STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT JAYLEN AIKEN, Plaintiff, vs. RICHARD EMMONS, Defendant.	IN THE COURT OF COMMON PLEAS FOR THE FOURTEENTH JUDICIAL CIRCUIT CASE NO.: 2024-CP-07-00660 **ORDER DENYING DEFENDANT'S MOTION FOR RELIEF OF JUDGMENT**

THIS MATTER came before me on December 18, 2024, for a hearing on Defendant's Motion for Relief of Judgment. In attendance by Zoom teleconference were the Plaintiff's attorney, L. Scott Harvin, and Defendant's attorney, Matthew A. L. Anderson.

Defendant has moved for relief from the Final Order and Judgment which was filed in this action on September 3, 2024, pursuant to Rule 60(b)(1) of the South Carolina Rules of Civil Procedure. Rule 60(b)(1) provides that "[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 . . . mistake, inadvertence, surprise, or excusable neglect." Rule 60(b)(1), SCRCP. For the following reasons, Defendant's Motion is DENIED.

Significantly, Defendant challenges neither service of the Summons and Complaint, nor the process in which Plaintiff obtained the Entry of Default. Defendant also concedes that he received proper notice of the hearing on August 20, 2024. Instead, Defendant asks that the Default Judgment be set aside because he believed that his employer's corporate counsel would answer the complaint. (Affidavit of Richard Emmons, ¶¶ 10, 15). Defendant has produced no evidence as to why corporate counsel failed to answer the complaint, or of any attempts to contact corporate counsel directly. Instead, the only attorney whom Defendant claims to have tried to contact was Plaintiff's Counsel. (Affidavit of Richard Emmons, ¶ 14).

The moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief. See *Bowers v. Bowers*, 304 S.C 65, 67, 403 S.E.2d 127 129 (Ct. App. 1991). Furthermore, a party has a duty to monitor the progress of his case. *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). The Summons provided

Defendant notice that a default judgment would be entered against him if he did not answer the complaint within 30 days. He acknowledges receipt of the Summons and Complaint on April 9, 2024. (Affidavit of Richard Emmons ¶ 9). Defendant presents no evidence of anything that he did from April 9, 2024, until August 17, 2024. to monitor the status of the case or to confirm that counsel had answered the Complaint. Defendant gives no reason why he was unable to return to Beaufort upon receiving notice of his hearing.

As to why counsel failed to answer the Complaint on Defendant's behalf, we are left to speculate. Defendant produced no evidence of counsel's neglect, excusable or otherwise. Defendant did not even produce evidence of whether the Summons and Complaint ever reached corporate counsel, or whether if it did, counsel's failure to answer was negligent or intentional.

The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c). See *Sundown Operating Company, Inc. v. Intedge Industries, Inc.,* 383 S.C. 601, 607-608, 681 S.E.2d 885, 888 (2009). Rule 60 "requires **a more particularized** showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party." (Emphasis added) *Id.*

In the case at bar, Defendant provides no evidence at all as to any mistake, inadvertence or excusable neglect on the part of counsel. All he offers is the mere failure of counsel to answer, which in and of itself does merit relief from the judgment. See e.g. *Simon v. Flowers*, 231 S.C. 545, 551, 99 S.E.2d 391, 994 (1957) (Negligent of attorney may be imputed to the client, and be a basis for denial of relief).

In any event, Defendant has not met his burden as to why his own conduct merits relief. In *Regions Bank v. Owens*, the Court of Appeals, affirmed a master's refusal to set aside an entry of default based on the Defendant's contention he contacted his power-of-attorney who said he had hired an attorney and would "take care of it."[5] The court noted "the Defendant] presented no evidence he took any steps to protect himself by contacting either [the power-of-attorney] or [the power-of-attorney's lawyer] to confirm an answer would be filed on his behalf." *Regions Bank, v Owens*, 402 S.C. 642, 648-49, 741 S.E.2d 51, 54-55 (Ct App. 2013)

The Court noted "a party has a duty to monitor the progress of his case" and a "[l]ack of familiarity with legal proceedings is unacceptable" as an excuse for the failure to answer. *Id.* (citing *Hill v. Dotts*, 345 S.C. 304, 347 S.E.2d 894 (Ct. App. 2001).

As noted in *Williams v. Ray,* "[i]t is always a matter of regret that a party should not have his day in court." *Williams v. Ray,* 232 S.C. 373, 383-84, 102 S.E.2d 368, 373 (1958). However, Defendant was duly served with the summons and complaint, and it was his duty to answer the complaint, therefore, he must suffer the consequence of his failure to answer. *Id.* Whatever led counsel not file an answer remains a mystery. However, Defendant's own failure to follow the status of his case and to confirm that an answer was filed within thirty days of service was his own error, which is not excusable under Rule 60(b)(1).

At the hearing on this motion, Defendant argued that he is entitled to relief pursuant to the factors outlined in *Wham.* See *Wham v. Shearson Lehman Brothers, Inc.*, 298 S.C. 462, 465, 481 S.E.2d 499, 501-02 (Holding that a master shall consider the following factors in deciding whether to grant relief from an entry of default: (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). However, because I find that Defendant failed to show good cause for failing to answer the complaint, I need not consider the *Wham*. See e.g., *Regions Bank, v Owens*, 402 S.C. at 649, 741 S.E.2d at 55 (citing *Sundown,* 383 S.C. at 607-608, 681 S.E.2d at 888 (holding that a court need only consider the *Wham* factors "[o]nce a party has put forth a satisfactory explanation for the default").

As such and for the aforementioned good and compelling reasons, I hereby deny this Motion for Relief from Judgment.

IT IS SO ORDERED.

Patrick W. Carr, Special Referee

March 27, 2025
Beaufort, South Carolina