil Action, the Current Owners will petition the Court, upon the Court's dismissal of the Current Owners, to award to the Current Owners their costs of pursuing such dismissal.
>
> **[See Defendant's Exhibit B]**

"Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP." Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). Pursuant to Rule 60(b), "[o]n motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; [and] (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application." SCRCP 60(b).

Again, noting the actions or rather inactions of the Defendant-- Defendant with full knowledge of the summons and complaint insist that their letter amounts to (1) mistake; (2) fraud,

ELECTRONICALLY FILED - 2024 Aug 20 12:36 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

misrepresentation, or misconduct of an adverse party; and (3) because it is no longer equitable that the default judgment should have prospective application and, therefore, the Court erred in entering default judgment against Defendant Casa Bahari.

Mistake, there was no mistake Defendant received notice and failed to answer. Plaintiff properly served Defendants registered agent December 4, 2024. *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), SCRCP, a party must first show a good faith mistake of fact has been made ...."). *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) (stating that a party seeking relief from judgment under Rule 60(b)(1) on the ground of mistake "must make a showing that failure to avoid the mistake was justified").

No evidence of fraud, misrepresentation, or misconduct by the adverse party has been demonstrated, as well. Especially considering that the Defendant's not only allowed the deadline to answer the complaint lapse, but also the deadline Defendant provided themselves. There was no agreed upon extension to answer, despite the fact Plaintiff did so.

There was no fraud. "In order to secure equitable relief on the basis of fraud, the fraud must be extrinsic." *Id.* at 80, 579 S.E.2d at 610 (citing *Bryan v. Bryan, supra*). "Extrinsic fraud is 'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" *Id.* at 81, 579 S.E.2d 605, 579 S.E.2d at 610 (citation omitted). Intrinsic fraud, on the other hand, is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud. *Id.* The classic case of intrinsic fraud is perjured testimony or presenting forged documents at trial. *See, e.g., Bryan v. Bryan,* 220 S.C. at 169, 66 S.E.2d at 611; James F. Flanagan, South Carolina Civil Procedure at 485 (2d ed.1996). Neither can or be found here. The fact that Defendant may or may not have owned the property was available to them still after answering, which they failed to do.

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Misconduct by the adverse party. None here. Plaintiff did not alter the complaint, deadline, language or attempted to cause confusion regarding Defendant's right and obligation to answer the summons and complaint served upon them.

Additionally, it is important to note, that prior to proceeding with the damages hearing on March 13, 2024, Counsel for the Plaintiff notified the court that correspondence had been received regarding this matter. However, at that time, the Defendant had not answered or otherwise pleaded. The court then granted the Plaintiff permission to proceed with the hearing on damages.

THE COURT PROPERLY FOUND CASA BAHARI WAS NOTIFIED OF THE DAMAGES HEARING

"[N]otice of any trial or hearing on unliquidated damages shall also be given to parties in default." South Carolina Rules of Civil Procedure rule 5(a). "[W]hen the relief which is sought is unliquidated damages, Rule 5(a), specifically provides 'notice of any trial or hearing on unliquidated damages shall also be given to parties in default.'" Roche v. Young Bros. Inc. of Florence, 318 S.C. 207, 212, 456 S.E.2d 897, 901 (1995). In Roche, Chief Justice Toal reversed the trial judge and remanded the cases to the circuit court for a new damages hearing because "Young Brothers did not received notice of the damages hearing as required by Rule 5(a), SCRCP." Id. The Young brothers however did not receive notice of the hearing because "No attempt was made to notify Young Brothers of the damages hearing."

Further, Notice was sent to the Defendant regarding the hearing. Defendant however seeks to alter the rule suggesting that they had not received the notice. No such rule exists. As noted in the Young Brother case, the trial court correctly reversed the decision since no attempt was made to place the Defendant on notice. However, and as indicated in Defendant's own motion, Plaintiff provided notice to Defendant's registered agent. **[See Defendant's Exhibit D]**.

Defendant failed to timely answer and had only had one but two opportunities to do so.

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CONCLUSION

Based on the motions, memoranda, and documents on file with the Court, and for the reasons set forth above, Defendant's Motions to Reconsider must be denied.

Dated: August 20, 2024

Respectfully Submitted,

POULIN | WILLEY

/s/ India D. Shaw

India Shaw
S.C. Bar No.: 104339
32 Ann Street
Charleston, SC 29403
T: (803) 222-2222
F: (843) 494-5536
E: india.shaw@poulinwilley.com

ATTORNEYS FOR THE PLAINTIFF

ELECTRONICALLY FILED - 2024 Sep 05 8:06 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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.	**MOTION FOR CONTINUANCE**

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD

YOU WILL PLEASE TAKE NOTICE that the Plaintiff above-named, by and through her undersigned counsel, submits the following Motion to Continue the Damages Hearing regarding Defendant Darlington 48, LLC that has been noticed in this matter for September 9, 2024, before the Honorable David P. Caraker, Jr.

For the following reasons, the Poulin | Willey | Anastopoulo, LLC, and India D. Shaw (collectively "Anastopoulo") as counsel to Plaintiff move to continue the damages hearing as to Defendant Darlington 48, LLC as currently, there are pending motions before the Honorable Judge Michael Nettles concerning Damages and Default Judgment for multiple parties involved in this case. The outcome of these rulings are likely to impact the hearing set for August 9th, 2024.

ELECTRONICALLY FILED - 2024 Sep 05 8:06 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

In the interest of judicial efficiency and to ensure fairness in these proceedings, the Plaintiff requests that the hearing on Damages for Defendant Darlington 48, LLC, be continued until such determination can be made on the pending Motions. Defendant Darlington 48, LLC remains unrepresented and has not appeared in this matter. Opposing counsel for Arete Wyndam Property Owners, LLC and Casa Bahari, LLC has been notified of this request via email and is included in communications regarding this matter to the court. To date, no objections have been raised.

For these reasons, the Plaintiff respectfully requests that this Court grant a continuance of the hearing scheduled for August 9th, 2024.

Dated: September 05, 2024

Respectfully Submitted,

POULIN | WILLEY

/s/ India D. Shaw

India Shaw
S.C. Bar No.: 104339
32 Ann Street
Charleston, SC 29403
T: (803) 222-2222
F: (843) 494-5536
E: teamshaw@poulinwilley.com

ATTORNEYS FOR THE PLAINTIFF

ELECTRONICALLY FILED - 2024 Aug 02 5:40 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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, Defendants.	**PLAINTIFF'S REQUEST FOR HEARING ON DAMAGES**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD

COMES NOW the Plaintiff, Aszane Cruz, by and through undersigned counsel, hereby respectfully requests a hearing on damages pursuant to Rule 55, based upon Defendant Brenda Calhoun failure to answer the complaint filed by Plaintiff as required by the South Carolina of Civil Procedure. In support of this request, Plaintiff shows as follows:

1. On July 19, 2024, Plaintiff filed a Request for Entry of Default as to Defendant Darlington 48 Unit, LLC.
2. On July 22, 2024, Default was entered by the Clerk of Court as to Defendant Darlington 48 Unit, LLC.
3. As of the date of this filing, Defendant Darlington 48 Unit, LLC has failed to plead or otherwise defend the claims asserted by Plaintiff as required by the Federal Rules of Civil Procedure. No extension to the response deadline was either requested or granted.

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4. Therefore, a hearing to determine the amount of unliquidated damages is proper.

WHEREFORE, Plaintiff hereby requests that this court conduct a hearing to determine the amount.

Dated: August 2, 2024

Respectfully submitted,

POULIN | WILLEY | ANASTOPOULO, LLC

s/ *India D. Shaw*_____
India D. Shaw, Esquire
S.C. Bar No.: 104339
Lane D. Jefferies, Esquire
S.C. Bar No.:101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
803- 222-2222
teamshaw@poulinwilley.com

ELECTRONICALLY FILED - 2024 Sep 27 2:31 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

IN THE STATE OF SOUTH CAROLINA) COUNTY OF FLORENCE)	IN THE COURT OF COMMON PLEAS FOR THE JUDICIAL CIRCUIT CASE NO: 2023CP2102320
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.	**PLAINTIFF'S REQUEST FOR HEARING ON DAMAGES AS TO ARETE WYNDHAM PROPERTY OWNERS, LLC**

TO: THE HONORABLE COURT AND ALL PARTIES OF RECORD

COMES NOW the Plaintiff, Aszane Cruz, by and through undersigned counsel, hereby respectfully requests a hearing on damages pursuant to Rule 55, based upon Defendant Arete Wyndham Property Owners, LLC failure to answer the complaint filed by Plaintiff as required by the South Carolina of Civil Procedure. In support of this request, Plaintiff shows as follows:

1. On January 25, 2024, Plaintiff filed a Request for Entry of Default as to Defendant as to Defendant Arete Wyndham Property Owners, LLC.
2. On January 25, 2024, Default was entered by the Clerk of Court as to Defendant Arete Wyndham Property Owners, LLC.
3. No extension to the response deadline was either requested or granted.

ELECTRONICALLY FILED - 2024 Sep 27 2:31 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

4. As of the date of this filing, Defendant Arete Wyndham Property Owners, LLC has now appeared, however an Order Denying Arete Wyndham Property Owners, LLC's motion to Set Aside Default was Ordered by the Honorable Michael G. Nettles August 21, 2024.
5. Therefore, a hearing to determine the amount of unliquidated damages is proper.
6. If the court determines that no further hearing is necessary and that damages were already established at a previous hearing, Plaintiff respectfully requests that all defaulting Defendants be found jointly and severally liable for the damages awarded in the amount of $40,686.00.

WHEREFORE, Plaintiff hereby requests that this court conduct a hearing to determine the amount.

Dated: September 27, 2024

Respectfully Submitted,

POULIN | WILLEY

/s/ India D. Shaw

India Shaw
S.C. Bar No.: 104339
32 Ann Street
Charleston, SC 29403
T: (803) 222-2222
F: (843) 494-5536
E: india.shaw@poulinwilley.com

ATTORNEYS FOR THE PLAINTIFF

ELECTRONICALLY FILED - 2024 Jan 12 4:44 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR FLORENCE COUNTY

ASZANE CRUZ

Plaintiff/Petitioner

vs.

ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS; ET AL

Defendant/Respondent

DOCKET NO: **2023CP2102320**

FILING DATE: **09/29/2023**

AFFIDAVIT OF SERVICE OF:

SUMMONS; COMPLAINT; COVER LETTER; PLAINTIFF'S FIRST INTERROGATORIES TO DEFENDANT CASA BAHARI, LLC; PLAINTIFF'S FIRST REQUESTS FOR ADMISSION TO DEFENDANT CASA BAHARI, LLC; PLAINTIFF'S FIRST REQUESTS FOR PRODUCTION TO DEFENDANT CASA BAHARI, LLC

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the **4th day of December, 2023**, at **10:30 AM**, at the address of **7901 4th Street North suite 300, St. Petersburg, Pinellas County, FL 33702**; this affiant served the above described documents upon **Casa Bahari, LLC c/o REGISTERED AGENTS INC., REGISTERED AGENT** by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with **Corey Frank**, **I delivered the documents to Corey Frank who identified themselves as the person authorized to accept with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white male contact 25-35 years of age, 6'2"-6'6" tall and weighing 200-240 lbs.**.

Date: 12/6/23

Joseph Daly, Reg. # APS 59242, Pinellas County

State of FL County of Hillsborough

SUBSCRIBED AND SWORN to before me this 6 day of Dec, 2023

NOTARY PUBLIC in and for the State of **Florida**

My commission expires Deborah C Smith

DEBORAH C. SMITH
MY COMMISSION # HH 454478
EXPIRES: November 9, 2027

by means of (✓) physical presence or ( ) online notarization

REF: **REF-14312300**

FOR: **Poulin Willey Anastopoulo LLC**

ORIGINAL AFFIDAVIT OF SERVICE

Tracking #: **0119313196**

IN THE COURT OF COMMON PLEAS OF THE STATE OF SOUTH CAROLINA FOR FLORENCE COUNTY

ASZANE CRUZ
Plaintiff/Petitioner

vs.

ARETE WYNDHAM PROPERTY OWNER LLC D/B/A WYNDHAM PLACE APARTMENTS; ET AL
Defendant/Respondent

DOCKET NO: **2023-CP-21-02320**
FILING DATE: **09/29/2023**

AFFIDAVIT OF SERVICE OF:
SUMMONS; COMPLAINT; COVER LETTER; FIRST REQUESTS FOR ADMISSION; FIRST INTERROGATORIES; FIRST REQUESTS FOR PRODUCTION

The undersigned, being first duly sworn, on oath deposes and says: That s(he) is now and at all times herein mentioned was a citizen of the United States, over the age of eighteen, not an officer of a plaintiff corporation, not a party to nor interested in the above entitled action, has the authority to serve pleadings in the State named below, and is competent to be a witness therein.

On the **29th day of March, 2024**, at **8:04 PM**, at the address of **22136 Oak Orchard Rd, Newhall, Los Angeles County, CA 91321**; this affiant served the above described documents upon **Darlington 48 Unit, LLC c/o Bob Lambert, REGISTERED AGENT** by then and there personally delivering **1** true and correct copy(ies) thereof, by then presenting to and leaving the same with **Bob Lambert, REGISTERED AGENT**, **I delivered the documents to Bob Lambert, REGISTERED AGENT with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a gray-haired white male contact over 65 years of age, 5'8"-5'10" tall and weighing 160-180 lbs.**.

Date: 4-17-2024

Robert Alba, Reg. # 2017009246, County clerk Los Angeles county

SUBSCRIBED AND SWORN to before me this _____ day of _____, 20___.

NOTARY PUBLIC in and for the State of **California**
My commission expires _____

See attatched Jurat

ELECTRONICALLY FILED - 2024 May 07 9:56 AM - FLORENCE - COMMON PLEAS - CASE#2023CP210320

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California
County of Los Angeles

Subscribed and sworn to (or affirmed) before me on this 17 day of April, 2024, by Roberto Alba, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

HALEY R. RUDE
Notary Public - California
Los Angeles County
Commission # 2448410
My Comm. Expires May 29, 2027

(Seal) Signature

ELECTRONICALLY FILED - 2024 May 07 9:56 AM - FLORENCE - COMMON PLEAS - CASE#2023CP210320

ELECTRONICALLY FILED - 2023 Dec 28 4:13 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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. VS. 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 , Defendants.	**PETITION FOR PUBLICATION**

The Plaintiff herein would respectfully show unto this Honorable court as follows:

1. That this is an action of Common Pleas, based upon Premises liability case against the Defendant, Darlington 48 Unit, whose last known address was in Florence County, South Carolina.
2. That, although due and diligent search has been made for the Defendant, the Plaintiff has been unable to locate the Defendant in the County of Florence, State of South Carolina (see attached affidavit of non-service).
3. The Plaintiff is informed and believes that it is necessary that the Defendant be served by publication, and it requests that this Court issue an Order allowing such service, and that this Court issue an Order authorizing service of the Summons, and Notice of filing

ELECTRONICALLY FILED - 2023 Dec 28 4:13 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

the Complaint in **The Community Times**, the newspaper of general circulation in the county of the Defendant's last known address.

WHEREFORE, the Plaintiff must request this Court enter an Order authorizing service by publication of this matter.

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO LAW, LLC

India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
32 Ann Street
Charleston, SC 29403
P: (803) 222-2222
E: teamshaw@poulinwilley.com

Charleston, South Carolina
Dated this 28th day of December, 2023

Exhibit A

ELECTRONICALLY FILED - 2023 Dec 28 4:13 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

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. VS. 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 , Defendants.	**AFFIDAVIT FOR PUBLICATION**

Personally appeared before me, India D. Shaw, who being duly sworn, states that:

1. I am an attorney for the Plaintiff, Aszane Cruz, in the above referenced action. The Plaintiff and Defendant have an action of Common Pleas for a motor vehicle accident.
2. Defendant's business has no agent and no address listed with the South Carolina Secretary of States [Exhibit B].
3. The last known address for Defendant, Darlington 48 Unit, LLC was 307 State Road S-21-174, Florence, SC 29501.
4. My office has attempted to Serve the Defendant, Darlington 48 Unit, LLC, via Hand-Delivery Process Service on December 6, 2023, 307 State Road S-21-174, Florence, SC 29501. This attempt was unsuccessful [Exhibit C].

ELECTRONICALLY FILED - 2023 Dec 28 4:13 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

5. My office has attempted to Serve the Defendant, Darlington 48 Unit, LLC, via USPS certified mail, return receipt request on December 15, 2023, 307 State Road S-21-174, Florence, SC 29501. This attempt was unsuccessful [Exhibit D].
6. I believe that although the Plaintiff has tried to contact the Defendant with due diligence, the Defendant cannot be located at this time.

Respectfully Submitted,

POULIN | WILLEY | ANASTOPOULO LAW, LLC

India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
32 Ann Street
Charleston, SC 29403
P: (803) 222-2222
E: teamshaw@poulinwilley.com

Charleston, South Carolina
Dated this 28th day of December, 2023

Sworn to and subscribed before me
this 28th day of December, 2023

NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires March 4, 2031

KAMEN GREGORICH NOTARY PUBLIC MY COMM. EXP. 3/4/2031 SOUTH CAROLINA

South Carolina Secretary of State

Business Entities Online

File, Search, and Retrieve Documents Electronically

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Darlington 48 unit, LLC

Corporate Information

Entity Id: 00901716

Entity Type: Limited Liability Company

Status: No Agent

Domestic/Foreign: Domestic

Incorporated State: South Carolina

Important Dates

Effective Date: 03/12/2018

Expiration Date: N/A

Term End Date: N/A

Dissolved Date: N/A

Registered Agent

Agent: No Agent

Address: No Address

Official Documents On File

Filing Type	Filing Date
Resignation of Agent for Service of Process	10/14/2022
Notice of Change of Designated Office, Agent or Address of Registered Agent	04/04/2019
Articles of Organization	03/12/2018

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AFFIDAVIT OF SERVICE

State of South Carolina **County of Florence** **Common Pleas Court**

Case Number: 2023-CP-21-2320

Plaintiff:
ASZANE CRUZ,

vs.

Defendant:
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,

For:
Anastopoulo Law Firm LLC
32 Ann Street
Charleston, SC 29403

Received by Milligan & Associates LLC to be served on **DARLINGTON 48 UNIT LLC, 307 State Road S-21-174,, Florence, SC 29501**.

I, Edward Milligan, being duly sworn, depose and say that on the **6th day of December, 2023** at **11:25 am, I:**

Served the within named corporation by delivering a true copy of the **Summons and Complaint, Plaintiff's Standard and First Supplemental Interrogatories to Defendant Plaintiff's First Requests for Production to Defendant and Plaintiff's First Requests for Admission to Defendant** with the date and hour of service endorsed thereon by me to TARRETT DAVIS as GENERAL MANAGER of the within named corporation, in compliance with State Statutes.

Description of Person Served: Age: 38, Sex: M, Race/Skin Color: B, Height: 5'9, Weight: 260, Hair: BLK, Glasses: N

I certify that I am over the age of 18, have no interest in the above action, and in good standing, in the judicial circuit in which the process was served.

Subscribed and Sworn to before me on the 6th day of December, 2023 by the affiant who is personally known to me.

PRINT NAME

NOTARY PUBLIC __/__/____

DAVID P MILLIGAN
NOTARY PUBLIC
State of South Carolina
My Commission Expires Apr. 25, 2026

Edward Milligan
Process Server

Milligan & Associates LLC
Process@MilliganAndAssociates.com
P.O. Box 4845
Florence, SC 29502-4845
(843) 667-4747

Our Job Serial Number: DPM-2023000776
Ref: Cruz v Wyndham

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Exhibit D

00174

Poulin Willey Anastopoulo, LLC
India Shaw
32 ANN ST
CHARLESTON SC 29403-6212

USPS CERTIFIED MAIL

9402 8118 9876 5496 1096 32

Darlington 48 Unit, LLC
Darlington 48 Unit, LLC
307 STATE ROAD S-21-174
FLORENCE SC 29501

US POSTAGE AND FEES PAID
PRIORITY MAIL
Dec 15 2023
Mailed from ZIP 97230
1 LB PRIORITY MAIL RATE
ZONE 8 NO SURCHARGE
11923275
Commercial Plus Pricing

stamps endicia

062S0001442214

TOLL FREE: 1(803) 222-2222
FACSIMILE: (843) 353-1604

REPLY TO 32 ANN STREET OFFICE
TEAMSHAW@POULINWILLEY.COM

USPS Article #9402811898765496109632 Date: 12/15/2023

POULIN | WILLEY ANASTOPOULO

AKIM A. ANASTOPOULO (SC)
ERIC M. POULIN (SC)(GA)(NC)(CA)
ROY T. WILLEY, IV (SC)(KY)(NJ)

BLAKE G. ABBOTT (SC)(NC)
CONSTANCE ANASTOPOULO (SC)*
A. ELLIOTT HUGER BARROW, JR. (SC)*
BRADLEY BURGESS (SC)
MATTHEW J. BURGESS (SC)
JOSHUA P. CANTWELL (SC)
CHASE H. COBLE (SC)
RALPH JAMES D'AGOSTINO III (SC)
ERICA M. DOBRICH (SC)
PAUL DOOLITTLE (SC)
JACQUELINE A. DUFOUR (SC)
HERB F. GLASS (SC)(CA)
LANE D. JEFFERIES (SC)
NIKIRA M. LAFRANCE (NC) (SC)
ANGELINE LARRIVEE (NJ) (SC)
RYAN A. LOVE (SC)(NC)
STEPHANIE L. MASCELLA (SC)
FREDRICK J. MOGAB (SC)(NE)
LAUREN E. MOORE (SC)
JESSICA S. NELSON (SC)
J.C. NICHOLSON (SC)
JULIA K. PIRILLO (WV)
INDIA D. SHAW (SC)(NC)
ANDREW D. SMITH (SC)
JOSEPH E. THOENSEN (SC)
BRADLEY TINGER (SC)

*OF COUNSEL

00176

ELECTRONICALLY FILED - 2023 Dec 26 4:13 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

December 15, 2023

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED
Darlington 48 Unit, LLC
307 State Rd S-21-174
Florence, SC 29501

RE: *Cruz, Aszane v. Wyndham Place*
Case No.: *2023-CP-21-02320*

Dear Defendant:

Enclosed for service upon you, and pursuant to the South Carolina Rules of Civil Procedure, please find the following:

- Cover Letter;
- Summons and Complaint that has been filed in the above-referenced action;
- Plaintiff's Standard Interrogatories;
- Plaintiff's First Requests for Production; and
- Plaintiff's First Requests to Admit.

Upon receipt, please forward this letter and these important legal papers to your insurance company and/or attorney **immediately**. These documents are time sensitive. They are also the only copies you will receive, so be sure to deliver ALL of them to your insurance company and/or attorney along with this letter.

Sincerely,

s/ India D. Shaw
India D. Shaw

Enclosures

RECEIVED
Oct 11 2024
SC Court of Appeals

ELECTRONICALLY FILED - 2024 Oct 15 1:39 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Defendant/Appellant Casa Bahari, LLC ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

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Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

ROSEN HAGOOD, LLC

By:*/s/ Mary Harriet Moore*
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Mary Harriet Moore, Esquire (SC Bar 105312)
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ATTORNEYS FOR APPELLANT

Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

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ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

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Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

PROOF OF SERVICE

I, the undersigned of the law office of Rosen Hagood, LLC, attorneys for Appellant Casa Bahari, LLC, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Notice of Appeal, which copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Parties Served:

India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
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Darlington 48 Unit, LLC
c/o Bob Lambert, Registered Agent
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Darlington 48 Unit, LLC (last known address)
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Florence, SC 29501

ROSEN HAGOOD, LLC

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ATTORNEYS FOR APPELLANT

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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/CROSS- APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS/CROSS-RESPONDENT

OF WHOM ASZANE CRUZ IS,

CROSS- APPELLANT.

CROSS NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Plaintiff/Cross-Appellant Aszane Cruz ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Cross-Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

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Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
India D. Shaw, Esq.
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Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

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ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

ELECTRONICALLY FILED – 2024-10-11 13:24:57 – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

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, Defendants.	**ORDER ON DEFAULT JUDGMENT**

RECEIVED
Oct 11 2024
SC Court of Appeals

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

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Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

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shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

ELECTRONICALLY FILED – 2023 Apr 24 01:31 PM – FLORENCE – COMMON PLEAS – CASE # 2023CP2101233

3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140

FILED ELECTRONICALLY IN THE COMMON PLEAS - CASE # 2023CP2102320 - COMMON PLEAS - FILED - 12:40 PM - 23 Sept 2024

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.

ORDER DENYING DEFENDANT CASA BAHARI LLC'S MOTION TO RECONSIDER

RECEIVED
Oct 11 2024
SC Court of Appeals

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] is 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**.

FILED ELECTRONICALLY IN THE CLERK'S OFFICE - 2022 Sep 28 01:40 PM - FILED - CCOMMON PLEAS - CASE # 2022CP2301220

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."

FILED ELECTRONICALLY IN THE CCP - 2024 Sep 23 01:40 PM - FILED FOR REFERENCE - COMMON PLEAS - CASE # 2023CP2310220

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 Procedure12 (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.

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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), SCRCP, 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,

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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), SCRCP." 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
12rd Judicial Circuit

FILED IN THE COURT OF COMMON PLEAS - FLORENCE COUNTY - 2023CP2102320 - Sept 23 01:24 PM - FILED FOR REFERENCE - COMMON PLEAS - CASE# 2023CP2102320

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

FORM 4

00194

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

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		$ 00195

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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

ELECTRONICALLY FILED – 2023 Oct 24 01:24 PM – FILED REENCE – COMMON PLEAS – CASE # 2023CP2102320

ELECTRONICALLY FILED – 2022-04-01 13:24:33 PM – FILED – GREENVILLE – COMMON PLEAS – CASE# 2022CP2103220

ELECTRONICALLY FILED – 2022-Apr-13 13:23 PM – FILED – GREENVILLE – COMMON PLEAS – CASE # 2022CP2102320

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

Appellate Case No. 2024-001724

ASZANE CRUZ,

RESPONDENT/APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS,

OF WHOM CASA BAHARI IS,

APPELLANT/RESPONDENT.

PROOF OF SERVICE

I, India D. Shaw, the undersigned of the law office of Poulin, Willey, Anastopoulo, LLC, attorneys for Plaintiff Aszane Cruz, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Cross Notice of Appeal, on October 23, 2024, which a copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Dated: October 23, 2024

Parties Served:

James A. Bruorton, IV, Esquire (cbruorton@rosenhagood.com)
Mary Harriet Moore, Esquire (mhmoore@rosenhagood.com)
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401

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India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
Lane Jefferies, Esquire (lane@poullinwilley.com / teamjefferies@poulinwilley.com)
Poulin, Willey, and Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403

Darlington 48 Unit, LLC
c/o Bob Lambert, Registered Agent
22136 Oak Orchard Road
New Hall, Los Angeles County, CA 91321

Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
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ATTORNEYS FOR PLAINTIFF

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SC Court of Appeals

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/CROSS- APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS/CROSS-RESPONDENT

OF WHOM ASZANE CRUZ IS,

CROSS- APPELLANT.

CROSS NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Plaintiff/Cross-Appellant Aszane Cruz ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Cross-Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

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Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
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Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

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ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

ELECTRONICALLY FILED – 2024-10-11 13:24:57 – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

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, Defendants.	**ORDER ON DEFAULT JUDGMENT**

RECEIVED
Oct 11 2024
SC Court of Appeals

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

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Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

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shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

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3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

ELECTRONICALLY FILED - 2024-04-02 13:24:57 - FLO - FLORENCE - COMMON PLEAS - CASE # 2023CP2102320

Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140

FILED ELECTRONICALLY IN COMMON PLEAS - FLORENCE - CASE# 2023CP2102320 - 10/11/2024 1:20:00 PM

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.

ORDER DENYING DEFENDANT CASA BAHARI LLC'S MOTION TO RECONSIDER

RECEIVED
Oct 11 2024
SC Court of Appeals

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] is 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**.

FILED ELECTRONICALLY IN THE CASE - 2022-CP-23-01400 - Filing Date: 10/20/2022 4:30:00 PM - FILED IN THE CLERK'S OFFICE - COMMON PLEAS - CASE# 2022CP2301400

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."

FILED ELECTRONICALLY IN THE CCP - 2024 Sep 23 01:40 PM - FILING CONFIRMATION - COMMON PLEAS - CASE # 2023CP2310220

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 Procedure12 (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.

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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), SCRCP, 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,

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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), SCRCP." 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
12rd Judicial Circuit

FILED ELECTRONICALLY IN COMMON PLEAS - CASE# 2023CP2102320 - FILING# 2024SEP23 01:24:00 PM - FILED IN FLORENCE COUNTY

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

FORM 4

00215

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

RECEIVED
Oct 11 2024
SC Court of Appeals

ELECTRONICALLY FILED – 2024 Oct 03 13:24:33 PM – FLORENCE – COMMON PLEAS – CASE# 2023CP2102320

		$ 00216

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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

ELECTRONICALLY FILED – 2023 Apr 13 2:43 PM – FLORENCE – COMMON PLEAS – CASE # 2023CP2101233

ELECTRONICALLY FILED – 2022-04-01 13:24:33 PM – FILED – GREENVILLE – COMMON PLEAS – CASE# 2022CP2103220

ELECTRONICALLY FILED – 2022-04-01 13:24:33 – FILED – CCOMMON PLEAS – CASE# 2022CP2102320

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

ELECTRONICALLY FILED – 2022-04-13 13:24:33 – FILED – GREENVILLE – COMMON PLEAS – CASE # 2022CP2102320

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

ELECTRONICALLY FILED - 2024-04-02 13:24:33 - FLO - FLORENCE - COMMON PLEAS - CASE # 2023CP2102320

Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

PROOF OF SERVICE

I, the undersigned of the law office of Rosen Hagood, LLC, attorneys for Appellant Casa Bahari, LLC, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Notice of Appeal, which copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Parties Served:

India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
Lane Jefferies, Esquire (lane@poullinwilley.com / teamjefferies@poulinwilley.com)
Poulin, Willey, and Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403

James A. Bruorton, IV, Esquire (cbruorton@rosenhagood.com)
Mary Harriet Moore, Esquire (mhmoore@rosenhagood.com)

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Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401

Darlington 48 Unit, LLC
c/o Bob Lambert, Registered Agent
22136 Oak Orchard Road
New Hall, Los Angeles County, CA 91321

Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

ROSEN HAGOOD, LLC

By:*/s/ Mary Harriet Moore*
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ATTORNEYS FOR APPELLANT

00223
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ELECTRONICALLY FILED - 2024 Oct 25 3:39 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Defendant/Appellant Casa Bahari, LLC ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

ELECTRONICALLY FILED - 2024 Oct 25 3:39 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

ROSEN HAGOOD, LLC

By:*/s/ Mary Harriet Moore*
James A. Bruorton, IV, Esquire (SC Bar 17222)
Mary Harriet Moore, Esquire (SC Bar 105312)
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cbruorton@rosenhagood.com
mhmoore@rosenhagood.com

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

India Shaw, Esquire
Lane Jefferies, Esquire
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lane@poulinwilley.com

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ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

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00225
Oct 11 2024
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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

PROOF OF SERVICE

I, the undersigned of the law office of Rosen Hagood, LLC, attorneys for Appellant Casa Bahari, LLC, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Notice of Appeal, which copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Parties Served:

India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
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Rosen Hagood, LLC
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c/o Bob Lambert, Registered Agent
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Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

ROSEN HAGOOD, LLC

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ATTORNEYS FOR APPELLANT

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Oct 15 2024
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MARY HARRIET MOORE
mhmoore@rosenhagood.com

October 15, 2024

VIA EMAIL FOR ELECTRONIC FILING:
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211
ctappfilings@sccourts.org

Re: Aszane Cruz 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 manager/general manager of Arete Wyndham Property Owner, LLC d/b/a Wyndham Place Apartments
Court of Common Pleas Case No. 2023-CP-21-02320

Dear Ms. Kitchings:

We are in receipt of the Court of Appeals' October 15, 2024, deficiency letter. Enclosed please find a copy of the filed Notice of Appeal with the Florence County Clerk of Court. Of course, please do not hesitate to contact us if you have any questions about the above.

With best regards, I am

Sincerely,

s/ Mary Harriet Moore

Mary Harriet Moore

MHM/
Encl.

cc: The Honorable Jenny Abbott Kitchings (w/ encl.)
Lane Jefferies, Esquire (w/ encl.)
India Shaw, Esquire (w/ encl.)
Chip Bruorton, Esquire (w/ encl.)

00228
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Oct 11 2024
SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Defendant/Appellant Casa Bahari, LLC ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

ELECTRONICALLY FILED - 2024 Oct 25 3:39 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

ROSEN HAGOOD, LLC

By:*/s/ Mary Harriet Moore*
James A. Bruorton, IV, Esquire (SC Bar 17222)
Mary Harriet Moore, Esquire (SC Bar 105312)
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mhmoore@rosenhagood.com

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

India Shaw, Esquire
Lane Jefferies, Esquire
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ATTORNEYS FOR PLAINTIFF

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ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

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Oct 11 2024
SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/RESPONDENT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS

OF WHOM CASA BAHARI, LLC IS,

APPELLANT.

PROOF OF SERVICE

I, the undersigned of the law office of Rosen Hagood, LLC, attorneys for Appellant Casa Bahari, LLC, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Notice of Appeal, which copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Parties Served:

India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
Lane Jefferies, Esquire (lane@poullinwilley.com / teamjefferies@poulinwilley.com)
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Mary Harriet Moore, Esquire (mhmoore@rosenhagood.com)

ELECTRONICALLY FILED - 2024 Oct 25 3:39 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Rosen Hagood, LLC
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c/o Bob Lambert, Registered Agent
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Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

ROSEN HAGOOD, LLC

By:*/s/ Mary Harriet Moore*
Mary Harriet Moore, Esquire (SC Bar 105312)
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ATTORNEYS FOR APPELLANT

TOLL FREE: 1(800) 313-2546
FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
TEAMSHAW@POULINWILLEY.COM

POULIN | WILLEY ANASTOPOULO

ERIC M. POULIN (SC)(GA)(NC)(CA)
ROY T. WILLEY, IV (SC)(KY)(NJ)
ARIM A. ANASTOPOULO (SC)

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

October 23, 2024

Sent via Regular Mail
Darlington 48 unit, LLC
307 State Road S-21-174 B
Florence, SC 29501

RE: Aszane Cruz v. Casa Bahari, LLC, et al.
Case No.: 2023CP2102320

Dear Ms. Moore:

We hope this letter finds you well. Enclosed for service upon you are the following documents:

1. Plaintiff's Cross Notice of Appeal
2. Order of Default Judgement
3. Form 4 Order of Default Judgement
4. Order Denying Defendant's Motion to Reconsider

Please let us know if you have any questions.

Sincerely,

s/India D. Shaw
India Shaw
Trial Counsel

RECEIVED
Oct 11 2024
SC Court of Appeals

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/CROSS- APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS/CROSS-RESPONDENT

OF WHOM ASZANE CRUZ IS,

CROSS- APPELLANT.

CROSS NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Plaintiff/Cross-Appellant Aszane Cruz ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Cross-Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FflorENCE - COMMON PLEAS - CASE#2023CP2102320

Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
India D. Shaw, Esq.
S.C. Bar No.: 104339
Poulin | Willey | Anastopoulo, LLC
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TeamShaw@PoulinWilley.com

Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

India Shaw, Esquire
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india.shaw@poulinwilley.com
lane@poulinwilley.com

ATTORNEYS FOR PLAINTIFF

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cbruorton@rosenhagood.com
mhmoore@rosenhagood.com

ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

FILED ELECTRONICALLY – 2024-10-11 13:24:57 – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

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,

Defendants.

ORDER ON DEFAULT JUDGMENT

RECEIVED
Oct 11 2024
SC Court of Appeals

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

ELECTRONICALLY FILED – 2024-Apr-23 13:24:57 FAW – FLO – CCOMMON PLEAS – CASE # 2023CP2101233

Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

FILED ELECTRONICALLY FILED – 2022-04-01 13:24:57 PM – FLORENCE – COMMON PLEAS – CASE# 2022CP2101233

shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

ELECTRONICALLY FILED – 2023-04-24 13:24:57 – FLO – COMMON PLEAS – CASE# 2023CP2110238

3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

ELECTRONICALLY FILED - 2024-04-02 13:24:57 - FLO - FLORENCE - COMMON PLEAS - CASE # 2023CP2102320

Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

00240

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

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Oct 11 2024
SC Court of Appeals

ELECTRONICALLY FILED – 2024-Oct-11 13:24:33 FLAWI – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

		$ 00241

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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

ELECTRONICALLY FILED – 2023 Oct 24 01:24 PM – FILED REENCE – COMMON PLEAS – CASE # 2023CP2102320

ELECTRONICALLY FILED – 2022-04-01 13:24:33 PM – FILED – GREENVILLE – COMMON PLEAS – CASE# 2022CP2103220

ELECTRONICALLY FILED – 2022-04-01 13:24:33 – FILORENCE – COMMON PLEAS – CASE # 2022CP2101233

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

ELECTRONICALLY FILED - 2024-04-02 13:24:33 - FLO - FLORENCE - COMMON PLEAS - CASE # 2023CP2102320

Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

FILED ELECTRONICALLY IN THE COMMON PLEAS - CASE # 2023CP2102320 - COMMON PLEAS - FILED - 2024 Sep 23 01:40 PM

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

RECEIVED
Oct 11 2024
SC Court of Appeals

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] is 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**.

FILED ELECTRONICALLY IN THE CLERK OF COURT - 2022 Sep 28 01:40 PM - FILED - CCOMMON PLEAS - CASE # 2022CP2301220

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."

FILED IN THE COURT OF COMMON PLEAS - CASE # 2023CP2310220 - ELECTRONICALLY FILED - 2024 Sep 23 01:40 PM - FILED IN THE COURT OF COMMON PLEAS - CASE # 2023CP2310220

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 Procedure12 (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.

FILED ELECTRONICALLY IN COMMON PLEAS - CASE# 2023CP2300220 - FILED - 2024 Oct 28 01:40 PM - FILING ELECTRONICALLY FILED - 2024 Oct 28 01:40 PM - FILED ELECTRONICALLY IN COMMON PLEAS - CASE# 2023CP2300220

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), SCRCP, 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,

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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), SCRCP." 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
12rd Judicial Circuit

FILED ELECTRONICALLY IN COMMON PLEAS - FLORENCE - CASE# 2023CP2102320 - FILING# 1223 - 09-11-2024 01:24 PM

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

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

Appellate Case No. 2024-001724

ASZANE CRUZ,

RESPONDENT/APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS,

OF WHOM CASA BAHARI IS,

APPELLANT/RESPONDENT.

PROOF OF SERVICE

I, India D. Shaw, the undersigned of the law office of Poulin, Willey, Anastopoulo, LLC, attorneys for Plaintiff Aszane Cruz, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Cross Notice of Appeal, on October 23, 2024, which a copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Dated: October 23, 2024

Parties Served:

James A. Bruorton, IV, Esquire (cbruorton@rosenhagood.com)
Mary Harriet Moore, Esquire (mhmoore@rosenhagood.com)
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401

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India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
Lane Jefferies, Esquire (lane@poullinwilley.com / teamjefferies@poulinwilley.com)
Poulin, Willey, and Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403

Darlington 48 Unit, LLC
c/o Bob Lambert, Registered Agent
22136 Oak Orchard Road
New Hall, Los Angeles County, CA 91321

Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
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FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
TEAMSHAW@POULINWILLEY.COM

POULIN | WILLEY ANASTOPOULO

ERIC M. POULIN (SC)(GA)(NC)(CA)
ROY T. WILLEY IV (SC)(KY)(NJ)
ARIM A. ANASTOPOULO (SC)

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October 23, 2024

Sent via Regular Mail
Bob Lambert
Darlington 48, LLC
c/o Bob Lambert, Registered Agent
22136 Oak Orchard Road
Newhall, CA 91321

RE: Aszane Cruz v. Casa Bahari, LLC, et al.
Case No.: 2023CP2102320

Dear Ms. Moore:

We hope this letter finds you well. Enclosed for service upon you are the following documents:

1. Plaintiff's Cross Notice of Appeal
2. Order of Default Judgement
3. Form 4 Order of Default Judgement
4. Order Denying Defendant's Motion to Reconsider

Please let us know if you have any questions.

Sincerely,

s/India D. Shaw
India Shaw
Trial Counsel

RECEIVED
Oct 11 2024
SC Court of Appeals

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/CROSS- APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS/CROSS-RESPONDENT

OF WHOM ASZANE CRUZ IS,

CROSS- APPELLANT.

CROSS NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Plaintiff/Cross-Appellant Aszane Cruz ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Cross-Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
India D. Shaw, Esq.
S.C. Bar No.: 104339
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TeamShaw@PoulinWilley.com

Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

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mhmoore@rosenhagood.com

ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

ELECTRONICALLY FILED – 2024-10-11 13:24:57 – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

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, Defendants.	**ORDER ON DEFAULT JUDGMENT**

RECEIVED
Oct 11 2024
SC Court of Appeals

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

ELECTRONICALLY FILED – 2024 Apr 23 1:24 PM – FLORENCE – COMMON PLEAS – CASE # 2023CP2101233

Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

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shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

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3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

00262

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

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		$ 00263
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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

ELECTRONICALLY FILED – 2023 Apr 24 13:23 PM – FILED REFERENCE – COMMON PLEAS – CASE # 2023CP2102320

ELECTRONICALLY FILED – 2022-04-01 13:24:33 PM – FILED – GREENVILLE – COMMON PLEAS – CASE# 2022CP2103220

ELECTRONICALLY FILED – 2022-04-01 13:24:33 – FILED – CCOMMON PLEAS – CASE# 2022CP2102320

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

FILED ELECTRONICALLY IN THE COMMON PLEAS - CASE # 2023CP2102320 - COMMON PLEAS - FILED - 12:40 PM - 23 Sept 2024

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.

ORDER DENYING DEFENDANT CASA BAHARI LLC'S MOTION TO RECONSIDER

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SC Court of Appeals

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] is 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**.

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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."

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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 Procedure12 (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.

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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), SCRCP, 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,

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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), SCRCP." 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
12rd Judicial Circuit

FILED ELECTRONICALLY IN COMMON PLEAS - CASE# 2023CP2102320 - FILING RECEIVED - 2024Sep 23 01:40PM - FLORENCE COUNTY

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

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

Appellate Case No. 2024-001724

ASZANE CRUZ,

RESPONDENT/APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS,

OF WHOM CASA BAHARI IS,

APPELLANT/RESPONDENT.

PROOF OF SERVICE

I, India D. Shaw, the undersigned of the law office of Poulin, Willey, Anastopoulo, LLC, attorneys for Plaintiff Aszane Cruz, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Cross Notice of Appeal, on October 23, 2024, which a copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Dated: October 23, 2024

Parties Served:

James A. Bruorton, IV, Esquire (cbruorton@rosenhagood.com)
Mary Harriet Moore, Esquire (mhmoore@rosenhagood.com)
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401

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India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
Lane Jefferies, Esquire (lane@poullinwilley.com / teamjefferies@poulinwilley.com)
Poulin, Willey, and Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403

Darlington 48 Unit, LLC
c/o Bob Lambert, Registered Agent
22136 Oak Orchard Road
New Hall, Los Angeles County, CA 91321

Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
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ATTORNEYS FOR PLAINTIFF

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FACSIMILE: (843) 494-5536

REPLY TO ANN STREET OFFICE
TEAMSHAW@POULINWILLEY.COM

POULIN | WILLEY ANASTOPOULO

ERIC M. POULIN (SC)(GA)(NC)(CA)
ROY T. WILLEY, IV (SC)(KY)(NJ)
ARIM A. ANASTOPOULO (SC)

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October 23, 2024

Sent via Regular Mail & Electronic Mail
Mary Harriet Moore
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29403
mhmoore@rosenhagood.com

James A. Bruorton, IV
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29403
cbruorton@rosenhagood.com

RE: Aszane Cruz v. Casa Bahari, LLC, et al.
Case No.: 2023CP2102320

Dear Ms. Moore:

We hope this letter finds you well. Enclosed for service upon you are the following documents:

1. Plaintiff's Cross Notice of Appeal
2. Order of Default Judgement
3. Form 4 Order of Default Judgement
4. Order Denying Defendant's Motion to Reconsider

Please let us know if you have any questions.

Sincerely,

s/India D. Shaw
India Shaw
Trial Counsel

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Oct 11 2024
SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

ASZANE CRUZ,

PLAINTIFF/CROSS- APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS/CROSS-RESPONDENT

OF WHOM ASZANE CRUZ IS,

CROSS- APPELLANT.

CROSS NOTICE OF APPEAL

Pursuant to South Carolina Appellate Court Rule 203(b)(1), Plaintiff/Cross-Appellant Aszane Cruz ("Appellant"), by and through its undersigned attorneys, hereby appeals the following orders of the Honorable Michael G. Nettles, Circuit Court Judge:

- Order Granting Default Judgment, filed April 2, 2024; and
- Order Denying Defendant Casa Bahara, LLC's Motion to Reconsider, filed September 11, 2024.

Counsel for Cross-Appellant received written notice of the entry of the Circuit Court's Order Denying Defendant Casa Bahari, LLC's Motion to Reconsider on September 11, 2024, thus this

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Notice of Appeal is timely filed pursuant to South Carolina Appellate Court Rule 203(b)(1). Copies of the Circuit Court's Orders being appealed from are attached hereto.

POULIN | WILLEY | ANASTOPOULO, LLC

s/ Lane D. Jefferies
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
India D. Shaw, Esq.
S.C. Bar No.: 104339
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TeamJefferies@PoulinWilley.com
TeamShaw@PoulinWilley.com

Charleston, South Carolina
October 11, 2024.

Other attorneys of record:

India Shaw, Esquire
Lane Jefferies, Esquire
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ATTORNEYS FOR PLAINTIFF

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Mary Harriet Moore, Esquire
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mhmoore@rosenhagood.com

ATTORNEYS FOR DEFENDANTS
CASA BAHARI, LLC AND ARETE
WYNDHAM PROPERTY OWNER, LLC

ELECTRONICALLY FILED – 2024-10-11 13:24:57 – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

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,

Defendants.

ORDER ON DEFAULT JUDGMENT

RECEIVED
Oct 11 2024
SC Court of Appeals

Judge: The Honorable Judge Michael G. Nettles
Hearing Date: Tuesday, March 13, 2024
Attorney for Plaintiff: India D. Shaw, Esquire
Attorney for Defendant: N/A

This matter came before the Court on March 13, 2024. At issue was Plaintiff's request for a damages hearing with respect to a April 9, 2022, premises incident. Plaintiff, Aszane Cruz, and her attorney, India D. Shaw, were in attendance. Having noted that Defendant, Casa Bahari, was previously placed in default, and after hearing testimony and receiving evidence on the record, and for the reasons more fully articulated below, a default judgment is hereby entered in favor of Plaintiff.

FACTUAL AND PROCEDURAL BACKGROUND

1. Plaintiff brought this action against Defendant on September 9, 2023, arising from a premises incident that occurred in Florence County, South Carolina, on April 9, 2022. At the time of the incident, Plaintiff was sitting residing in her residences a rental property at 816 West

ELECTRONICALLY FILED – 2024-Apr-23 13:24:57 FAW – FLO – CCOMMON PLEAS – CASE # 2023CP2101233

Marion St, Apt A, Florence, SC 29501 in Sumter, South Carolina. At the same time, Defendant failed to maintain a safe, causing Plaintiff to suffer personal injuries when a ceiling fan fell on top of her.

Plaintiff's Summons and Complaint and first set of discovery requests were duly served on Defendant on December 4, 2023, via private process service, at Defendant's last known address, 6650 Rivers Avenue Suite 100 N. Charleston, South Carolina. Thus, the deadline for Defendant to appear and file a responsive pleading was January 3, 2023.

Defendant failed to file a responsive pleading or otherwise appear to defend the present lawsuit within thirty (30) days after being served. Upon Plaintiff's motion, an Order for Entry of Default was entered by the Clerk of Court for Florence County on January 25, 2024. The issue is now before the Court on Plaintiff's request for a determination of damages pursuant to Rule 55(b)(2), SCRCP, and for entry of judgment by default. The Court finds that Plaintiff served notice of this hearing upon Defendant at Defendant's last known address and the Affidavit of Mailing was filed and made part of the record in this action.

LAW/ANALYSIS

A. Judgment by Default

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. In cases involving unliquidated damages, a court shall hold a hearing to determine the appropriate amount, and, after determining the same, enter judgment by default upon the record. Rule 55(b)(2), SCRCP.

In the present action, Defendant failed to file a responsive pleading within the statutorily proscribed time. Because Defendant failed to file a responsive pleading, this Court must enter judgment by default. All allegations in Plaintiff's Complaint are deemed admitted, and judgment

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shall be entered against Defendant upon an appropriate inquiry as to damages.

B. Damages

For actions in tort, a plaintiff is entitled to recover compensation for all actual damages. Actual damages may include medical treatment costs, loss of income or earning potential, loss of property, pain and suffering, emotional distress, loss of enjoyment of life, and loss of consortium. A plaintiff is also entitled to certain incidental damages, if reasonably associated with or related to actual damages. In situations where the defendant's actions show willful, wanton, intentional, or malicious intent, a plaintiff may also seek to recover punitive damages.

In the present action, Plaintiff suffered personal injuries as a result of Defendants negligence and failure in keeping the premises safe ultimately resulted in Plaintiff's medical damages, pain and suffering, loss of enjoyment of life, and other mental anguish.

Accordingly, based on this record, and consistent with the statutory and common law of South Carolina, I find Plaintiff is entitled to recover for his injuries and hereby enter judgment against Defendant in the amounts as follows:

$31,686.00 in compensatory damages in favor of Plaintiff. Based on the evidence presented, I further find Defendant's actions **do** warrant the imposition of punitive damages and enter judgment for the same in the amount of $5,000.00 in favor of Plaintiff.

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT:

1. That Defendant failed to submit a responsive pleading or otherwise defend this action within thirty (30) days of service upon Defendant of the Summons and Complaint, and is in default.

2. That Defendant was properly served with notice of this damages hearing.

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3. That Plaintiff was injured and otherwise damaged as a result of the negligent actions of Defendant.

IT IS THEREFORE ORDERED that a default judgment be entered against Defendant and that Defendant be held liable for Plaintiff's damages, and that all allegations against Defendant as set forth in Plaintiff's Complaint be and are admitted and deemed true and accurate.

IT IS FURTHER ORDERED that Defendant pay Plaintiff the sum of $40,686.00 in actual and punitive damages for Plaintiff's personal injuries.

IT IS HEREBY ORDERED, ADJUGED, AND DECREED THAT DEFENDANT IS LIABLE FOR PLAINTIFF'S DAMAGES AND SHALL PAY TO PLAINTIFF THE TOTAL SUM OF $40,686.00.

IT IS SO ORDERED!

_____
The Honorable Michael G. Nettles
Circuit Court Judge

Florence, South Carolina
Date: _____

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Damages

So Ordered

s/ The Honorable Michael G. Nettles #2140

FORM 4

00284

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2023-CP-21-02320

ASZANE CRUZ

PLAINTIFF(S)

CASA BAHARI

ARETE WYNDHAM PROPERTY OWNER, LLC

DARLINGTON 48, LLC

JOHN DOE Individually and as a Manager/ General Manager of WYNDHAM PROPERTY OWNER LLC, LLC

DEFENDANT(S)

Submitted by: India D. Shaw	**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

☐ **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)
Aszane Cruz (Plaintiff)	Casa Bahari, LLC	$40,686.00
		$

RECEIVED
Oct 11 2024
SC Court of Appeals

ELECTRONICALLY FILED – 2024 Oct 03 13:24:33 PM – FLORENCE – COMMON PLEAS – CASE # 2023CP2102320

		$ 00285

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.
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-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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.

ELECTRONICALLY FILED – 2023 Oct 24 01:24 PM – FILED REFERENCE – COMMON PLEAS – CASE # 2023CP2103220

ELECTRONICALLY FILED – 2022-04-01 13:24:33 PM – FILED – GREENVILLE – COMMON PLEAS – CASE# 2022CP2103220

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FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.

2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

   The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).

4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.

5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.

6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.

7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.

8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

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9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.

10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.

11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.

12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.

13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.

14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

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Florence Common Pleas

Case Caption: Aszane Cruz VS Arete Wyndham Property Owner Llc , defendant, et al

Case Number: 2023CP2102320

Type: Order/Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

FILED ELECTRONICALLY IN THE COMMON PLEAS - FLORENCE - CASE # 2023CP2102320 - 10/11/2024 1:40:00 PM

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.

ORDER DENYING DEFENDANT CASA BAHARI LLC'S MOTION TO RECONSIDER

RECEIVED
Oct 11 2024
SC Court of Appeals

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] is 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**.

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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."

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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 Procedure12 (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.

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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), SCRCP, 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,

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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), SCRCP." 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
12rd Judicial Circuit

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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

ELECTRONICALLY FILED - 2024 Oct 23 3:20 PM - FLORENCE - COMMON PLEAS - CASE#2023CP2102320

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Judge

Court of Common Pleas Case No. 2023-CP-21-02320

Appellate Case No. 2024-001724

ASZANE CRUZ,

RESPONDENT/APPELLANT,

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 MANAGER/ GENERAL MANAGER OF ARETE WYNDHAM PROPERTY OWNER, LLC D/B/A WYNDHAM PLACE APARTMENTS,

DEFENDANTS,

OF WHOM CASA BAHARI IS,

APPELLANT/RESPONDENT.

PROOF OF SERVICE

I, India D. Shaw, the undersigned of the law office of Poulin, Willey, Anastopoulo, LLC, attorneys for Plaintiff Aszane Cruz, do hereby certify that I have caused to be served all parties and/or their attorneys of record to this appeal by copy of the Cross Notice of Appeal, on October 23, 2024, which a copy has been emailed and/or mailed, with sufficient postage affixed thereto, to the addresses below:

Dated: October 23, 2024

Parties Served:

James A. Bruorton, IV, Esquire (cbruorton@rosenhagood.com)
Mary Harriet Moore, Esquire (mhmoore@rosenhagood.com)
Rosen Hagood, LLC
40 Calhoun Street, Suite 450
Charleston, SC 29401

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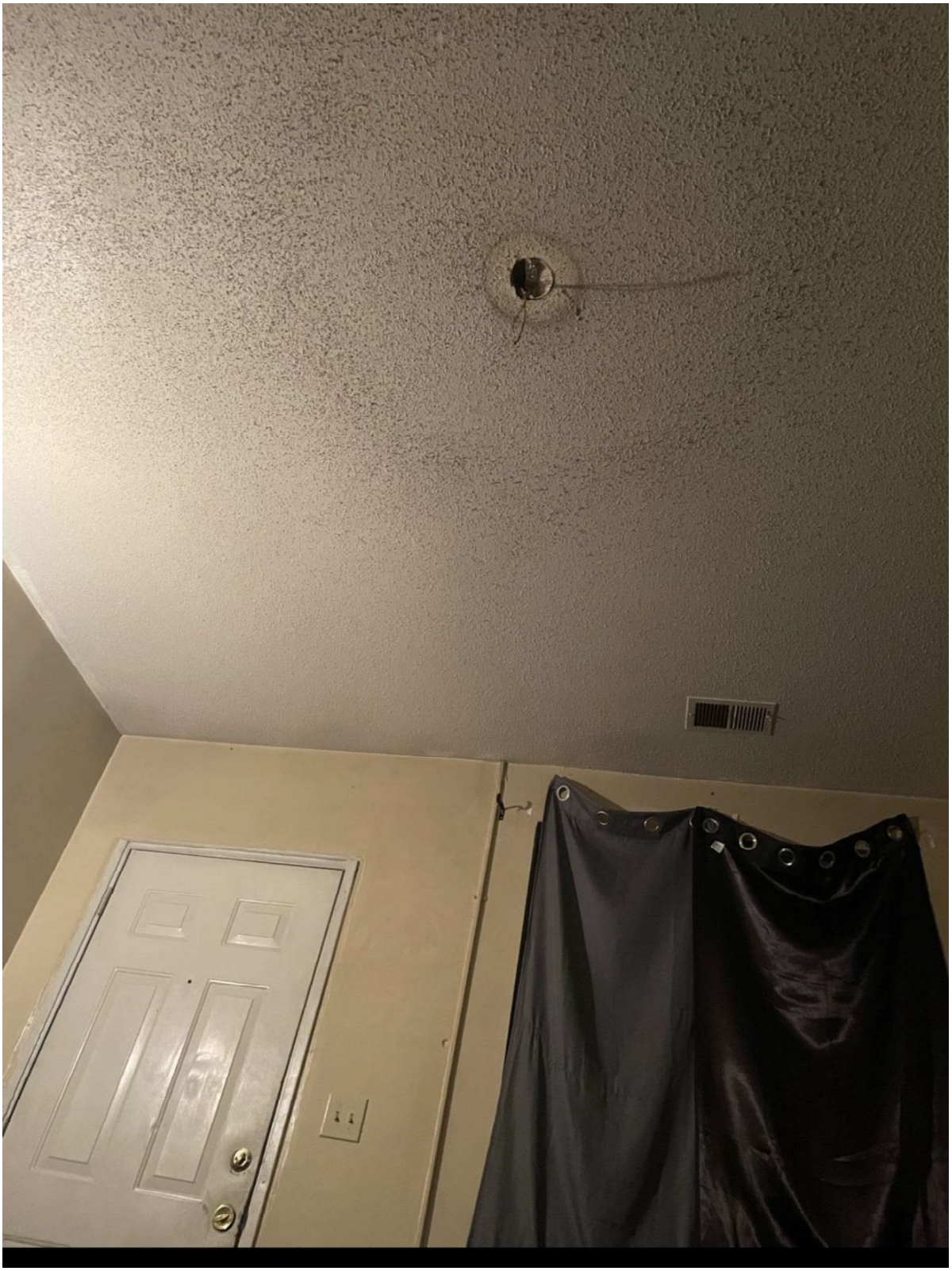
India Shaw, Esquire (india.shaw@poulinwilley.com / teamshaw@poulinwilley.com)
Lane Jefferies, Esquire (lane@poullinwilley.com / teamjefferies@poulinwilley.com)
Poulin, Willey, and Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403

Darlington 48 Unit, LLC
c/o Bob Lambert, Registered Agent
22136 Oak Orchard Road
New Hall, Los Angeles County, CA 91321

Darlington 48 Unit, LLC (last known address)
307 State Road S-21-174
Florence, SC 29501

POULIN | WILLEY | ANASTOPOULO, LLC

s/ India D. Shaw
India D. Shaw, Esq.
S.C. Bar No.: 104339
Lane D. Jefferies, Esq.
S.C. Bar No.: 101764
Poulin | Willey | Anastopoulo, LLC
32 Ann Street
Charleston, SC 29403
(803) 222-2222
TeamShaw@PoulinWilley.com
TeamJefferies@PoulinWilley.com
ATTORNEYS FOR PLAINTIFF



Plaintiff's Medical Bills

Cruz, Aszane v. Wyndam Place (Florence)

2023-CP-21-02320

Table of Contents

MUSC Neurology	$2970.00	27-29
MUSC Health Florence Medical Center	$12,874.00	31
Lake City Family Medicine	$305.00	33
Carolina Radiology Associates	$537.00	35

Total: $16,686.00

MUSC NEUROLOGY
$2,970.00

Dr. R. Joseph Healy, MD, PA

Patient Ledger for Aszane T Cruz

Service Dates: All Financial Centers: All Service Sites: All

Rendering Providers: All Voids Included Payment Notes Included

Responsible Party: Cruz, Aszane T
915 Tarilin Drive Apt E
700 West Marion St
Lake City, SC 29560

Account: Main

Phone: (843)615-3543

Total Amount Billed:	$2,970.00	Total Patient Adjustments:	$0.00
Total Payments:	$970.36	Total Insurance Adjustments:	$1,964.64
Total Patient Payments:	$40.00	Last Patient Payment:	05/01/2023
Total Insurance Payments:	$930.36	Last Insurance Payment:	04/24/2023
Patient Balance:	$0.00	Last Statement Date:	05/24/2022
Insurance Balance:	$35.00	Available Payer Credits:	$0.00

Super Bill	Status	DOS	Provider	Service Site	Financial Service	Diagnoses
196092	Complete	05/01/2023	Healy, Robert Joseph	Dr. R. Joseph Healy, MD, PA	Dr. R. Joseph Healy, MD, PA	

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
1000	05/01/23	05/01/23	MEDICAL RECORDS CHARGE		$40.00	$0.00	$0.00	$40.00

Super Bill	Status	DOS	Provider	Service Site	Financial Service	Diagnoses
195499	Succeeded	04/12/2023	Healy, Robert Joseph	Dr. R. Joseph Healy, MD, PA	Dr. R. Joseph Healy, MD, PA	M54.50, G47.9

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
CMS 069	04/12/23	04/12/23	BMI Screening and Follow up Education		$0.00	$0.00	$0.00	$0.00
99214	04/12/23	04/13/23	99214 EST. PATIENT, LEVEL IV		$200.00	$0.00	$200.00	$0.00

Super Bill	Status	DOS	Provider	Service Site	Financial Service	Diagnoses
194499	Complete	02/09/2023	Healy, Robert Joseph	Dr. R. Joseph Healy, MD, PA	Dr. R. Joseph Healy, MD, PA	M54.50, G47.9, N92.0

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
CMS 069	02/09/23	02/09/23	BMI Screening and Follow up Education		$0.00	$0.00	$0.00	$0.00
99214	02/09/23	02/13/23	99214 EST. PATIENT, LEVEL IV		$200.00	$0.00	$200.00	$0.00

Super Bill	Status	DOS	Provider	Service Site	Financial Service	Diagnoses
193819	Complete	11/06/2022	Healy, Robert Joseph	MUSC HEALTH FLORENCE MEDICAL CENTER (OP)	Dr. R. Joseph Healy, MD, PA	G47.33

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
95810	11/06/22	11/09/22	NPSG		$400.00	$0.00	$400.00	$0.00

May. 5. 2023 10:29AM Dr. RJ Healy No. 1160 P. 11/13
0303

Superbill	Status	DOS	Provider	Service Site	Financial Center	Diagnoses
130117						

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
CMS 069	07/15/22	07/15/22	BMI Screening and Follow up Education		$0.00	$0.00	$0.00	$0.00
99214	07/15/22	07/15/22	99214 EST. PATIENT, LEVEL IV		$200.00	$0.00	$200.00	$0.00

Superbill	Status	DOS	Provider	Service Site	Financial Center	Diagnoses
[illegible]	Complete	06/07/2022	Healy, Robert Joseph	Dr. R. Joseph Healy, MD, PA	Dr. R. Joseph Healy, MD, PA	G47.9, N92.0, M54.16

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
CMS 069	06/07/22	06/07/22	BMI Screening and Follow up Education		$0.00	$0.00	$0.00	$0.00
99214	06/07/22	06/08/22	99214 EST. PATIENT, LEVEL IV		$200.00	$0.00	$200.00	$0.00

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]
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]

Superbill	Status	DOS	Provider	Service Site	Financial Center	Diagnoses
[illegible]	Complete	06/03/2022	Healy, Robert Joseph	Dr. R. Joseph Healy, MD, PA	Dr. R. Joseph Healy, MD, PA	G47.33

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
95806	06/03/22	06/07/22	SLEEP STUDY UNATT&RESP EFFT		$150.00	$0.00	$150.00	$0.00

Superbill	Status	DOS	Provider	Service Site	Financial Center	Diagnoses
[illegible]	Complete	05/24/2022	Healy, Robert Joseph	Dr. R. Joseph Healy, MD, PA	Dr. R. Joseph Healy, MD, PA	M79.604

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
95886	05/24/22	05/25/22	MUSC TEST DONE W/N TEST COMP		$800.00	$0.00	$800.00	$0.00
[illegible]								
95909	05/24/22	05/25/22	NRV CNDJ TST 5-6 STUDIES		$480.00	$0.00	$480.00	$0.00

May. 5. 2023 10:31AM Dr. RJ Healy No. 1160 P. 12/13
00304

Superbill	Status	DOS	Provider	Service Site	Financial Center	Diagnoses
128663						

Transaction	Service Date	Posted Date	Description	Ref Number	Fee	Trans Amt	Ins Bal	Pt Bal
CMS 069	05/18/22	05/18/22	BMI Screening and Follow up Education		$0.00	$0.00	$0.00	$0.00
99205	05/18/22	05/19/22	OFFICE/OUTPATIENT VISIT NEW		$300.00	$0.00	$300.00	$0.00

May. 5. 2023 10:32AM Dr. RJ Healy No. 1160 P. 13/13

MUSC HEALTH FLORENCE MEDICAL CENTER $12,874.00

MUSC Health
Medical University of South Carolina

MUSC Health
PO Box 931736
Atlanta, Ga 31193-1736

Aszane T Cruz
915 Taiilin Drive Apt E
LAKE CITY, SC 29560

Guarantor ID: 1697314

Visit Coverages:
Cigna Managed Care - Cigna HMO/POS/Flexcare

This is not a bill. This is an itemization of your MUSC Health services for:

Guarantor: Aszane T Cruz

Services From: -

Current Account Balance: 399.00

Svc Dt	Dx/Rev Code	Procedure	Description	HAR/Invoice	Billing Provider	Amount
04/10/22	0351	70450	HB CT HEAD W/O CONTRAST	102584013		3,195.00
04/10/22	0352	72125	HB CT CERV SPINE W/O CONTRAST	102584013		4,859.00
04/10/22	0450	99284	HB ER VISIT EXTENDED	102584013		4,778.00
04/10/22	0637		IBUPROFEN 800 MG TAB	102584013	BURNS JR., KENNETH SCOTT	15.00
04/10/22	0637		OXYCODONE-ACETAMINOPHEN 5-325 MG TAB	102584013	BURNS JR., KENNETH SCOTT	27.00
						-

Total Charges: 12,874.00

For inquiries regarding this document, please call 1-843-792-2311.

LAKE CITY
MEDICINE
$305.00

Date Printed: 6/7/2022 3:05:22 PM

00309

Account: 9966
CRUZ, ASZANE

Practice:
LAKE CITY FAMILY MEDICINE, LLC
901 N. Matthews Road
Lake City, SC 29560-7024
(843)374-8380

Provider:
Shafara Dozier
901 N. Matthews Road
Lake City, SC 29560-7024
(843)374-8380

New	Ref#	Prac	Prov	Chrg#	From/Post	Patient/Payment	Procedure	Mod	M2	M3	Diagnosis	Amount	PAR	P1234	Ins 1	Ins 2	Ledger Bal
	31	2	ALN	1	04/13/22	ASZANE	99213A				G43.909	$305.00	AR	TEH	CIGNA-	FIRSTC	$301.70

CAROLINA RADIOLOGY ASSOCIATES

$537.00

CAROLINA RADIOLOGY ASSOCIATES, LLC
1303 AZALEA COURT
SUITE C
MYRTLE BEACH, SC 29577-5765
Phone: (866)264-3435
Fax: (843)497-9566
Tax ID:

00311

Patient: 470489 - CRUZ, ASZANE T

Date Created: Wednesday, May 4, 2022 1:09 PM

DATE	REF. DOCTOR	DOCTOR	PROCEDURE	CHARGES	PAYMENTS	ADJUSTMENTS	BALANCE	PAYSOURCE	INS PLAN
04/10/2022	WIGGINS, JESSICA	MOORE, BRADFO	72125 - CT CRV SP	$289.00					
				$289.00	**$78.87**	**$183.84**	**$26.29**		
04/10/2022	WIGGINS, JESSICA	MOORE, BRADFO	G9637 - FINAL REP	$0.00					
				$0.00	**$0.00**	**$0.00**	**$0.00**		
04/10/2022	WIGGINS, JESSICA	MOORE, BRADFO	70450 - CT HEAD/	$248.00					
				$248.00	**$57.98**	**$170.70**	**$19.32**		
04/10/2022	WIGGINS, JESSICA	MOORE, BRADFO	G9637 - FINAL REP	$0.00					
				$0.00	**$0.00**	**$0.00**	**$0.00**		
			Account Total:	**$537.00**					

July 6,2020
Advanced Call Center Technologies, LLC
1235 Westlakes Drive
Suite 160
Berwyn, PA 19312

Dear Aszane,

This is to advise you that your employment will terminate effective,7/6/2022, due to (those Reasons discussed with you of call avoidance is a consumer market technique for avoiding or reducing incoming call volumes. [Note: employers also have the option of providing employees with working notice|

We will provide you with a severance package, details of which are outlined in the attached Termination Agreement,and how to return equipment.. This amount is inclusive of any payments, statutory or otherwise , which may be owed to you under the Ontario Employment Standards Act.

We would also like to take this opportunity to remind you that, notwithstanding the termination of your employment with the ACT, certain of your obligations under your employment contract and other agreements that you may have signed during your employment with ACT continue. These obligations include, but may not be limited to, obligations of confidentiality and obligations relating to any intellectual property to which you may have contributed while employed by ACT.

If you have any questions concerning the information contained in this letter, please contact me directly.

,
Kortney Hazel
Supervisor
Advanced Call Center Technologies, LLC
Office: (928) 314-9300
Mobile: (443) 558-8953
Kortneyh@acttoday.com