THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

The Honorable J. Michael Baxley, Special Referee

Appeal No.: 2023-00173

Mark McAuley, ... Plaintiff/Respondent,

v.

Sunshine 11, LLC d/b/a Relax Inn, Usha Patel
And Anjan Patel, ... Defendants,
Of Whom

Sunshine 11, LLC d/b/a Relax Inn is the ..... Appellant.

PETITION FOR REHEARING

Pursuant to Rules 221 and 240, SCACR, Appellant, Sunshine 11, LLC d/b/a Relax Inn ("Appellant"), petitions this Court to rehear its Unpublished Opinion in the above-captioned case, Unpublished Opinion No. 2025-UP-145 (Ct. App. filed April 30, 2025). Appellant received this Court's Unpublished Opinion on April 30, 2025.

This Court overlooked and/or misapprehended how the entirety of the facts of this case constitute excusable neglect on the part of Appellant. Accordingly, the trial court's decision should have been reversed in its entirety.

A. Appellant's Actions Demonstrate Excusable Neglect

The Unpublished Opinion of the Court of Appeals breaks out each of Appellant's arguments for why excusable neglect exists and refutes them individually. However, Appellant's arguments must be read as a whole and not piecemeal as it is the overall circumstances of the case that demonstrate excusable neglect.

There are three critical and undisputed pieces of information that demonstrate Appellant's failure to timely answer the complaint was the product of excusable neglect. First, South Carolina's strong legal history of allowing matters to be decided on the merits. The Unpublished Opinion ignores the clear policy of South Carolina courts "to favor the trial of cases on the merits." *Lewis v. Congress of Racial Equality and/or C.O.R.E., Inc.*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981) ("It is generally recognized that courts should closely scrutinize default judgments to prevent harsh results and drastic action."); *Colleton Prep. Acad., Inc. v. Hoover Universal*, 616 F.3d 413, 417 (4th Cir. 2010) (noting that "[w]e have repeatedly expressed a strong preference that … defaults be avoided and that claims and defenses be disposed of on their merits"). The decision does not even give lip service to this maxim. This is important because whether the neglect by Appellant is excusable or not must be viewed in light of this policy and in the context of the entire factual situation.

Second, as the Court noted, the employee of Appellant who received the summons and complaint does not speak or read English. While the Court found that fact alone was not enough to constitute excusable neglect, it must be viewed in conjunction with the third undisputed piece of information, which is that Appellant was already a party to a lawsuit by Appellee, which was being handled by Northfield Insurance Company ("Northfield").

Thus, Appellant's failure to timely respond to the complaint when the Appellant did not understand what was received due to her deficiencies in the English language when combined with her understandable belief that it was related to a parallel matter being actively litigated and addressed on her behalf is excusable neglect and certainly not such a severe failure to preclude Appellant from litigating the matter on its merits.

Accordingly, read as a whole, an individual who does not read or write English was served with a summons and complaint, was justified in believing it was related to existing litigation. It is also worth noting that Appellee did nothing to alert Appellant's insurer to the existence of the separate lawsuit to allow the matter to be determined on the merits.

CONCLUSION

For the reasons set forth herein, Appellant respectfully request that this Court rehear its decision in this case, and reverse the determination by the trial court that default judgment against Appellant was appropriate and should not be set aside.

Respectfully submitted,

McAngus Goudelock & Courie, LLC

May 12, 2025

/s/Sterling Davies

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Sunshine 11, LLC d/b/a Relax Inn is the ..... Appellant.

PROOF OF SERVICE

I certify that, on May 12, 2025, I have served the Appellant's **Petition for Rehearing** on Mark McAuley by emailing a copy to his attorneys of record, as follows:

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MCANGUS GOUDELOCK & COURIE, LLC

May 12, 2025

/s/Sterling Davies

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May 12, 2025

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May 12 2025
SC Court of Appeals

Via SC Courts E-Filing & U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
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RE: Mark McAuley vs Sunshine 11, LLC d/b/a Relax Inn, Usha Patel and Anjan Patel
Appeal No.: 2023-00173
Date of Incident: October 17, 2021
MGC File No.: 21027.22023

Dear Ms. Kitchings:

Enclosed for filing in the above-referenced matter is the Petition for Rehearing, along with the Proof of Service, for Appellant, Sunshine 11, LLC d/b/a Relax Inn.

We are serving counsel of record via email only. We will send our firm's check in the amount of $50 for filing the Petition via U.S. Mail with a copy of this filing.

Please do not hesitate to contact the undersigned if the Court requires additional copies and/or if you have any questions.

Yours truly,

McAngus Goudelock & Courie, LLC

Sterling Davies

Enclosures
cc: Kenneth E. Berger, Esquire (via E-mail only)
Bradley L. Lanford, Esquire (via E-mail only)