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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of the Common Please

Edward W. Miller, Circuit Court Judge
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-002191
Civil Action No. 2022-CP-23-05612

Lakeview Loan Servicing, LLC
and Loan Care LLC, ... Appellants,

v.

Andrew E. Lewis, ... Respondent.

APPELLANTS' INITIAL BRIEF

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INTRODUCTION

South Carolina law does not allow a party with a valid, binding, and unchallenged foreclosure judgment against them in the amount of $462,977.44, to obtain a subsequent judgment for alleged equity in the foreclosed real property of over $590,000.00. Yet, this is the bizarre and unjust result that occurred in this case.

This appeal involves a successful attempt by Appellee-Plaintiff, Andrew E. Lewis ("Lewis"), to exploit the trial court's failure to vacate a technical default against the Appellants-Defendants, LoanCare LLC and Lakeview Loan Servicing, Inc. (collectively, the "LoanCare Defendants"). As a result, although Lewis paid only one mortgage payment between 2016 and 2022, had otherwise lived in the property rent free for five years, and, ultimately, had his rights to the property extinguished through a foreclosure judgment, the trial court in this case awarded Lewis a $593,000.00 judgment for so-called "equity" in the real property. (Order of Judgment (the "Judgment")). This Judgment was entered without authority of law and must be reversed.

South Carolina law is constructed in a manner where the bar to vacate the entry of default is low. But serious repercussions follow when a default exists, precluding a defendant from challenging the well-pled allegations of the complaint, obtaining damages discovery, or otherwise presenting evidence. For these reasons, South Carolina public policy errs in favor of vacating a default where good cause exists. Because the trial court failed to vacate the default despite a showing of good cause, the LoanCare Defendants could not defend against the allegations in the complaint.

The trial court then severely compounded its error by deeming ***all the allegations*** in the complaint admitted—not just the well-pled facts.[1] (Judgment). In doing so, the trial court precluded the LoanCare Defendants from cross-examining Lewis on the validity of his causes of action and otherwise impeaching his conclusory assertions.

The trial court completely ignored the LoanCare Defendants' legal right to challenge the validity of Lewis's causes of action and relied on conclusory and unsupported arguments and testimony. Despite the so-called "facts" in the Judgment, the actual evidence presented by Lewis—in his complaint and during the damages hearing—established that Lewis ***rejected*** the loan modification offered by the LoanCare Defendants. The competent evidence further established that Lewis did not have ***any*** equity in the Property; he had a $464,004.22 foreclosure judgment against him for amounts due and owing on the Property, and owed $528,000, in total, on the Property at the time of foreclosure. (Supplemental Order); (9/5 Tr. 31). Lewis even ***admitted*** during the damages hearing that ***his interest in the Property was extinguished*** through a valid and unchallenged foreclosure judgment. Lewis never sought pre-foreclosure sale of the Property or post-foreclosure redemption of the Property and, instead, voluntarily abandoned the Property.

As a matter of law, Lewis was not entitled to entry of a $593,000 Judgment against the LoanCare Defendants. The trial court erred by deeming admitted ***all*** the allegations in Lewis's Complaint, as opposed to only those well-pled allegations of fact. Due to the trial court's actions, Lewis was allowed to claim undisputed damages relating to invalid causes of action and baseless, unsupported conclusions that were taken as admitted facts. The trial court's actions essentially subjected the LoanCare Defendants to a confession of judgment. By awarding Lewis a Judgment

[1] All ***bold italicized*** emphasis added.

of $593,000, the trial court committed reversible error, warranting reversal of the Judgment on appeal for entry of judgment in the LoanCare Defendants' favor or, alternatively, for further proceedings.

ISSUES ON APPEAL

I. Whether the trial court committed reversible error by denying the LoanCare Defendants' Motion to Set Aside Default.

II. Whether the trial court committed reversible error by treating the totality of the averments in the Complaint as admitted and uncontested for the purposes of the damages trial and refusing to address the validity of Lewis's causes of action.

III. Whether the trial court committed reversible error by finding that Lewis presented a prima facie case of damages where no competent evidence existed to support his claimed damages and where Lewis's damages had already been adjudicated and extinguished in a separate, valid, and undisturbed proceeding.

STATEMENT OF THE CASE

I. THE FORECLOSURE.

In June 2016, Lewis and his wife purchased what Lewis testified was his "forever home," located at 4 Glassy Wing Circle, Greeneville, South Carolina (the "Property"). (Motion to Set Aside, ¶ 1); (9/5 Tr. 12:4). Lewis and his wife borrowed the total sum of $406,200.00 to purchase the Property, which was secured by a first mortgage in the original principal amount of $342,400 (the "Mortgage"), and a second mortgage in the original principal amount of $64,200 (the "Second Mortgage"). (Motion to Set Aside, ¶ 1, Exhibits 1-3, Exhibit 5, ¶ 8).

The Mortgage was eventually transferred to Defendant Lakeview and serviced by Defendant LoanCare. (Motion to Set Aside, ¶ 1, Exhibits 1-3). By September 1, 2016, ***after making just one payment***, Lewis defaulted on the Mortgage and, in July 2017, the LoanCare Defendants commenced a foreclosure action against Lewis (the "Foreclosure Action"). (Motion to Set Aside, ¶ 3 & Exhibit 4). A judgment of foreclosure was entered on April 27, 2018, in the

amount of $380,112.53, plus interest and fees. (the "Foreclosure Judgment"). The Property was then sold at the foreclosure sale on August 1, 2018, to a third party for the sum of $382,001.00. (Master's Order and Judgment of Foreclosure & Sale); (Order Vacating Sale).

On September 13, 2018, the trial court entered an order vacating the foreclosure sale based on an agreement between Lewis and the third-party purchaser. (Order Vacating Sale). The order vacating the sale did not vacate the foreclosure judgment or otherwise dismiss the Foreclosure Action. Instead, the trial court observed that "Plaintiff [Defendant LoanCare] is negotiating with the Defendants [Lewis], and Plaintiff's counsel will advise the court as to the outcome of those loss mitigation discussions before proceeding further with the action." (Order Vacating Sale).

The Foreclosure Action remained open, but inactive, for the ***next three years***. During this time, Lewis remained in the Property, essentially rent free, as he made only one repayment toward the Mortgage. (Motion to Set Aside, ¶ 6, Exhibit 7). The LoanCare Defendants further paid the property insurance and real estate taxes on the Property, totaling $38,954.41. (Motion to Set Aside, ¶ 6, Exhibit 7).

Although Lewis applied for loan modification, he never qualified for a modification that was ***acceptable to him***. (Motion to Set Aside, ¶ 7). Because Lewis rejected the loan modification agreement offered to him and because Lewis neither cured his default nor otherwise satisfied the Foreclosure Judgment, in April 2022, the LoanCare Defendants filed an Affidavit of Debt, which updated the total amount due under the Mortgage to $462,977.44, including interest and fees. (Affidavit of Debt).

On April 14, 2022, four years after entry the original Foreclosure Judgment, the trial court entered a Supplemental Order to the Master's Order and Judgment of Foreclosure & Sale. (Supplemental Order). The Supplemental Order modified the original Foreclosure Judgment by

amending the prior debt figures and making the total foreclosure judgment $464,004.22, inclusive of interest and fees. (Supplemental Order). On June 6, 2022, the Property was sold to a third party for the sum of $470,000.00. (9/5 Tr. 12:17-25).

Lewis never challenged the Supplemental Order or the sale of the Property. (9/5 Tr. 31). Instead, he merely requested the trial court stay execution of the writ of possession and allow him to remain in the Property until September 1, 2022. (Motion to Stay). The trial court permitted this relief. (Order). ***The Foreclosure Judgment, the Supplemental Order, and sale of the Property were never appealed or otherwise sought to be vacated by Lewis***. Ultimately, by the time Lewis vacated the Property, he and his wife resided in the Property rent free for five years, without paying their Mortgage, and owed in total $528,000 on their combined mortgage obligations. (9/5 Tr. 31).

II. THE LEWIS LITIGATION.

On October 12, 2022, Lewis commenced litigation against the LoanCare Defendants. (Summons & Complaint). The Complaint was founded on the Foreclosure Action and, specifically, Lewis's failed attempts to modify his Mortgage. (*Id.*).

The general allegations contained in the Complaint included an incomplete timeline commencing on June 10, 2016, when Lewis purchased the Property, continuing into 2017, when Lewis acknowledges he defaulted on the Mortgage and the Foreclosure Action commenced, and continuing into "the next few years," when Lewis's loan modification fell through. (Complaint, ¶¶ 5-18). According to the allegations in the Complaint, "[e]ven though [Lewis's] original modification was accepted and terminated improperly by Defendants, Defendants continued to deny Plaintiff's modification attempts." (Complaint, ¶ 18). Thus, the Complaint acknowledges that Lewis and the LoanCare Defendants were never able to come to an agreement as to the terms of a loan modification. (Complaint, ¶¶ 5-18).

Based on these general allegations, Lewis asserted five causes of action against the LoanCare Defendants: Count I—Breach of Contract; Count II—Negligent Misrepresentation; Count III—Fraud; Count IV—Constructive Fraud; and Count V—Violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"). (Complaint, 3-7). Aside from rote recitation of the elements of the various causes of action, the Complaint did not incorporate additional facts in support of its various claims. (Complaint, 3-7).

A. The Default.

Service of process was effected on the LoanCare Defendants on October 17-18, 2022, via their registered agents, making their responses due to be served by November 21-22, 2022. (Proofs of Service for Defendants); SCRCP 12(a). When the LoanCare Defendants did not respond to the Complaint, on December 1, 2022, Lewis filed his Affidavits of Default against the LoanCare Defendants, requesting the trial court enter default and allow the matter to proceed to a damages hearing. (Affidavits of Default). That same day, and although no default appears on "the calendar (file book)", *see* SCRCP 55(a), Lewis also immediately moved for a damages hearing against the LoanCare Defendants. (Motions for Damages).

Lewis did not set his motion for hearing until over two months later. During this time, the LoanCare Defendants realized that they had not responded to the complaint, retained counsel, and attempted to resolve this matter with Lewis. (Motion to Set Aside). On February 14, 2023, Lewis noticed the Motion for Damages to be heard on February 24, 2023, and three days later the LoanCare Defendants filed their Motion to Set Aside or Vacate the Default. (Notice of Hearing on Motion for Damages).

B. <u>The LoanCare Defendants' Motion to Set Aside</u>.

At the time of service, the LoanCare Defendants were upgrading their internal litigation tracking procedures. (Motion to Set Aside). During this transitional period, the LoanCare Defendants inadvertently missed the answer deadline for Lewis's Complaint. (*Id.*).

On or around January 12, 2023, the LoanCare Defendants realized their error in missing the answer date. They immediately retained counsel and reached out to counsel for Lewis to resolve the matter. (Motion to Set Aside). Within days of contact, Lewis's counsel conveyed a settlement offer upon defense counsel. (*Id.*). Despite offers and counteroffers, no immediate resolution was reached. (*Id.*). The parties continued with settlement negotiations throughout the next month as the LoanCare Defendants worked on addressing the default. (*Id.*). Meanwhile, counsel was actively reviewing six years of prior litigation, addressing extrajudicial correspondence relating to loan modification offers conveyed to Lewis, conferring with prior foreclosure counsel, engaging in discussions with Lewis's counsel to amicably resolve this matter and, ultimately, drafting a motion to set aside the default. (*Id.*).

On February 17, 2023, after attempts to resolve this matter failed and only three days after Lewis filed his motion for a damages hearing, the LoanCare Defendants moved to set aside the default and sought leave to plead and defend against Lewis's allegations. (Motion to Set Aside).

The Motion to Set Aside also outlined the LoanCare Defendants' inadvertence, the lack of conscious disregard for the judicial system, and their efforts taken to resolve this matter and vacate the default. The Motion also set forth the necessary facts addressed in *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989), which provides:

> Once a party has put forth a satisfactory explanation for the default, the trial court must also 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. Specifically, the Defendants' Motion addressed discussed: (1) the timing

> of the motion for relief being a mere thirty six days after the recognition of their mistake; (2) the clear meritorious defenses of the Defendants considering Lewis' lack of meritorious suit and the valid foreclosure judgment against Lewis; and (3) the lack of prejudice to Lewis if relief is granted.

Lewis did not respond to the Motion to Set Aside. After a hearing, the trial court denied the LoanCare Defendants' Motion to Set Aside. Within a notably short Order, the trial court found "Defendants' bases and explanation insufficient to satisfy the good cause standard of Rule 55(c) *SCRCP*." *See* (Order at 4). In support of this finding, the trial court relied on four cases, including *Williams v. Vanvolkenburg*, 312 S.C. 373 (Ct. App. 1994); *Dixon v. Besco Eng'g Inc.*, 320 S.C. 174 (Ct. App. 1995); *Regions Bank v. Owens*, 402 S.C. 642 (Ct. App. 2013); and *Nelson v. Coleman Co.*, 41 F.R.D. 7 (D.S.C. 1966). The trial court continued: "[f]urthermore, in addition to failing to satisfy the good cause standard of Rule 55(c), SCRCP, (*Id*. at 4). Defendants have also failed to satisfy the *Wham* factors for being dilatory in filing their motion for relief thirty-six (36) days after being advised they were in default." (*Id.*). The trial court was silent as to any substantive analysis on the *Wham* factors. This was the entirety of the legal and factual analysis offered by the trial court in denying the LoanCare Defendants' Motion to Set Aside. (*Id.*).

The LoanCare Defendants sought reconsideration of the trial court's order. In their motion, the LoanCare Defendants re-articulated their explanation for the delay, relied on appropriate and binding South Carolina case law indicating they had met their burden under Rule 55(c), and provided an analysis under the *Wham* factors. *See generally* (Motion to Alter or Amend). Lewis did not respond to the LoanCare Defendants' motion and the trial court summarily denied the LoanCare Defendants' request for reconsideration. (Order).

C. <u>The LoanCare Defendants' Memorandum Pertaining To Damages Hearing</u>.

In advance of the damages hearing, the LoanCare Defendants submitted a Memorandum Pertaining to Damages Hearing (the "Memorandum"). (Memorandum). Lewis did not submit anything in advance of the hearing.

In their Memorandum, the LoanCare Defendants argued that a default does not act as a confession of judgment. (Memorandum at 4-5). On the contrary, a plaintiff must still establish that he is entitled to damages. (*Id.*). This includes stating a valid cause of action. (*Id.*). Indeed, as the LoanCare Defendants explained, there can be no breach of a contract, because Lewis has admitted through the allegations of the Complaint that ***no contract existed***. (*Id.* at 9-10). And, further, Lewis failed to set forth causes of action on his remaining counts as there are no factual allegations supporting the conclusory allegations of misconduct. (*Id.* at 11-18).

As the LoanCare Defendants explained in the Memorandum, with supporting case law, Lewis failed to set forth any allegations in the Complaint that the parties ever entered into an agreed-upon loan modification agreement. (Memorandum at 5). In essence, and at most, Lewis's allegations established an "agreement to agree"—something that is not enforced by the South Carolina courts as a valid agreement. (*Id.* at 4-5, 8-9).

Moreover, the LoanCare Defendants argued that because Lewis's interest in the Property was extinguished through the Foreclosure Action, he was collaterally estopped from seeking damages that are alleged to have arisen from the foreclosure. (Memorandum at 6-7).

D. <u>The Damages Hearing</u>.

On September 5, 2024, an evidentiary hearing took place on Lewis's claimed damages before Judge G.D. Morgan, Jr. (9/5 Transcript). Lewis testified during the hearing, and the parties submitted exhibits in support of their positions. (9/5 Transcript). Notably, although the damages

hearing was recorded, several portions of the recording are inaudible. As a result, the parties entered a consent order agreeing that "[t]he parties stipulate that all facts, arguments and legal authority raised in Defendants Motion to Alter or Amend the Judgment filed October 31, 2024, had been properly presented to the trial court such that they are preserved for appeal." (Consent Order).

From the start of the hearing, Lewis's counsel took the position, and the trial court agreed, that "***all the allegations in the complaint are deemed admitted***." (9/5 Tr. 4:13-15); *see also generally* (*Id.* Tr. 24-28 (discussing Lewis's objection to the LoanCare Defendants' attempts to cross-examine Lewis regarding unsupported allegations pertaining to validity of his causes of action and damages)). Consequently, the LoanCare Defendants could not cross-examine Lewis about certain testimony that was directly contrary to the assertions made in the Complaint that were supposedly admitted. (*Id.*).

During the hearing, and contrary to the allegations in his Complaint, Lewis testified that, as of June 3, 2018, he had an agreement with Lakeview and was approved for a loan modification. (9/5 Tr. 5:19-20). *But cf.* (Complaint, ¶ 10 (asserting that as of June 4, 2018, the parties were "work[ing] out a [trial] payment")). According to Lewis, the agreement was that Lewis "would make payments in July, August and September of 2018." (9/5 Tr. 5:22-24). *But cf.* Complaint ¶¶ 13-15, 17-18 (alleging that the LoanCare Defendants "closed" Lewis's account and loan modification, continued "over the course of the following months" to "attempt to figure out his modification payments, and eventually "den[ied] Plaintiff's modification attempts")).

Lewis then testified that, although he made a payment in July 2018, when he contacted Lakeview, he was advised that the payment "had not been applied to the account yet." (9/5 Tr. 6:4-5). Lewis was later advised on July 5, 2018, that his payment was rejected, and as a result, he sent

certified funds. (9/5 Tr. 6:8-9, 16-17). According to Lewis, although he attempted to make his August 2018 payment, he was advised that the Property was going to sale at 11:00 a.m., and that the Property did, in fact, sell. (9/5 Tr. 6:22-7:18).

Lewis testified at length about his attempt to reverse the August 2018 sale and modify or restructure the Mortgage. (9/5 Tr. 8-11). Again, and in contradiction to the allegations in the Complaint, Lewis testified that his modification was approved in November or December of 2019 and he received a new loan modification on June 19, 2019. (9/5 Tr. 8:7-25). However, because of the payment due dates, he would have already been behind and, thus, Lewis did not accept this loan modification agreement. (9/5 Tr. 8:22-9:8). As a result, Lewis testified that he had to engage in the loan modification process again. (9/5 Tr. 9:9-19).

The Property was ultimately sold in June 2022. (9/5 Tr. 11:2-10). Although completely irrelevant to the issues, Lewis was allowed to testify that the foreclosure had a great effect on his wife, and that he contemplated suicide during this period. (9/5 Tr. 11-12).

The only evidence of damages presented by Lewis was an appraisal conducted by the LoanCare Defendants in June 2020, wherein the appraisal value of the Property was found to be $801,000. (Tr. 12:17-25). Despite this appraisal value, the Property sold at the foreclosure sale for $470,000. (*Id.* Tr. 12:17-25). Lewis testified that he was seeking damages in the amount of his equity in the Property which he testified was $461,393. (Tr. 12-17-25).

This amount was not based on any actual equity that Lewis may have had in the Property. This amount does not represent the appropriate measure of damages and was calculated on Lewis's fabrication of an equity calculation which he testified was the difference between the appraisal value, $801,000, and the amount the Property sold for at the foreclosure sale, $470,000. (9/5 Tr.

12:17-25). Lewis actually had "negative equity" in the Property as a result of his unpaid Mortgage and second mortgage totaling $528,000. (*Id.* Tr. 3013-25).

Lewis also sought damages for storage and a credit for what he paid during the loan modification application period. (9/5 Tr. 13-14). Thus, Lewis's total damages demand was $525,393, which he requested be trebled. (9/5 Tr. 14:7-13).

On cross-examination, Lewis agreed that he acquired the property on June 10, 2016, and that it was encumbered by two loans, the first Mortgage in the original principal balance of $342,400, and the Second Mortgage in the original principal balance of $64,000. (9/5 Tr. 14:20-15:17). Lewis admitted that, in the beginning of 2017—only a few months after purchasing the Property—he failed to make the payment due. (9/5 Tr. 16:13-22). Lewis acknowledged that the Foreclosure Action was eventually instituted against him and his wife, and that additional defendants were included due to an $8,000 lien on the Property for credit card debt. (9/5 Tr. 16:25-17:5).

With regard to his damages, Lewis admitted that he was not "paying bills at the time [he was] going through the modification process in 2018." (9/5 Tr. 19:7-8); *see also* (9/5 Tr. 29:10-17). Lewis also agreed that, due to the Foreclosure Action, "***his interest in the property had been extinguished***." (Tr. 20:4-10).

When the LoanCare Defendants attempted to cross-examine Lewis on the existence of an alleged loan modification, Lewis's counsel objected on the ground that the LoanCare Defendants were attempting to make "legal attacks on a complaint that is admitted in this court." (9/5 Tr. 21;13-14); (9/5 Tr. 25:20-25 ("[E]verything in our complaint it is absolutely admitted. The court doesn't have the discretion to say that doesn't exist.")). Although counsel for the LoanCare Defendants attempted to explain that this matter goes directly to Lewis's alleged damages, the trial

court admonished counsel that "the damages that they are seeking as a result of the allegations in the complaint it had been admitted by file." (9/5 Tr. 26:16-27:24). Notwithstanding the conflicting evidence on this point, which was ***not*** alleged in the Complaint, the trial court disallowed any testimony with respect to the fact that Lewis did not have a valid loan modification agreement. (9/5 Tr. 28:4-18).

Lewis later agreed on cross-examination that a new judgment was eventually entered against him in the Foreclosure Action for $464,000.22, and that the Property ultimately sold for $470,000 in June 2022. (9/5 Tr. 29:18-30:2). At the time of the foreclosure and sale, ***Lewis acknowledged he owed $528,000 on the mortgage***. (9/5 Tr. 30:9-12).

The LoanCare Defendants were able to effectively impeach Lewis's requested damages for the equity the Property as Lewis testified that "***you have to make your payments first and pay off your debts before you can claim that you have equity***." (9/5 Tr. 31:17-21). Lewis then qualified this testimony by stating that if he "wasn't under the impression that [he] was going to move forward with this mortgage process" he "would have just sold the house for, say, 750 and walked away with a profit." (9/5 Tr. 31:22-32:3). Lewis, however, did not do so, and he confirmed that he never listed the Property. (9/5 Tr. 32:14-18).

On conclusion of the hearing, the parties gave short closing statements. As part of Lewis's counsel's closing, he argued that the LoanCare Defendants cannot "collaterally attack the legal theory that is deemed admitted. It's just that actual amount of damages." (9/5 Tr. 37:1-5). Counsel cited the case of *Renney v. Dobbs* for the position. (*Id.*). The trial then court took its ruling under advisement. (*Id.* Tr. 39:13-16).

E. <u>The Judgment</u>.

On October 21, 2024, the trial court entered its Judgment in favor of Lewis, using the Judgment drafted and provided by Lewis's counsel without any revisions by the trial court. (Judgment). The Judgment indicated that several "facts" were deemed "admitted," citing various provisions of Lewis's Complaint. (Judgment). Along with several alleged facts contained in the Complaint, the Judgment also identifies numerous unsupported legal conclusions as admitted "facts", including that:

- "Plaintiff contracted with Defendants for the remodification of Plaintiff's mortgage. *Id.,* ¶ 21."
- "Defendants breached the agreement with Plaintiff by continually forcing him to reapply for a loan modification after it had already been approved and unjustly terminated. *Id*."
- "As a direct and proximate result of Defendants' breach, Plaintiff has suffered actual and consequential damages. *Id.,* ¶ 24."
- "In negotiating the loan modification with Plaintiff, Defendants represented that the loan modification was reinstituted after the unjust foreclosure. *Id.,* ¶ 26."
- "Defendants knew the representations made were false. *Id.*, ¶ 27."
- "Defendant had a pecuniary interest in making these representations. *Id*., ¶ 28."
- "Defendants owed Plaintiff a duty to see that truthful and accurate information was communicated to Plaintiff. *Id*., ¶ 29."
- "Defendants breached their duty by failing to exercise due care. *Id*., ¶ 30."
- "Plaintiff justifiably relied upon Defendants to communicate truthful information and justifiably relied upon Defendants' representations. *Id*., ¶ 31."
- "As a direct and proximate result of Plaintiff's reliance upon Defendants' misrepresentations, Plaintiff has suffered a pecuniary loss in the form of actual, consequential, and special injuries. *Id*., ¶ 32."
- "Defendants' conduct was willful and intentional. *Id.*, ¶ 33."

- "The representations Defendants made regarding the modification were material. *Id*., ¶ 36, 47."
- "Defendants knew the representations were false. *Id*., ¶¶ 37, 46."
- "Defendants made the representations with knowledge of their falsity and with a reckless disregard for their falsity. *Id*., ¶ 38."
- "Defendants intended that the representations be acted upon. *Id*., ¶¶ 39, 48."
- "Plaintiff was ignorant of the falsity of Defendants' representations and relied on the representations' truth. *Id*., ¶¶ 40, 49."
- "Plaintiff was right to rely on the representations' truth. *Id*., ¶¶ 41, 50."
- "As a consequent and proximate result of Defendants' fraud, Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries. *Id*., ¶ 42."
- "As a consequent and proximate result of Defendants' constructive fraud, Plaintiff has suffered a pecuniary loss in the form of actual, consequential and special injuries. *Id*., ¶ 51."
- "Defendants fraudulently and deceptively continued to deny Plaintiff's loan modification after accepting it. *Id*., ¶ 54."
- "As a result of Defendants' fraudulent and deceptive acts, suffered financial hardships and damage to his credit score. *Id*., ¶ 55."
- "These fraudulent and deceptive acts have led to great expense for Plaintiff. *Id*., ¶ 56."
- "Defendants' business of mortgages and loans creates the potential for repetition of these fraudulent, unfair and deceptive acts. *Id*., ¶ 57."
- "Since these fraudulent and deceptive acts can easily be repeated, it is offensive to public policy. *Id*., ¶ 58."
- "As a proximate cause of Defendants' fraudulent and deceptive acts, Plaintiff has been damaged. *Id*., ¶ 58."

(Judgment at 3-4).

The Judgment then addresses the testimony through two short paragraphs. (Judgment). According to the Judgment, Lewis testified regarding the allegations in the Complaint, and that

"as the direct and proximate result of Defendants' actions he has suffered damages from: i) the loss of Four Hundred Sixty-One Thousand, Three Hundred Ninety-Three Dollars ($461,393.00) in equity he had in the Subject Property, ii) Eighteen Thousand Dollars ($18,000.00) in moving and storage expenses, and iii) Twenty-one Thousand Dollars ($21,000.00) in payments on his mortgage of which he was not given credit for." (Judgment). The trial court then found that Lewis proffered a 2020 appraisal report that contained a "'Recommended List Price' of $801,000.00 less the amount owed of $339,607.00." The trial court also noted Lewis's testimony that the Property ultimately sold in February 2023 for $760,000. (Judgment).

The Judgment disregards the inconsistencies between certain allegations in Lewis's Complaint and his testimony at the damages hearing, and wholly ignores the LoanCare Defendants' cross-examination of Lewis. For example, the Judgment disregards Lewis's testimony that he "***rejected***" the loan modification offer that was presented to him, establishing that a valid contract never existed. (9/5 Tr. 31:1-15).

As to damages, the Judgment ignores Lewis's admissions that ***he owed $528,000 on the Property at the time of entry of the foreclosure judgment and that he did not have any equity in the Property***. (9/5 Tr. 20:4-10, 30:9-12, 31:17-21). The Judgment likewise ignores Lewis's testimony that he admitted he could have "just sold the house for, say, 750 . . . ." but that he chose not to do so. (9/5 Tr. 31:22-32:3, 14-18).

Instead, the Judgment relies on Lewis's self-serving but unsupported testimony and concludes that he somehow established by a preponderance of the evidence that he had equity in the Property—both before and after the foreclosure sale—and that the LoanCare Defendants could not rebut this as a matter of equity (not law). (Judgment (quoting *See Emery v. Smith,* 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) ("He who comes into equity must come with clean

hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief."))). This is all despite Lewis's admission that he did not make any payments on his Mortgage, and that he would have had to have made payments before he could claim any equity in the Property, that equity was extinguished in the Foreclosure Action, and that he took no steps to actually sell the Property during the five years he resided in the Property without paying rent or making mortgage payments.

F. The Motion To Alter Or Amend Judgment.

The LoanCare Defendants timely moved to alter or amend the Judgment. (Motion to Alter). The LoanCare Defendants re-raised the issues set forth in their Memorandum. And, more specifically, the Motion to Alter addressed the trial court's complete failure to address the inconsistent testimony, Lewis's cross-examination, and the dearth of evidence establishing Lewis suffered any damages based on a valid cause of action. (*Id.*).

The LoanCare Defendants also observed that, even ***if*** Lewis were entitled to damages in the amount of the equity in the Property, Lewis's and the trial court's calculation were improper as they were not based on the appraisal value of the Property minus the amount due on the Mortgage. (Motion to Alter at 14 & n.13). Pursuant to this calculation, Lewis's damages would, at most, total approximately $278,000. (*Id.*).

Again, Lewis did not respond. The trial court, likewise, sua sponte rejected the LoanCare Defendants' Motion to Alter entering a summary denial. (Order). This appeal followed.

STANDARD OF REVIEW

This Court reviews a trial court's order denying a motion to set aside a default for abuse of discretion. *See Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.,* 369 S.C. 540, 544,

633 S.E.2d 497, 499 (2006) ("The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge."). Such discretion is not all-encompassing. A trial court abuses its discretion when the trial court's decision "was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 681 S.E.2d 885 (2009) (quoting *In re Estate of Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)).

This Court's review of the trial court's failure to address the validity of Lewis's causes of action is de novo as it constitutes a question of law. *See Deutsche bank Nat'l Trust Co. v. Estate of Houck*, 434 S.C. 500, 505, 863 S.E.2d 829 (Ct. App. 2021). Indeed, when a judgment, such as that here, "is without authority of law" it constitutes "reversible error." *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194, 196 (Ct. App. 1984) (quoting *Mut. Savings & Loan Ass'n v. McKenzie*, 274 S.C. 630, 266 S.E.2d 423, 424 (1980)); *Cordero v. Moore*, 2024 S.C. App. Unpub. LEXIS 187, *3-4 2024 WL 2319457 (Ct. App. May 22, 2024) ("[I]f a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error.") (quoting *Masters*, 321 S.E.2d at 196)).

This Court's review of the sufficiency of the evidence presented during the damages hearing is for abuse of discretion, and the "court's findings of fact will not be disturbed on appeal unless wholly unsupported by the evidence or clearly influenced or controlled by an error of law." *Hendricks v. Hicks*, 374 S.C. 616, 649 S.E.2d 151 (Ct. App. 2007); *56 Leinbach Investors, LLC v. Magnolia Paradigm, Inc.*, 411 S.C. 466, 471, 769 S.E.2d 242 (Ct. App. 2014).

ARGUMENT

I. THE JUDGMENT MUST BE REVERSED; THE TRIAL COURT ERRED AS A MATTER OF LAW BY NOT VACATING THE DEFAULT.

A. The Trial Court Failed To Exercise Discretion In Its Consideration Of The LoanCare Defendants' Motion to Set Aside Default And, Instead, Reflexively Denied Their Motion Without Full And Fair Consideration.

"Public policy favors the disposition of cases on their merits rather than on technicalities." *Microtronics, Inc. v. South Carolina Dept. of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). Due to South Carolina's public policy, the standard for granting relief from an entry of default under Rule 55(c) is not high and merely requires that the defendant present evidence of "***good cause***," which is defined to mean "an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." Rule 55(c), SCRCR; *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 607-08, 681 S.E.2d 885 (2009). Thus, consistent with South Carolina's public policy, "[t]his section [of Rule 55] is liberally construed to promote justice and disposes of cases on the merits." *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 178, 463 S.E.2d 636, 639 (Ct. App. 1995).

"Once a party has put forth a satisfactory explanation for the default, the trial court must then consider the *Wham* factors, including: (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). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995)." *Sundown Operating Co.*, 383 S.C. at 608. This does not, however, mean that the trial court may ignore these facts where good cause exists.

Although a trial court is given broad discretion to consider these factors, the trial court should avoid using its discretion to preclude a defendant from participating in litigation, and, rather, in the interests of justice, use its discretion to provide defendants with a full and fair opportunity to participate in the proceeding. To this end, the Supreme Court of South Carolina has recently explained that "[t]he exercise of discretion is not to simply make a decision. ***The exercise of discretion requires first that the trial court recognize it has the responsibility of discretion***." *Morris v. BB&T Corp.*, 438 S.C. 582, 587, 885 S.E.2d 394 (2023). In so holding, the Supreme Court made clear that the trial courts are not to engage in a reflexive refusal to fully consider grounds for good cause simply upon a missed deadline. Such a reflexive refusal is what the trial court did in this case.

The Judgment against the LoanCare Defendants in this case is founded on the trial court's preliminary order denying their Motion to Set Aside Default (the "Order"). The Order provides only that "Defendants bases and explanation [were] insufficient to satisfy the good cause of Rule 55(c) *SCRCP*." (Order at 3). In support of this bare conclusion, the trial court parenthetically cited four cases, which will be addressed in turn, below. *See* (*Id.*); *see also* discussion *infra* at pp. 21-24. The trial court then found, without any discussion, that "Defendants have also failed to satisfy the *Wham* factors for being dilatory in filing their motion for relief thirty-six (36) days after being advised they were in default." (Order at 4).

Public policy warranted vacation of the default. Notably, while Lewis filed an affidavit of default, no default appeared on "the calendar (file book)" as required by Rule 55, SCRCP. Despite this, as soon as the LoanCare Defendants became aware of Lewis's affidavit of default and motion for damages hearing, they began taking action to resolve this matter with Lewis and his counsel.

When settlement attempts failed and Lewis scheduled a hearing on his motion for damages hearing, the LoanCare Defendants immediately moved to vacate the default.

At the hearing, the trial court failed to give any substantive consideration to the LoanCare Defendants' facially valid and satisfactory explanation of good cause. Instead, in a stark and conclusory fashion, the trial court found their basis and explanation were insufficient. The trial court's silence lends itself to a presumption that the trial court simply ignored the LoanCare Defendants' explanation of good cause. The LoanCare Defendants renewed these arguments in a motion for reconsideration; however, a new judge had taken over this case and issued a summary denial of the motion. (Order).

As discussed in detail below, in totality, the trial court's decision amounts to a fundamental error of law requiring reversal. Because the trial court failed to follow the applicable law, at its most basic level, the trial court fundamentally abused its discretion by denying the LoanCare Defendants' motion and allowing this case to proceed to a damages hearing. Accordingly, the Judgment must be reversed on this ground alone.

B. The LoanCare Defendants Presented A Satisfactory Explanation Of Good Cause, Which Would Promote The Interests of Justice. The Case Law Relied On By The Trial Court Is Inapposite And Fails To Support The Trial Court's Findings.

Rather than establishing sufficient findings of fact and articulating a robust legal analysis, the trial court merely relied on four cases in which, for one reason or another, good cause was found to not exist. (Order at 3-4). However, absent sufficient factual findings or evidence in the record, a bare legal conclusion finding of a lack of good cause warrants reversal as an abuse of the trial court's discretion. We now address these cases in turn.

First, the trial court relied on *Williams v. Vanvolkenburg*, in which this Court held "that good cause would not be established whether Defendants failed to ask their attorney to file an

answer or whether the attorney was negligent in failing to answer." *See* (Order at 3 (quoting *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994)). However, in either of these scenarios referenced in the court's parenthetical quote, there was active knowledge of the complaint and a choice not to move forward in addressing it.

The *Williams* decision's focus on the negligence of answering the complaint is predicated upon the knowledge of the complaint and the required deadline to respond. *See Williams*, 312 S.C. at 375. In the present case, there is no evidence that the LoanCare Defendants ignored the Complaint or otherwise had knowledge of the litigation prior to January 12, 2023. Rather, here, Lewis's Complaint slipped through the litigation tracking system as updates and changes were being made. (Motion to Set Aside). Thus, the *Williams* decision is inapposite to the facts presented in this case and does not support the trial court's Order.

Next, the trial court cites *Dixon v. Besco Eng'g, Inc.*, in which the Order provides stands for the proposition that "the defendant's failure to recognize a deadline did not constitute good cause to set aside the entry of default." (Order at 3). However, this is a misapplication of the *Dixon* decision.

In *Dixon*, like in *Williams*, the record established that prior to the default, the defendants had clear knowledge of the deadline to respond to the complaint and failed to do so. *See Dixon*, 320 S.C. at 178 (observing that the defendant's counsel "overlooked the January 4 deadline . . . and believed Besco had an unlimited extension of time to respond to Dixon's complaint"). No such knowledge exists in this case.

Turning to *Regions Bank v. Owens*, the trial court relied on that court's finding of "evidence support[ing] the master's finding that Owens fails to show good cause . . . although he asserted another defendant told him he had hired an attorney and would take care of it." 402 S.C. 642, 648-

49, 742 S.E.2d 51, 54-55 (Ct. App. 2013). Once again, the basis for this decision stems from active knowledge of the complaint and active disregard for its deadlines. *See Id*. at 645. Despite the discussions of negligence and mistaken belief, neither of these are relevant to the analysis in the present, underlying matter. Further, the defendants in the *Regions Bank* failed to file anything for over ***six months*** after being served with the complaint. This evidence stands in stark contrast to the record in this case where less than three months passed between service on the LoanCare Defendants registered agents and the first actions of the Defendants after recognizing their default.

Lastly, the trial court cited *Nelson v. Coleman Co.* for the proposition that "the failure to timely forward a complaint within a company's internal departments was not good cause to warrant relief from default." (Order at 3-4 (quoting *Nelson v. Coleman Co.*, 41 F.R.D. 7, 9-11 (D.S.C. 1966)). This opinion, from 1966, operates under a pre-*Wham* framework in assessing good cause and ultimately diverges from the analysis that was to be undertaken by the trial court in this case. Even so, *Nelson* stands for the proposition that a deeper, more robust analysis is required before denying a motion to vacate default.

Moving beyond the trial court's unwarranted dismissal of the LoanCare Defendants explanation of good cause through citation to inapposite case law, the trial court also never addressed the interests of justice portion of the standard set forth in *Sundown Operating Co*. 383 S.C. at 607-08 (holding that a trial could should consider a party's explanation of good cause and any "reasons why vacation of the default entry would serve the interests of justice").

In the present matter, the LoanCare Defendants articulated the following ways in which granting their motion would serve the interests of justice: (1) Lewis' claims are baseless in light of the 2017 Foreclosure Action, (2) Lewis did not contest any of the explanations provided by Defendants in the Motion to Set Aside Default, and (3) public policy seeks adjudication of disputes

on the merits. (Motion to Set Aside). ***Not one of these reasons was addressed at all in the trial court's Order***. *See generally* (Order). Instead, the trial court merely held that the LoanCare Defendants' explanation did not satisfy the mere good cause standard. This absence of analysis, once again, rises to the level of an abuse of the trial court's discretion for failure to adhere to the standards articulated by the South Carolina Supreme Court. *See* discussion, *supra* pp. 19-21.

Unlike the facts in the cases cited by the trial court in its Order, there is no record evidence of inadvertence or negligence on the part of the LoanCare Defendants in this case. Rather, as the record demonstrates, the LoanCare Defendants' litigation tracking system inadvertently failed after upgrades. Once realizing this failure, they immediately attempted to resolve this situation by engaging Lewis in settlement negotiations, and engaging defense counsel to review and analyze six years of prior litigation and prepare the Motion to Set Aside Default. In sum, the trial court's application or lack of application of the law amounts to a fundamental abuse of discretion and error of law, warranting reversal of the Order of Judgment.

C. The Trial Court Was Required To Consider The *Wham* Factors.

A trial court may only ignore the *Wham* factors where there is sufficient evidentiary support in the record to support a finding of a lack of good cause. Otherwise, the trial court must make specific factual findings relating to the *Wham* factors:

> Once a party has put forth a satisfactory explanation for the default, the trial court ***must also 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). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 179, 463 S.E. 2d 636, 639 (Ct. App. 1995).

Sundown Operating Co., 383 S.C. at 607-08.

"Although applicable to both rules [Rule 55(c) and Rule 60(b)], the [*Wham*] factors are applied with ***greater liberality*** within the context of Rule 55(c) vis-a-vis Rule 60(b). *See* 10A Charles Alan Wright et al., Federal Practice & Procedure: Civil § 2694 at 117 (3d ed. 1998) ("Courts uniformly consider [the factors] . . . when determining whether to set aside default entries as well as default judgments. Of course, in practice the requirements are more liberally interpreted when used on a motion for relief from a default entry."). The disparate application of the default factors reflects the different standards of the two rules." *Hill v. Dotts*, 345 S.C. 304, 310 n.1, 547 S.E.2d 894 (Ct. App. 2001) (emphasis added).

In an attempt to satisfy its judicial discretion, the Order glosses over *Wham*, finding that "Defendants have also failed to satisfy the *Wham* factors for being dilatory in filing their motion for relief thirty-six (36) days after being advised they were in default." (Order at 4). While the LoanCare Defendants recognize that it is not necessary for the trial court to "make specific findings of fact for each factor," that is predicated upon "***sufficient evidentiary support on the record for the finding of the lack of good cause***." *Dixon*, 320 S.C. at 179. In this matter, the trial court made no factual findings to support any of its conclusions. Rather, the trial court engaged in reflexive decision-making based entirely on the number of days in which the Defendants did not answer Lewis's Complaint.

As this Court noted in *Yoko Kim Melton v. Chong Olenik,* "[a]lthough we recognize the court is not required to make findings as to each factor, we find it problematic to determine here whether the judge properly exercised the discretion afforded under the law since the other *Wham* factors were not discussed." 379 S.C. 45, 56 (Ct. App. 2008). Thus, this Court has routinely concluded that a trial court's order must be supported through discussion of the *Wham* factors. *See e.g.*, *Wilder v. Blue Ribbon Taxicab Corp.*, 396 S.C. 139, 145-46, 719 S.E.2d 703 (Ct. App. 2011)

(holding that under the first two factors, there was no good cause); *Richardson v. P.V., Inc.*, 383 S.C. 610, 619, 682 S.E.2d 263 (2009) (holding that the lack of meritorious defense rendered the defendant to lack good cause); *Foster v. Armstrong*, No. 2021-UP-336, 2021 S.C. App. Unpub. LEXIS 400 at *10-11 (Ct. App. Sep. 22, 2021) (holding that the lack of personal jurisdiction amounted to a meritorious defense).

Here, the LoanCare Defendants offered several valid explanations to support good cause. The LoanCare Defendants then presented the trial court with evidence relating to the timing of the motion, their meritorious defenses, and discussed the lack of prejudice to Lewis. (Motion to Set Aside).

Specifically, from the time that they recognized there was a default, the LoanCare Defendants acted quickly to engage defense counsel and otherwise resolve this matter. *See generally* (Motion to Set Aside Default). The Motion to Set Aside was expediently filed only 36 days after becoming aware of the default. The passage of this time included attempts by the LoanCare Defendants to amicably resolve this matter with Lewis and necessitated review of six years of prior litigation from the foreclosure action.

The LoanCare Defendants also presented numerous meritorious defenses, including that: (1) Lewis did not qualify for loss mitigation programs and rejected the modification offered by Defendants during the foreclosure action, and (2) Lewis is precluded from seeking relief for the "unjust foreclosure" that had already been settled by the 2017 Foreclosure Action and Supplemental Foreclosure Action. "To establish a meritorious defense, a party is not required to show an absolute defense." *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989); *Graham v. Town of Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978) ("[A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at trial. It need only be one

which is worthy of hearing or judicial inquiry because it raises a question of law deserving some investigation and discussion or a real controversy as to the real facts arising from conflicting or doubtful evidence."). *Dawson v. Charleston County Sch. Dist.*, 2017 S.C. C.P. LEXIS 280 at *7-8. Taking the LoanCare Defendants' defenses together, these would certainly result in a real controversy arising from conflicting evidence presented by the parties. As such, this dispute would be worthy and ripe for adjudication on the merits, rather than disposing of it on a technicality.

Finally, at the time of the default, litigation was only a few months old. As such, there was no prejudice to Lewis by allowing this matter to proceed further on the merits. Lewis is only seeking monetary relief and nothing about proceeding on the merits would have caused Lewis to suffer any sort of irreparable harm. *Cf. Dawson v. Charleston County Sch. Dist*., 2017 S.C. C.P. LEXIS 280 at *9-10 ("The delay [would] not [have] had an adverse effect on the ability of either party to collect evidence; neither has the resolution of the case on its merits been substantially delayed by the parties' actions.") (citing *Mictronics v. South Carolina Dept. of Revenue*, 345 S.C. 506, 512, 548 S.E.2d 223, 226 (Ct. App. 2001)). In totality, this factor also weighs in favor of LoanCare Defendants as Lewis could point to no true prejudice he would suffer had the trial court set aside the default.

While it remains clear that the LoanCare Defendants articulated a sufficient explanation to warrant consideration of the *Wham* factors, no such analysis took place. Instead, the trial court glossed over the *Wham* factors, hoping that would be sufficient. Fundamentally, it would be contrary to South Carolina law to allow such a stark and insufficient legal analysis dispose of a case such as this. The trial court's conscious disregard for the standards articulated by the South Carolina Supreme Court must be reversed and remanded for further proceedings.

II. THE JUDGMENT MUST BE REVERSED; LEWIS DID NOT PLEAD OR PROVE VALID CAUSES OF ACTION AGAINST THE LOANCARE DEFENDANTS.

Lewis's Complaint does little more that state his disappointment with the outcome of the Foreclosure Action. What is missing from the Complaint though are any valid causes of action against the LoanCare Defendants. Under South Carolina law, the Judgment cannot be sustained on conclusory allegations or speculation.

A fallacy of Lewis's argument below, which was adopted by the trial court, is that ***"all the allegations in the complaint are deemed admitted***." (9/5 Tr 4:13-15); (Order of Judgment). While South Carolina law is punitive, there is no legal support for this averment. By prohibiting the LoanCare Defendants from challenging the validity of the Complaint and otherwise inquiring into the legitimacy of Lewis's testimony during the damages hearing, the trial court committed reversible error.

The South Carolina Rules of Civil Procedure do not work in a vacuum; they work in concert. Thus, while Rule 55 generally governs the procedure by which defaults and judgments are entered, this rule does not insulate a plaintiff from his obligations under Rules 8 or 9 to plead a valid cause of action or otherwise bar a defendant from availing itself of the protections of other rules, such as Rule 12, governing defenses. *See generally* SCRCP.

Relevant here, Rules 8 requires a plaintiff to plead a "short and plain statement of the facts showing that the pleader is entitled to relief." Rule 8(a), SCRCP. Rule 9, which is relevant to Lewis's claims for fraud, requires more and provides that a plaintiff must plead allegations of fraud "with particularity." Rule 9(b), SCRCP. Where a plaintiff fails to adequately plead a cause of action as set forth in Rules 8 and 9, Rule 12(b)(6) allows for dismissal.

In the context of defaults, Rule 55 finds its roots in Rule 8(d), which provides that a defense that is not raised is, effectively, waived:

> **(d) Effect of Failure to Deny.** Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading. Averments in a pleading to which no responsive pleading is required or permitted shall be taken as denied or avoided.

Despite the ostensible severity of Rule 8(d), Rule 12 provides that certain defenses are ***not waived*** by virtue of failing to respond. Specifically, Rule 12(h) provides that a defendant does not waive the defense of failure to state a cause of action when not raised in a defensive pleading or motion, and such a defense can be raised up to and including the time of trial:

> **(h) Waiver or Preservation of Certain Defenses.**
> **(1)** A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.
>
> **(2)** ***A defense of failure to state a cause of action upon which relief can be granted***, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim ***may be made*** in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or ***at the trial on the merits***.

Rule 12(h), SCRCP.

Consequently, while a defendant does "admit the truth of the allegations, set out in the plaintiff's declaration or complaint," a defendant does ***not*** admit the validity of a cause of action or the sufficiency of conclusory allegations. (Order of Judgment at 5 (quoting *Solley v. Navy Fed. Credit Union, Inc.,* 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012)). South Carolina law is replete and long-established that "[a] party seeking a default judgment is entitled to only such relief as is framed by his pleading, and then only to the extent requested therein." *Masters v. Rodgers Dev. Group*, 283 S.C. 251, 321 S.E.2d 194, 196 (Ct. App. 1984) (quoting *Mut. Savings & Loan Ass'n v. McKenzie*, 274 S.C. 630, 266 S.E.2d 423, 424 (1980)).

In *Gadsden v. Home Fertilizer and Chem. Co.*, 89 S.C. 483, 72 S.E. 15 (1911), the Supreme Court of South Carolina thoroughly discussed this legal principle. There, a defendant took a default on plaintiff's breach of contract claim. *Id.* at 16. After the default judgment was entered, the defendant appeared and sought to vacate the default judgment based on plaintiff's failure to state a claim for special damages. *Id.* The trial court found that the allegations in the complaint, coupled with the plaintiff's testimony were deemed admitted and were undisputed and, thus, denied defendant's motion. *Id.* The supreme court reversed holding that the default judgment was "wholly unsupported by the evidence" and was "without authority of law." *Id.* at 489.

In so holding, the *Gadsden* Court undertook a detailed analysis of the law relating to defaults and the necessary quantum of evidentiary proof to sustain a judgment. *Id.* at 487-89. As the *Gadsden* Court explained:

> The authorities, with practical unanimity, agree that ***a default admits only what has been well pleaded, and that it does not forfeit or affect the rights of a defendant, except as to the matters necessarily admitted by the default***. 23 Cyc. 571. Therefore, if the complaint fails to state facts sufficient to constitute a cause of action, any judgment thereon, except one of dismissal, goes beyond the allegations of the complaint; and so, if the complaint states facts which entitled plaintiff only to a certain kind of relief, or to relief only to a certain extent, a judgment by default which gives a different kind of relief, or relief to a greater extent is without authority of law and cannot be sustained. In *Gillian v. Gillian*, 65 S.C. 129, 43 S.E. 386, Mr. Justice Gary, speaking for the court, quotes with approval from 6 Enc. Pl. & Pr. 115, as follows: "The defendant by waiving a contest and suffering a default to be taken against him, admits the truth of the allegations, set out in the plaintiff's declaration or complaint; and the same rule applies to a judgment final after overruling a demurrer." Hence the default authorizes the entry of any judgment warranted by the facts alleged. And where the facts pleaded constitute a cause of action, the effect of the default is to establish it definitely. ***But the default does not admit that the facts pleaded are sufficient to constitute a cause of action, as the effect of the confession is limited to the material issuable facts well pleaded in the declaration or complaint. Nor does it admit an allegation which constitutes a mere conclusion of law***. The facts pleaded must accordingly be sufficient to form a legal basis for the judgment taken by default, or it will be reversed on appeal or set aside on proper application. [*Id.*]

This case is not unlike *Gadsden*. In his Complaint, Lewis set forth bare bones allegations relating to various attempts to obtain loan modification approval. Lewis merely repeated the statements in his Complaint at the damages hearing and did not add any competent testimony with evidentiary value. When the LoanCare Defendants attempted to cross-examine Lewis regarding his conclusory assertions, the trial court stopped them. The LoanCare Defendants were then completely barred from addressing Lewis's failed loan modification attempts as this evidence was not relevant to damages:

> [Counsel for the LoanCare Defendants]: . . . The testimony that the court just heard was that [Lewis] though he had this modification in 2018, because he submitted a loan application. Okay. He - - and I have a document right here that he signed that is - - impeachment where he signs.
>
> THE COURT: How does that go to damages?
>
> [Counsel for the LoanCare Defendants]: That's his whole claim, that's not pled in the complaint that is just what he said in direct.
>
> THE COURT: But the damages that they are seeking as a result of the allegations in the complaint it had been admitted by file.
>
> [Counsel for the LoanCare Defendants]: . . . That's why - - that's why I'm trying to make that point, Your Honor. So damages, can't they cannot give - - flow from a claim, that failed to state a claim.
>
> THE COURT: I am going to sustain this part of the - - I'm gonna sustain this objection.

(9/5 Tr. 27:13-28:5); *see also* (*Id.*, Tr. 22:20-21 (". . .let's make sure you keep it on the damage")); (*Id.*, Tr. 28:21-22 (sustaining an objection on a similar line of questions)).

As counsel for the LoanCare Defendants argued, the facts that counsel was attempting to explore were not contained in the Complaint and were, therefore, not admitted by the default. Nowhere in the Complaint did Lewis identify an enforceable contract with the LoanCare Defendants—he merely made averments of "attempts" to modify his Mortgage. (Complaint, ¶¶ 4-

18). The Complaint alleges the complete opposite of a binding contract, asserting that that LoanCare Defendants "terminated" the loan modification and "continued to deny Plaintiff's modification attempts." (Complaint, ¶ 18).

The default in this case did not alter Lewis's burden of proof. It was still necessary for Lewis to plead valid causes of action against the LoanCare Defendants, and present prima facie evidence to support his claims and damages. In fact, Rule 55, governing defaults and judgments thereon, supports this principle and provides for a right of an evidentiary hearing for the purposes of determining the amount of damages and "***to establish the truth of any averment by evidence***":

> **(b) Judgment. Judgment by default may be entered as follows:**
>
> *** * ***
>
> **(2)** ***If, in order to enable the court to enter judgment or to carry it into effect, it is necessary*** to take an account or to determine the amount of damages or ***to establish the truth of any averment by evidence or to make an investigation of any other matter***, the court may conduct such hearing or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute.

Rule 55(b)(2), SCRCP.

Notwithstanding the default, the LoanCare Defendants were entitled to explore Lewis's testimony on cross-examination and impeach him regarding his conclusory and unsupported allegations. The trial court did not allow the LoanCare Defendants this opportunity and completely ignored the arguments made in their Memorandum when entering its Judgment.

The severity of the sanctions against a defendant when a default is not vacated mandates strict compliance with the remainder of Rule 55's provisions addressing a defending party's rights prior to entry of a judgment on damages. The trial court in this case did not adhere to Rule 55's procedure and require Lewis "establish the truth of any averments by evidence" or otherwise "make an investigation of any other matter," such as the validity of Lewis's causes of action.

Instead, the trial court simply accepted numerous conclusory allegations in Lewis's Complaint as admitted and entered an unmitigated Judgment in his favor based on self-serving testimony and incompetent evidence. *But cf.* (Memorandum (addressing insufficiency of Lewis's causes of action)).

When a judgment, such as that here, "is without authority of law" it constitutes "reversible error." *Masters*, 321 S.E.2d at 196 (quoting *McKenzie*, 266 S.E.2d at 424)); *see also Gadsden.*, 89 S.C. at 489 (same); *3D Land Holding, LLC v. Johnson*, 2024 S.C. App. Unpub. LEXIS 261, 2024 WL 3441395 (App. July 17, 2024) (unpub.) (discussing South Carolina's well established legal principle that a default admits the well pled allegations of the complaint, but it does not admit the validity of a cause of action); *Cordero v. Moore*, 2024 S.C. App. Unpub. LEXIS 187, *3-4 2024 WL 2319457 (Ct. App. May 22, 2024) ("[I]f a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and therefore reversible error.") (quoting *Masters*, 321 S.E.2d at 196)). Accordingly, because the trial court's Judgment is based on Lewis's unfounded allegations, which it precluded the LoanCare Defendants from exploring, the Judgment is without authority of law and must be reversed.

III. THE JUDGMENT MUST BE REVERSED; THE TRIAL COURT ERRED AS A MATTER OF LAW BY FINDING THAT LEWIS PRESENTED A PRIMA FACIE CASE OF DAMAGES.

A. Lewis Is Collaterally Estopped From Claiming Equity In The Property.

The Judgment does not address the LoanCare Defendants' argument relating to collateral estoppel. (Judgment). Instead, the Judgment seemingly dispenses with this argument by addressing the LoanCare Defendant's purported unclean hands. (Judgment at 6 ("Under these admitted facts, it would be inequitable for Defendants to be able to use an event they created as a shield against liability."). The Judgment cites to *Emery v. Smith,* 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct.

App. 2004), for this proposition, which provides: "He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." (Judgment at 6).

Lewis never argued or otherwise pled a defense of unclean hands, *see* Rules 8 & 12, SCRCP (requiring defenses be pled)—it was first presented in the Judgment adopted by trial court, post-damages hearing, and without providing the LoanCare Defendants an opportunity to challenge such a defense through evidence or argument. Regardless, the holding in *Emery* is wholly inapplicable to this case. *Emery* involved a marital dispute wherein the former wife sought 25% of the former husband's military benefits. 603 S.E.2d at 599. In response to the former-husband's laches defense, the court held that such a defense could not be pursued due to his own unclean hands. *Id.* at 605. Lewis did not plead a defense of unclean hands and such a defense is not at issue. The issue is whether Lewis can assert a valid claim for damages against the LoanCare Defendants based on the existence of the judgment against him in the Foreclosure Action, which Lewis admitted extinguished his interests and equity in the Property. (9/5 Tr. 20:4-10, 31:17-21).

Controlling South Carolina law prevents parties (and the Courts) from the inevitable death spiral scenario of subsequent harmed-by-judgment lawsuits, which is all that Lewis asserted in this case. *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (1997) ("Issue preclusion only bars relitigation of particular issues actually litigated and decided in the prior suit."); *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008) ("Under the doctrine of collateral estoppel, also known as issue preclusion, when an issue has been actually litigated and determined by a valid and final judgment, the determination is conclusive in a subsequent action whether on the same or a different claim…"); *Campbell, Inc. v. Prc Precast*, 2018 S.C. C.P. LEXIS

685, *3 ("Issue preclusion bars the re-litigation of only the particular issues that were actually litigated and decided in the prior suit.").

All of Lewis's damages in this case flowed directly from the Foreclosure Judgment and Lewis was barred from asserting his cause of action for damages through application of the doctrine of collateral estoppel. Collateral estoppel arises when "the issue in the present lawsuit was: (1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. DOT*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009).

Here, the debt owed by Lewis to the LoanCare Defendants, the value and subsequent sale of the Property, was ***actually litigated*** through the Foreclosure Action and ultimately adjudicated in 2022. (Supplemental Judgment). The 2022 Supplemental Foreclosure Judgment remains a valid, binding and undisturbed judgment, a fact admitted by Lewis. (9/5 Tr.).

The Foreclosure Action and judgment also ***directly and conclusively determined the value*** of the Property ***at issue in this litigation***. The law in South Carolina clearly provides that a judicial sale transfers the interests of the mortgagor (Lewis) to the bona fide purchaser, thereby extinguishing any and all interest that Lewis may have had in the Property. *See Wachesaw Plantation E. Cmty. Servs. Ass'n v. Alexander*, 420 S.C. 251, 264, 802 S.E.2d 635 (Ct. App. 2017) (holding that "the period in which Homeowner was allowed to exercise his right of redemption expired upon the acceptance of the highest bid at the judicial sale"); *F.C. Enters. v. Dibble*, 335 S.C. 260, 266, 516 S.E.2d 459, 462 (Ct. App. 1999) ("[A] purchaser at a judicial sale secures the same title and rights in the property as the person whose interest was sold."); *Ex parte Keller*, 189 S.C. 26, 41, 199 S.E. 909, 916 (1938) ("When a man buys a piece of property at a judicial sale, he secures every interest in the property which is covered by the proceedings in the action."); 4 Powell

on Real Property § 37.40 (2024) ("After confirmation of the sale, the official, master or referee executes and delivers a deed to the successful bidder. Such deed passes to the purchase all interests of the mortgagee and the rights of all the participants in the mortgagor's interest who had been joined as parties defendant.") *see also* S.C. Code Ann. § 15-39-830 ("Upon a judicial sale being made . . . the officer making the sale must execute a conveyance to the purchaser which shall be effectual to pass the rights and interests adjudged to be sold."); S.C. Code Ann. § 15-39-870 (providing that "the proceedings under which such sale is made shall be deemed res judicata . . .").

The outcome of the Foreclosure Action ***is controlling*** in this case with respect to Lewis's claim for damages in the form of equity in the Property. Damages are meant to place a plaintiff in the position he would have been but for a defendant's actions, but a plaintiff ***should not be placed in a better position***. *Clark v. Cantrell*, 339 S.C. 369, 378, 529 S.E.2d 528, 533 (2000).

The foreclosure sale unequivocally extinguished all of Lewis's interests in the Property, including any equity that he may have had (which he did not). Lewis admitted this. (9/5 Tr. 20, 30). Because Lewis did not possess any equity in the Property, he cannot now assert a cause of action for damages to recover equity in the Property.

Lewis chose his path, decided against redemption of the Property, and voluntarily left. He cannot now attempt to re-litigate the issue to imbue equity back to himself in the Property after a valid, undisturbed foreclosure judgment revoked such rights. It is not the LoanCare Defendants who have come here with unclean hands as suggested by the trial court. On the contrary, it is Lewis who has come to this Court with unclean hands, using a procedural technicality of default to obtain damages to which he is legally and factually not entitled.

Principles of collateral estoppel apply here and bar Lewis from asserting any causes of action against the LoanCare Defendants that arise out of the underlying Foreclosure Action. The Judgment, therefore, must be reversed.

B. Lewis Failed To Present Prima Facie Evidence Of Damages.

Assuming arguendo that Lewis could claim damage as alleged in his Complaint, it was improper for the trial court to allow Lewis to present—and for the trial court to consider—evidence of unmitigated damages, without exception. This is exactly what the trial court allowed in this proceeding.

As the trial court acknowledged, "[a] defendant in default admits liability but not the damages . . . ." (Judgment at 5 (quoting *Solley v. Navy Fed. Credit Union, Inc.*, 397 S.C. 192, 203, 723 S.E.2d 597, 603 (Ct. App. 2012) (citing *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981))). "[T]he defaulting defendant has conceded liability. ***However, a defaulting defendant does not concede the [a]mount of liability***." *Solley*, 397 S.C. at 203, 723 S.E.2d at 603 (quoting *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978)); Rule 55(b), SCRCP (requiring the trial court "establish the truth of any averment by evidence").

Regardless of the existence of a default, a plaintiff is not entitled to endless damages:

> The purpose of actual or compensatory damages is to compensate a party for injuries suffered or losses sustained. The goal is to restore the injured party, as nearly as possible through the payment of money, to the same position he or she was in before the wrongful injury occurred.

Clark, 339 S.C. at 378. Thus, even "[i]n a default case, the plaintiff must prove . . . the amount of his damages, and such proof must be by a preponderance of the evidence." *Wells Fargo Bank, Nat'l Ass'n v. Marion Amphitheatre, LLC*, 408 S.C. 87, 757 S.E.2d 557 (Ct. App. 2014) (quoting *Solley*, 397 S.C. at 204, 723 S.E.2d at 603 (citation omitted)); *Howard v. Holiday Inns, Inc.*, 271

S.C. 238, 241-42, 246 S.E.2d 880, 882 (1978). "If the plaintiff's proof is speculative, uncertain, or otherwise insufficient to permit calculation of his special damages, his claim should be denied. *See Piggy Park Enterprises, Inc. v. Schofield*, 251 S.C. 385, 162 S.E.2d 705 (1968)." *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 528, 374 S.E.2d 505, 507 (Ct. App. 1988).

In his Complaint, Lewis sought special and consequential damages for lost equity in the Property of over four hundred thousand dollars. (Complaint). When determining loss value of a property, South Carolina courts calculate damages "between the contract price and either (1) the fair market value of the house on the date of the breach or (2) the price at which the house is subsequently sold." *Jackson v. Midlands Human Res. Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct. App. 1988); *see also Payne v. Holiday Towers, Inc.*, 283 S.C. 210, 216, 321 S.E.2d 179, 182 (Ct. App. 1984) ("Where an action lies for deception in the sale of real property, actual damages at common law may be measured by the difference between the purchase price of the property and its fair market value."). Like other damages, these damages must be supported by competent, admissible evidence. *Id.*

Lewis's damages were based almost exclusively on his fabricated calculation of equity, gleaned from the "Recommended List Price" of $801,000, less the amount the Property sold for at the foreclosure sale, $470,000, which he equated to be $461,393. (9/5 Tr. 12:15-25). Lewis's math is incorrect, as this amount would calculate to $331,000. Instead, from the Judgment, it appears that this number is culled from the "Recommended List Price" of $801,000.00 less the amount owed on the original, but foreclosed Mortgage, totaling $339,607.00. (Judgment).

No competent evidence was presented to support these damage calculations. Although the Property appraised in 2020 for $801,000, the evidence established that the actual value of the Property was at most $760,000, which is the amount the Property sold for in 2022, post-

foreclosure. (9/5 Tr.). However, as previously discussed, any equity Lewis had in the Property was extinguished at the time of foreclosure. *See* discussion, *supra* pp. 33-37. Thus, even if this Court were to allow Lewis to recover his equity as damages, the quantum of evidence establishes that Lewis had negative equity at the time of the foreclosure sale due to the $528,000 he owed on the combined mortgages, making his damages zero. (*Id.* Tr. 3013-25).[2]

It was incumbent on the trial court to consider only the competent evidence and award damages, if any, consistent with those Lewis was entitled to recover. The trial court did not do so in this case and, instead, simply accepted Lewis's self-serving, legally unsupported, and speculative evidence. Accordingly, the Judgment is without authority of law and must be reversed on this ground, too.

CONCLUSION

WHEREFORE, based on the above facts and legal authorities, Appellants LoanCare LLC and Lakeview Loan Servicing LLC respectfully request this Court reverse the Order of Judgment and either (i) remand for entry of judgment in the LoanCare Defendants' favor or, in the alternative, (ii) remand for further adjudication of this matter on the merits. The LoanCare Defendants further request this Court enter any such other and further relief as it deems necessary and appropriate.

Dated: July 16, 2025.

Respectfully Submitted,

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[2] Even if Lewis could rely on the post-resale value of the Property as the foundation for the calculation of his damages (he cannot), his damages in the equity of the Property could not have exceeded $232,000 ($760,000 minus $528,000).

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