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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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

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

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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.

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**FINAL RESPONDENT BRIEF OF RESPONDENT/APPELLANT ASZANE CRUZ**

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May 1, 2025  
Charleston, SC

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## **STATEMENT OF ISSUES ON APPEAL**

- I. Did the circuit court err in granting Respondent/Appellant's Motion for Default Judgment?
- II. Did the circuit court err in denying Appellant/Respondent's Motion to Reconsider/Set Aside the Default Judgment Order?
- III. Did the Circuit Court err in finding that Appellant/Respondent received proper notice of the damages hearing?

## **STATEMENT OF THE CASE**

Respondent/Appellant, Aszane Cruz, (herein after "Respondent") initiated this action against Defendants, including Appellant Casa Bahari, LLC, for personal injuries sustained on April 9, 2022, at the premises located at 816 West Marion Street, Florence, South Carolina. Despite proper service of the Summons and Complaint on December 4, 2023, Casa Bahari failed to file an answer within the required 30-day period. (R. p. 00034-00043). Instead, Casa Bahari unilaterally granted itself a 10-day extension without court approval and still failed to respond within that self-imposed extension. (R. p. 00101). Consequently, an entry of default was properly granted on January 25, 2024 (R. p. 00001-00002).

On April 2, 2024, the Circuit Court awarded Respondent damages of \$40,686.00 following a duly noticed hearing. (R. p. 00009). Casa Bahari subsequently moved to set aside the default judgment, arguing mistake, fraud, and lack of notice, and further claimed that the judgment was inequitable and should not have prospective application. (R. p. 00020). The Circuit Court denied this motion, finding no valid basis for relief under Rule 60(b), SCRCPP. Casa Bahari now appeals this ruling, seeking reversal of the default judgment.

## ARGUMENTS

### I. STANDARD OF REVIEW ON APPEAL

“[T]he power to set aside a default judgment is addressed to the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion.” *Fassett v. Evans*, 364 S.C. 42, 49, 610 S.E.2d 841, 845 (Ct. App. 2005). “An abuse of discretion occurs when the judge’s ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case.” *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. 1, 5-6, 630 S.E.2d 464, 466–67 (2006) (citing cases).

### II. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING CASA BAHARI’S MOTION TO RECONSIDER

The decision to set aside a default judgment is within the sound discretion of the trial court and will not be disturbed absent a clear abuse of discretion. *Fassett v. Evans*, 364 S.C. 42, 610 S.E.2d 841 (Ct. App. 2005). Casa Bahari’s failure to timely respond, despite knowing about the lawsuit and unilaterally granting itself an extension, does not warrant relief under Rule 60(b).

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, release, 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.” S.C. R. CIV. PRO. 60(b). “In determining whether

to grant a motion under Rule 60(b), the trial [court] should [also] consider: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” *Microtronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 510-11, 548 S.E.2d 223, 226 (Ct. App. 2001).

Unlike Rule 55(c), which allows an entry of default to be set aside upon a showing of good cause, Rule 60(b) requires a stricter standard because it applies after a final judgment has been entered. See *Sundown Operating Co., Inc. v. Intedge Indus., Inc.*, 681 S.E.2d 885 (S.C. 2009) The South Carolina Supreme Court has made clear that courts should not conflate the less stringent good cause standard of Rule 55(c) with the rigorous requirements of Rule 60(b).

The Circuit Court applied the appropriate standard under Rule 60(b), SCRCP, and properly denied Casa Bahari’s Motion to Reconsider. The first step requires the moving party to demonstrate mistake, inadvertence, excusable neglect, or fraud before the court can even consider a meritorious defense.

There was no error of law. Casa Bahari failed at step one, as it did not show mistake, inadvertence, excusable neglect or fraud. Since Casa Bahari did not satisfy the first step, the analysis does not proceed to whether a meritorious defense exists. See *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

**A. The Circuit Court Properly Denied Appellant’s Request for Relief from Default Judgment**

The Circuit Court correctly declined to set aside the default judgment against Casa Bahari, as there was no showing of mistake, inadvertence, surprise, or excusable neglect warranting relief under Rule 60(b).

To obtain relief under Rule 60(b), a party must establish a good faith mistake or excusable neglect. *Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (Ct. App. 2009). Here, Casa Bahari was properly served but neglected its duty to respond. Its argument that it assumed it was dismissed based on correspondence with Respondent's counsel is not a reasonable excuse. The trial court correctly held that Casa Bahari's failure to act was not due to mistake, inadvertence, or excusable neglect but rather a conscious decision to delay participation.

Respondent filed the Summons and Complaint on September 29, 2023, and Casa Bahari was properly served via its registered agent on December 4, 2023, triggering its obligation to file an answer within 30 days pursuant to SCRCP 12(a). Casa Bahari's deadline to respond was January 3, 2024, but it failed to file an answer or make any appearance. On January 16, 2024, in a letter dated January 11, 2024, rather than filing an answer or properly requesting an extension from the court, Casa Bahari unilaterally granted itself a 10-day extension, which had no legal effect. Despite this self-imposed extension, Casa Bahari still failed to file an answer.

Due to Casa Bahari's continued inaction, Respondent moved for entry of default on January 25, 2024 (R. p. 00076-00081), and the Clerk of Court entered default the same day (R. p. 00001). Respondent then requested a damages hearing on January 31, 2024. On March 4, 2024, Respondent provided notice of the damages hearing in compliance with SCRCP 5(a) (R. p. 00087). The Circuit Court held the damages hearing on March 13, 2024, and subsequently entered a default judgment against Casa Bahari.

"A defendant shall serve their answer within 30 days ... Defendant did not file an answer ... Instead, 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." (R. p. 00028)(Order, p. 3).

Because Casa Bahari had ample time to respond and failed to act, the default judgment was properly entered and should not be set aside.

Here, Casa Bahari did not meet the Rule 60(b) threshold. Mere negligence or failure to understand legal obligations does not constitute excusable neglect. See *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 368 S.E.2d 687 (Ct. App. 1988). The Circuit Court explicitly found: “Excusable neglect is almost never found ... I think the last excusable neglect was a hurricane hitting the law office in Hilton Head and blowing it away.” (R. p. 00066, line 25 )(R. p. 00067, lines 1-3)(Aug. 21, 2024 Tr. at 8.).

Courts in South Carolina have repeatedly held that a movant must first satisfy one of the specific grounds listed under Rule 60(b) before a court considers whether setting aside the judgment would be just. See *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988).

Mere negligence or failure to understand legal obligations does not constitute excusable neglect. See *Goodson v. Am. Bankers Ins. Co. of Fla.*, 295 S.C. 400, 368 S.E.2d 687 (Ct. App. 1988). The Circuit Court explicitly found: “Excusable neglect is almost never found ... I think the last excusable neglect was a hurricane hitting the law office in Hilton Head and blowing it away.” (R. p. 00066, line 25 )(R. p. 00067, lines 1-3 )(Aug. 21, 2024 Tr. at 8).

"I don't know how they do it in Georgia or Atlanta (R. p. 00089, lines 3–8), but you know, the summons and complaint tells them what they're supposed to do, the summons in particular." (R. p. 00070, lines 15-19 )(Aug. 21, 2024 Tr. at 10)

Because Casa Bahari failed to establish any qualifying reason for relief under Rule 60(b)(1)-(5), the court was not required to consider any alleged meritorious defense, and its motion was properly denied. This aligns with *Sundown Operating Co.*, where the South Carolina Supreme

Court reaffirmed that the presence of a meritorious defense is irrelevant if the party fails to meet Rule 60(b)'s threshold requirement.

**B. The Circuit Court Properly Declined to Set Aside the Default Judgment, As There Was No Fraud, Misrepresentation, Or Misconduct By An Adverse Party**

Casa Bahari claims that Respondent's counsel engaged in fraud or misrepresentation by proceeding with default despite prior communications. However, no misrepresentation occurred. The court found that Casa Bahari had actual notice of the lawsuit and failed to act. Additionally, Casa Bahari's reliance on Rule 60(b)(3), SCRCF, is misplaced, as no extrinsic fraud—fraud that prevents a party from presenting its case—was demonstrated. *Coleman v. Dunlap*, 306 S.C. 491, 413 S.E.2d 15 (1992).

Before Judge Michael Nettles, where the court assessed damages. At the damages hearing, Respondent's counsel specifically noted in all fairness:

"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."(R. p. 00047, lines 15-22)(Mar. 13, 2024 Tr. at 4).

Consequently, the default judgment was entered on April 2, 2024, awarding \$40,686.00 in damages. (R. p. 00009-00013). Casa Bahari moved to set aside the default judgment under Rule 60(b), SCRCF, alleging excusable neglect and fraud. The Circuit Court denied Casa Bahari's motion on August 21, 2024, holding that Casa Bahari failed to meet Rule 60(b)'s threshold requirement and that its default was due entirely to its own negligence. Throughout the litigation, Casa Bahari was given multiple opportunities to respond and failed to take any meaningful action to defend itself, leading to the properly entered default judgment that it now seeks to undo.

Casa Bahari was fully aware of the lawsuit and failed to respond despite multiple opportunities. The Circuit Court explicitly found:

“There was no showing of fraud, misrepresentation, or other misconduct by the adverse party. Respondent 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.” (R. p. 00030)(Order, p. 5).

Casa Bahari falsely alleges that Respondent and her counsel acted in bad faith by seeking default judgment because of alleged knowledge Casa Bahari was not the property owner. The reality is, Casa Bahari’s failure to timely respond precluded them from raising this defense in the first place. South Carolina law does not permit a defendant to ignore litigation deadlines and then later claim fraud when opposing counsel pursues default judgment in accordance with the law.

Additionally, Casa Bahari attempts to attack the credibility of Counsel by referencing *Hood v. United Services Auto Ass’n*, 2025 WL 45711 (SC 2025), a case completely unrelated to this matter. The reliance on Hood is misplaced and inflammatory, serving no purpose other than to attempt to malign opposing counsel rather than engage in a legitimate legal argument. South Carolina courts have consistently rejected attempts to turn litigation into personal attacks, particularly when a party has failed to meet its own procedural obligations. See *Roche v. Young Bros. Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 901 (1995) (holding that procedural noncompliance does not justify claims of fraud absent extrinsic deception preventing participation in the case).

Finally, Casa Bahari’s claims regarding Defendant Darlington 48 Unit, LLC are irrelevant to whether default judgment was properly entered in this case. The mere fact that Respondent proceeded with default judgment in compliance with the law does not amount to misconduct. The

Circuit Court properly denied Casa Bahari's motion to set aside the default judgment, and this Court should affirm that ruling in full.

**C. The Circuit Court Properly Declined to Set Aside the Default Judgment, As It Remains Equitable And Does Not Require Prospective Relief**

Casa Bahari argues that the judgment is inequitable and should not have prospective application. However, this argument fails for several reasons. First, default was properly entered due to Casa Bahari's own neglect, not due to an unfair judicial process. Second, the damages awarded were reasonable and justified based on the evidence presented at the hearing. Third, there is no undue hardship or unjust application of the judgment—Casa Bahari simply seeks to avoid liability despite failing to participate in the litigation when required.

Under Rule 60(b)(5), SCRCPP, a judgment may be set aside if it is no longer equitable to have prospective application. However, this rule applies only in cases where the legal or factual basis for the judgment has fundamentally changed. Here, there is no such change—Casa Bahari was properly found in default, and the judgment remains a fair and appropriate resolution of the case.

South Carolina law is clear that a judgment against one defendant does not become inequitable merely because other defendants remain in the case. The Circuit Court's order confirms that Casa Bahari's liability was properly determined

Further, Casa Bahari's reliance on *Saro Investments v. Ocean Holiday Partnership*, 314 S.C. 116, 441 S.E.2d 835 (Ct. App. 1994), is misplaced. *Saro* addresses when a judgment may lose prospective application and states:

"The standard to be applied in determining whether an order or judgment has 'prospective application' is whether it is executory or involves supervision or changing conduct or conditions by the court."

Here, the default judgment is not executory nor does it require ongoing supervision, meaning Casa Bahari remains fully liable. The Court further emphasized this at the hearing:

"I personally don't think that you're entitled to another damage hearing for—I think the damages were for a concrete entity, and we've already established what that is." (R. p. 00071, lines 23-25)(R. p. 00072, line 1)(Aug. 21, 2024 Tr. at 12–13).

Because Casa Bahari did not meet the threshold for reconsideration, the default judgment awarding \$40,686.00 remains valid, enforceable, and consistent with South Carolina law.

Moreover, South Carolina courts recognize that joint and several liability applies where multiple defendants may be liable for the same injury. See *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 399 S.E.2d 783 (1991). Casa Bahari's argument that the judgment is inequitable because other defendants have not yet been adjudicated is legally irrelevant—it remains liable based on the properly entered default judgment.

### **III. THE CIRCUIT COURT PROPERLY FOUND THAT APPELLANT WAS PROPERLY NOTIFIED OF THE DAMAGES HEARING**

Under Rule 5(a), SCRCP, notice of damages hearings must be provided to defaulting parties. The record shows that Casa Bahari was given notice, and any alleged failure to receive it was due to its own inaction. The court correctly ruled that Casa Bahari's due process rights were not violated.

Casa Bahari asserts that it did not receive proper notice of the damages hearing. Under Rule 5(a), SCRCP, notice of damages hearings must be provided to defaulting parties. The record

shows that Casa Bahari was given notice, and any alleged failure to receive it was due to its own inaction. The court correctly ruled that Casa Bahari’s due process rights were not violated.

The Circuit Court found that Respondent complied with this requirement:

“Defendant suggests they did not receive the notice. However, no such rule exists. Respondent provided notice to Defendant’s registered agent.” (R. p. 00030)(Order, p. 5.).

This finding is supported by *Roche v. Young Bros. Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 901 (1995), which held that actual notice sent to the registered agent is legally sufficient.

### CONCLUSION

The Circuit Court correctly applied Rule 60(b), found that Casa Bahari failed to show excusable neglect or fraud, and affirmed the default judgment. Casa Bahari had multiple opportunities to respond, was properly served, and failed to act. Their motion to reconsider was correctly denied. Accordingly, this Court should affirm the Circuit Court’s ruling in full.

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