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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
Haigh Porter, Master-in-Equity

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Appellate Case No. 2025-001115
Civil Action No. 2024-CP-21-00548

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Shirley Reed,

Respondent,

v.

OHM Florence, LLC,

Appellant,

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# INITIAL BRIEF OF APPELLANT

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## STATEMENT OF ISSUES ON APPEAL

I. Did the master-in-equity err in declining to set aside default where the complaint was not properly served on the defendant?

II. Did the master-in-equity err in declining to set aside default where good cause existed to set aside the default?

III. Did the master-in-equity err in entering a damages award that was excessive not supported by admissible evidence?

## STATEMENT OF THE CASE AND FACTS

### The Subject Complaint

In this action, Respondent Shirley Reed ("Respondent" or "Ms. Reed") brought claims against OHM Florence, LLC ("Appellant" or "OHM"), alleging OHM to be liable for injuries Ms. Reed sustained when she allegedly "stepped on loose rocks in the parking lot causing her to fall to the ground backwards" at a restaurant in Florence, South Carolina called the Thunderbird Country Buffet ("Thunderbird") on November 8, 2023. (Complaint at ¶¶ 1–2, 10, 12 (R. _____)). Although Ms. Reed's Complaint alleged upon information and belief that OHM "was in possession and control of the premises" and doing business as Thunderbird Country Buffet (*see id.* at ¶¶ 2, 7 (R. ____)), OHM later submitted evidence undisputed by the parties showing that Thunderbird was a separate entity which had leased the premises from OHM for the purpose of operating the restaurant (*see* Lease Agreement, Exhibit 1 to Renewed Mot. to Set Aside Entry of Default or, Alt., for Summary Judgment and Incorp. Mem. of Law in Support (R.p. ________)).

Ms. Reed alleged three causes of action against OHM, the only named defendant: (1) premises liability to Ms. Reed as a business invitee; (2) negligence in allegedly creating, failing to remedy, or neglecting to warn of the condition presented by the alleged loose gravel; and (3) vicarious liability for the actions of the Thunderbird restaurant's employees with respect to their duty to maintain a reasonably safe environment for customers. (*See* Compl. at ¶¶ 13–19, 20–23, 24–28 (R. _____)). Notably, as will be discussed in Section II of this Brief regarding OHM's meritorious defenses as to liability, none of these causes of action are ultimately viable where OHM merely leased the subject premises to Thunderbird, which owned, operated, and maintained the restaurant.

**The Default**

Ms. Reed filed her Summons and Complaint on March 5, 2024, approximately four months after the subject incident at the restaurant. (*See* Compl. at ¶ 10 (R.p. ____)). On April 25, 2024—long after the expiration of her ten-day window to do so under Rule 5(d), SCRCP—Ms. Reed filed a Certificate of Service purporting to show that on March 18, 2024, service had been effected upon Sagar Patel as registered agent for OHM at the registered address of 340 Plantation View Lane, Mount Pleasant, SC 29464. (*See* Certificate of Service (R.p. _____)). Sagar Patel, however, was not in the state of South Carolina at the time of this purported service. (*See* Amended Motion to Set Aside Default (R.p. _____)). Rather, as established by Mr. Patel's affidavit and by his rental car and flight receipts, he was traveling from Denver, Colorado to Atlanta, Georgia that day. (*See id*. at Exhibits 1–4 (R.p. ____)). It was Mr. Patel's accountant, Kevin Leichhardt, who resides at the registered address in Mount Pleasant with his wife, that is believed to have signed for receipt of the service of process. (*See* Transcript of March 31, 2025 Hearing at 8 (R.p. ____)).

The day after filing her certificate of purported service, April 26, 2024, Ms. Reed filed a Request for Default, citing the Certificate of Service and representing that OHM's registered agent had accepted service on March 18, 2025. (*See* Request for Entry of Default Judgment (R.p. ____)). The Court entered an Order of Default on May 2, 2024, finding that "proper and good service was made upon Defendant pursuant to Rule 4(d)(1), SCRCP." (*See* Order of Default at 2 (R.p.____)). Ms. Reed then moved for a damages hearing. (*See* Plaintiff's Motion and Order for Reference (R.p. ____)). On May 9, 2024, the case was referred to Judge Haigh Porter as Master-in-Equity for a damages hearing. (*See* Order Appointing Master (R.p. ___)).

On June 21, 2024, approximately fifty days after the entry of default (three months after the purported service of the Complaint; eight months after the subject incident), OHM filed a

Motion to Set Aside Entry of Default. (*See* Motion to Set Aside Entry of Default (R.p. ____)). In its motion, OHM explained, among other arguments, that prior to the purported service of the Complaint, OHM had received a preservation letter from Ms. Reed which—likely due to Ms. Reed's misapprehension of OHM's relationship with the Thunderbird restaurant—requested material (surveillance footage) which OHM did not possess. (*See id*. at 1–3 (R.p. _____)). Reasoning that it could not provide what it did not possess, OHM did not forward the document to its insurer, and when it eventually received Ms. Reed's Complaint, OHM mistakenly concluded that responsive action was still unnecessary, and it did not forward that document to its insurer, either. (*See id*.). Upon subsequent realization of the nature and purpose of the Complaint, however, OHM's insurer was notified and, within just a few days, retained counsel who submitted the Motion to Set Aside Default. (*See id*.).

On August 1, 2024, OHM filed an Amended Motion to Set Aside Default, which provided the court with further argumentation and evidence in favor of relief from default. (*See* Amended Motion to Set Aside Default (R.p. _____)). In the amended motion, OHM reiterated its prior explanation of how the default occurred and again advanced arguments showing that the factors for setting aside default under Rule 55(c), SCRCP, weighed in OHM's favor because (1) it had promptly moved for relief, (2) it had multiple meritorious defenses to liability (such as that the elderly Ms. Reed's already-evident difficulties with walking may have predominated in causing her injuries), and (3) Ms. Reed would not be prejudiced by allowing OHM to litigate the case and defend itself on the merits. *See generally id*. (R.p. ____)). OHM also advanced the following two additional arguments regarding service.

First, OHM argued that it had not been properly served, because under S.C. Code § 15-9-210(a), the only authorized person for service of process on a domestic corporation like OHM is

the corporation's registered agent, but OHM's registered agent in this case, Sagar Patel, was not present in the state at the time the purported service was effected. (*See* Amended Motion to Set Aside Default at 2 (R.p. _____)). As evidence in support of this argument, OHM submitted the Affidavit of Sagar Patel along with car rental and plane flight receipts, showing that Mr. Patel was traveling out of state at the time of the purported service upon him. (*See* Exhibits 1–4 to Amended Motion to Set Aside Default (R.p. ____)). OHM further argued that the statute does not authorize a registered agent to deputize a sub-agent for service on a corporation, and that the Rule 4(d)(1) analysis of alternate service on persons "of suitable age and discretion then residing therein" does not apply to the requirements for service upon a registered agent. (*See* Amended Motion to Set Aside Default at 2 (R.p. _____)). Because Rule 4(d)(8), SCRCP, provides that "default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person," OHM argued, default should be aside in this case. (*See id.*)

Second, OHM argued that Ms. Reed was not entitled to the procedural remedy of a default judgment where she herself did not comply with the procedural rules for obtaining a default. Because allowing a plaintiff to prevail through default is an unfavored remedy that risks an inequitable outcome in favor of enforcing conformity with civil procedure, OHM argued that it should be relieved from default in this case, where Ms. Reed not only failed to fulfill service requirements, but also failed to file proof of service within ten days thereof as required by Rule 5(d), SCRCP—instead waiting thirty-eight days, almost four times the allotted period, to file her proof service. (*See* Amended Motion to Set Aside Default at 4–5 (R.p. _____)).

Ms. Reed filed a Memorandum in Response to OHM's amended motion to set aside the default on August 7, 2024, and a hearing was held on the motion before Judge Porter on August

12, 2024. (*See* Plaintiff's Mem. in Response to Defendant's Am. Motion to Set Aside Entry of Default (R.p. ____)). At the hearing before Judge Porter, OHM reiterated its arguments that service was not properly effected on the registered agent and that Ms. Reed had not properly followed procedural rules for obtaining a default. (*See, e.g.,* Transcript of August 12, 2024 Hearing at 5:1–7:10 (R.p. ____)). OHM further argued as it had in its motion that whether the default was validly entered or not, good cause existed to set it aside because OHM had timely moved for relief, OHM had meritorious defenses as to liability, and Ms. Reed would not be prejudiced by allowing the case to proceed to litigation on the merits due to the recent nature of the incident. (*See, e.g., id*. at 8:17–10:7; 12:7–16 (R.p. ____)). Ms. Reed opposed these arguments, particularly as to whether she had properly effected service on the registered agent and whether OHM had presented evidence of meritorious defenses to liability. (*See, e.g., id*. at 13:6–20:21 (R.p. ___)).

Responding to the parties, Judge Porter limited his analysis to the issue of whether service had been validly effected on the registered agent, focusing on whether the defendant had received actual notice of the summons and complaint and denying OHM's motion on that basis—never engaging with the *Wham* factors for determining whether good cause exists to set aside default. (*See* Transcript of August 12, 2024 Hearing at 22:18–27:12 (R.p. ____)). On September 4, 2024, the court entered an Order Denying Defendant's Amended Motion to Set Aside Entry of Default, again basing its decision entirely on the issue of whether service had been validly effected upon the registered agent. (*See* Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. ____)).

On September 6, 2024, OHM filed a motion to reconsider this ruling, in which it requested reconsideration of the order and noted that the court had not ruled upon several issues, including the issue of whether good cause existed to set aside default under the three-factor test. (*See* Motion

to Alter or Amend a Judgment (Rule 59(e), SCRCP) (R.p. _____)). A hearing was held before Judge Porter on the motion to reconsider on October 9, 2024, at which OHM explained its need for a ruling on these issues, including whether the issue of whether good cause existed to set aside default under the *Wham* analysis. (*See* Transcript of October 9, 2024 Hearing at 4:9–18; 11:2–12:8 (R.p. ____)).

Although the court's prior order had made no mention of good cause for setting aside default, instead merely concluding that "the Court found it had personal jurisdiction over Defendant, and Defendant was properly put on notice to the proceedings" (*see* Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. ____)), Ms. Reed contended at the hearing that this issue had been sufficiently addressed by the court already. (*See* Transcript of October 9, 2024 Hearing at 4:8–14 (R.p. ____) ("Your Honor, please, you referred to your Order. You found that—those factors in there. And you don't have to go and be specific and answer all this and go over all this again. Your Honor, your Order was sufficient. It's good enough to stand up on appeal.")). Judge Porter did not address the issues presented by OHM during the hearing, but indicated an intention to review the record and examine the *Wham* case before issuing an order. (*See id*. at 14:13–16:24 (R.p.___) ("This doesn't answer your questions…. But, anyway, I will take this under advisement, and I'll go back and fine-tooth nail this—the record in this, as well as some of my materials on some of these cases that you folks—in particular, the Wham case.")). The court's subsequent October 30, 2024 Form 4 Order denying the Motion to Reconsider, however, did not address the issue of good cause. (R.p.____).

On March 20, 2025, OHM filed a Renewed Motion to Set Aside Entry of Default or, Alternatively, for Summary Judgment and Incorporated Memorandum of Law in Support. (R.p. _____). With that motion, OHM produced new evidence to the court in the form of a copy of the

lease agreement between OHM and Thunderbird (*see* Lease Agreement, Ex. 1 to OHM's Renewed Motion (R.p. ____)). OHM explained that in 2018 the Lease Agreement turned over general control of the subject premises to its lessee, Thunderbird, including such general obligations as landscaping and sweeping, while retaining only certain structural obligations such as maintenance of the parking lot, roof, and exterior walls, as is typical of a commercial lease. (*See* Renewed Motion to Set Aside Entry of Default or, Alternatively, for Summary Judgment and Incorporated Memorandum of Law in Support at 4–5 (R.p. ___)). Citing cases showing that lessors are not typically liable to their lessee's invitees for conditions on the leased property under premises liability,[1] OHM argued that it thus had another strong meritorious defense counseling in favor of relief from the disfavored remedy of default judgment, further asserting that OHM should properly be entitled to summary judgment. (*See id.*).

**The Damages Hearing**

A hearing was held on both OHM's renewed motion for relief from default and on Plaintiff's claimed damages on March 31, 2025. (*See* Transcript of March 31, 2025 Hearing (R.p.

[1] Generally, the owner of land, who possesses "superior knowledge of conditions on the premises within his control," has a duty to warn others "of latent hazardous conditions on his land." *Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). But if the owner of the land leases his property to another, "the law of property regards the lease as equivalent to a sale of the premises for the term of the lease[;] [i]n the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee." *Id.* Once the lessor surrenders the premises in good condition, he "typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee." *Id.* Courts have thus routinely held that lessors are not liable for the injuries caused by purportedly hazardous conditions that developed after the lessor turned over the premises to its lessee. *See, e.g.*, *Byerly* at 443 (lake owner had no duty to discover and warn of a latent hazardous condition which it did not create and about which it had no knowledge); *Smith v. Oil Ship, Inc.*, Case No. 2:22-cv-3877-RMG, 2023 WL 122029, at *2 (D.S.C. Jan. 5, 2023) (no possibility lessor was liable to plaintiff for slip and fall claims which arose after the premises was delivered to the lessee in good condition).

____)). At the hearing, the parties appeared again before Judge Porter, and OHM argued that the Lease Agreement it had submitted to the court constituted new evidence of OHM's meritorious defenses against liability, supporting good cause to set aside default. (*See id*. at 4:18–6:19; 10:24–11:4 (R.p. ____)). Ms. Reed contended that sweeping the premises should be considered OHM's obligation under the lease as part of its obligation to maintain the parking lot, roof, and exterior walls of the premises. (*See id*. at 6:20–7:11 (R.p.___)). Ms. Reed then raised the issue of service on the registered agent as previously argued by the parties (*see id*. at 7:12–10:2 (R.p.___)), to which OHM responded (*see id*. at 9:5–9; 10:6–10:24 (R.p.___)). Judge Porter denied the motion on the record without comment. (*See id*. at 11:5 (R.p. ___)).

The court then invited Ms. Reed to present evidence of her damages. (*See id*. at 11:6 (R.p.___)). Ms. Reed proceeded to enter a number of items into evidence against the objections of OHM on grounds of failure to authenticate the evidence. Specifically, Ms. Reed (1) entered medical records as evidence on the assumption they were related to the subject incident absent any authenticating testimony by Ms. Reed or any medical provider, despite OHM's objection that the elderly and ailing Ms. Reed had numerous serious health problems ongoing before the subject incident occurred and also afterward (*see, e.g., id*. at 11:6; 26:2–27:2; 37:19–54:13 (R.p.___)); (2) entered purported medical bills into evidence without authenticating testimony from any party who was responsible for paying the alleged bills or seeking payment for the alleged bills—where a witness for Ms. Reed admitted no bills had yet been paid and where the purported bills contained language stating that they were not, in fact, bills (*see, e.g., id*. at 15:13–20; 22:1–22:18; 25:3–27:2 (R.p.___)); and (3) entered power of attorney documents with no testimony from any witness who created, signed, or witnessed the documents (*see, e.g., id*. at 16:5–18:5; (R.p.___)).

Ms. Reed then proceeded to offer expert testimony in the form of a medical cost projection report by her expert, Vanessa Teachey, despite OHM's objections as to the reliability and, by extension, admissibility, of the report. (*See id*. at 54:17–75:14 (R.p.___)). In opining on alleged future medical costs in her report, Ms. Teachey relied heavily on the cost of residence at a skilled nursing facility, which she projected to be $9,939 per month. (*See id*. at 65:9–23 (R.p. ____)). But the medical records previously submitted by Ms. Reed showed that she was already residing at a skilled nursing facility at less than one-fifth this cost, $1,700 per month. (*Id*. at 63:21–65:1 (R.p. ____)). When cross-examined on this issue, Ms. Teachey admitted that she was not even aware that Ms. Reed was currently residing in a skilled nursing facility. (*Id*. at 63:12–14 (R.p. ___)). The court did not rule on OHM's objection to Ms. Teachey's testimony during the hearing, and it made no finding as to the reliability of Ms. Teachey's report. (*See id*. at 75:9–14 (R.p.___)). Ultimately, Ms. Reed purported to show $1.14 million in medical bills and additional future medical costs. (*See id*. at 68:2–7 (R.p.___)).

On April 14, 2025, Judge Porter entered an Order of Judgment with a corresponding Form 4 Order of the same date, in which he denied OHM's renewed motion for relief from default and awarded Ms. Reed a judgment against OHM of well over four million dollars ($4,161,541.00). (R.p. ____). Neither order dealt individually with OHM's evidentiary objections or made any finding as to the reliability of Ms. Reed's expert's future cost report, on which the Order or Judgment relied. (*See* Order of Judgment at 5 (R.p.___)).

OHM filed a Motion to Alter or Amend Pursuant to Rule 59(e) or, in the alternative, Motion for Relief from Judgment Pursuant to Rule 60(b) on April 24, 2025. (R.p. ____). In that motion, OHM asserted that the damages award was excessive and unsupported by the evidence, moved that the court reconsider its order, and requested definitive rulings on several issues that had not

been directly ruled upon, including whether the purported service satisfied S.C. Code § 15-9-210(a); whether good cause existed to set aside default; whether Ms. Reed's proffered medical records, purported medical bills, power of attorney documents were properly authenticated; and whether Ms. Reed's proffered expert medical cost projection was reliable and admissible. (*See id.* (R.p. _____)).

Ms. Reed filed a memorandum in opposition to OHM's motion on April 28, 2025. (*See* Plaintiff's Memorandum in Opposition to Defendant's Motion to Alter or Amend or in the Alternative Motion for Relief from Judgment (R.p. _____)). On May 15, 2025, Judge Porter entered a Form 4 Order denying OHM's motion to reconsider or for relief from judgment. (R.p. ____). This appeal follows.

## STANDARD OF REVIEW

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 265, 750 S.E.2d 615, 619 (Ct. App. 2013) (quoting *Roberson v. S. Fin. of S.C., Inc.,* 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Roberson,* 365 S.C. at 9 (citing *Mitchell Supply Co., Inc. v. Gaffney,* 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct.App.1988)). "An abuse of discretion in setting aside a default judgment occurs when the trial court issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Roberson,* 365 S.C. at 9 (quoting *In re Estate of Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

"[T]he standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause'…. [r]equir[ing] a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Id*. (citing Rule 55(c), SCRCP). "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." *Id*. at 607–608 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 464, 381 S.E.2d 499, 501 (Ct. App. 1989)).

"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)." *Sundown Operation Co.*, 383 S.C. 601 at 608 (citing *Ricks v. Weinrauch,* 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987)). "Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.'" *Id*. (quoting Rule 60(b), SCRCP).

## ARGUMENT

### I. Default Based on Purported Service on Registered Agent Was Not Proper Because Registered Agent Was Not Present for the Purported Service.

As described above, a default was entered against OHM in this case based upon a Certificate of Service representing that the Summons and Complaint had been personally served on OHM's registered agent, Sagar Patel, at the registered address. (*See supra* at 3–8). However, as also described above, Mr. Patel was not personally present at that address on the date of service, making the purported service invalid for purposes of default. (*See id*.).

Under Rule 4(d)(8), SCRCP, "default or judgment by default *shall* be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person." Rule 4(d)(8), SCRCP (emphasis added). S.C. Code Section 15-9-210 authorizes a domestic corporation's registered agent to receive service of process on behalf of the corporation. *See* S.C. Code § 15-9-210(a). The statute does not, by contrast, authorize any "sub-agent" or other persons to receive service of process on behalf of the registered agent or the corporation. *Id*. Similarly, Rule 5(d)(1), SCRCP provides that service may be affected "by delivering a copy to an agent authorized by appointment or by law to receive service of process." *See* Rule 4(d)(1), SCRCP. The other non-personal method of service authorized by this rule, "leaving copies thereof at [an individual's] dwelling house or usual place of abode with some person of suitable age and discretion then residing therein," by its terms does not apply to a corporation. *See id*.

Because OHM is a domestic business corporation, its "registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served." S.C. Code Ann. § 15-9-210(a). Where, as here, a domestic corporation has a registered agent, that registered agent is the *only* person authorized to accept service of process for the

corporation. OHM's registered agent is Sagar Patel, and the Secretary of State lists the registered agent's address as 340 Plantation View Lane, Mount Pleasant, South Carolina, 29464.[2] Although Ms. Reed served *someone* at 340 Plantation View Lane with the Summons and Complaint in this matter, she did not serve OHM's registered agent Sagar Patel. Because Ms. Reed did not serve the registered agent with process, the court was required to set aside the default upon OHM's showing that an unauthorized person has signed for the service of process. *See* Rule 4(d)(8), SCRCP. The trial court in this case therefore abused its discretion when it failed to set aside OHM's default.

### II. Good Cause Existed to Set Aside the Default.

In the alternative, even if default had been properly entered against OHM in this case, good cause existed to set aside the default. "Under Rule 55(c) of the South Carolina Rules of Civil Procedure, a default may be set aside 'for good cause shown.'" *Melton*, 379 S.C. at 54. *See also* Rule 55(c), SCRCP ("For good cause shown the court may set aside an entry of default"). "Rule 55(c) should be liberally construed to promote justice and dispose of cases on the merits." *Id*. (quotation and citation omitted). But "[t]he decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge," and "[t]he trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Sundown Operating Co.*, 383 S.C. at 606–07 (citing *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.,* 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006); *Mitchell Supply Co., Inc. v. Gaffney,* 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988). "An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order,

[2] *See* SOUTH CAROLINA SECRETARY OF STATE: BUSINESS ENTITIES ONLINE, "OHM FLORENCE LLC" (https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/124cedf1-e6b5-4660-9643-de9 5ad6 32f5f) (last visited July 15, 2025).

based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Id*. (citing *In re Estate of Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

"The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.'" *Regions Bank v. Owens*, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013). "This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice." *Id*. (citing *Sundown Operating Co.*, 383 S.C. at 607–608). "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." *Sundown Operating Co.*, 383 S.C. at 607–608 (citing *Wham*, 298 S.C. at 465).

Even assuming the default was valid in this case, the court below abused its discretion in denying OHM relief from default, as there was not "sufficient evidentiary support on the record for the finding of a lack of good cause" under the *Wham* factors. *See Dixon v. Besco Engineering, Inc.,* 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). In rendering its decisions in this case, the court below appears never to have engaged in any good-cause analysis at all, whether under *Sundown Operating Co*., *Wham*, or any other case precedent.

Instead of determining whether there was an explanation for why the default occurred, followed by an analysis of whether good cause existed to set it aside due to timing, meritorious defenses, or lack of prejudice to the plaintiff, the court below appears to have collapsed its entire decision-making process of whether to set aside default into its analysis of whether the purported service was sufficient to successfully trigger a default. In its first order denying relief from default, the Court noted only that:

> [T]he Court has "never required exacting compliance with the rules to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche v. Florence Young Bros., Inc. of Florence*, 318 S.C. 207, 210, 456, S.E.2d 897, 899 (1995). After reviewing the legal memoranda and evidence submitted by the parties and hearing arguments from the moving party, this Court found it had personal jurisdiction over Defendant, and Defendant was properly put on notice to the proceedings.

(Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. ____)) (*See also* Transcript of August 12, 2024 Hearing at 22:18–27:12 (R.p. ____)). This is not a proper good cause analysis for the disfavored remedy of default judgment. Similarly, in its third order denying relief from default (the second was a Form 4 order), the Court analyzed only the issue of whether it deemed service to have been proper:

> As provided in *Roche v. Young Bros., Inc. of Florence*, the Court has "never required exacting compliance with the rules to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Roche v. Florence Young Bros., Inc. of Florence*, 318 S.C. 207, 210, 456, S.E.2d 897, 899 (1995). In this case, Defendant was provided a copy of the summons and complaint within hours of its service on its registered agent's address. Under the Defendant's interpretation of S.C. Code Ann. § 15-9-210, a corporation could evade service by submitting an address in their articles of incorporation that their registered agent will never be present to sign for legal pleadings, defeating the purpose of registering an agent and address to accept legal proceedings. The Court finds effective service on the corporation and hereby denies Defendant's Renewed Motion to Set Aside.

(Order of Judgment at 3–4 (R.p.____)). Again, this is not the proper analysis for the question of whether to set aside default under *Sundown Operating Co*. and *Wham*.

By ignoring the substantial evidence and argumentation presented by OHM to explain why the default occurred, and more importantly that good cause existed to set it aside based on the rapid timing of OHM's motion for relief, the significant meritorious defenses available to OHM, and the lack of prejudice to Ms. Reed in allowing the case to proceed to litigation on its merits (*see supra* at 3–9), the Court abused its discretion in refusing to set aside default. Indeed, a review of the

record shows that had the Court engaged in the proper analysis, the evidence in the record—liberally construed per *Melton*, 379 S.C. at 54—supports only the conclusion that good cause existed to set aside the default against OHM. (*See supra* at 3–8).

## III. The Damages Award Was Excessive and Not Supported by the Evidence.

"It is well established that the relief granted in a default judgment is limited to that supported by the allegations in the Complaint and the proof submitted at the damages hearing." *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E.2d 566, 579 (2013) (citing *Jackson v. Midlands Human Res. Ctr.,* 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct.App.1988)). "Moreover, trial judges and appellate courts conduct a review of the award to ensure the verdict is not excessive and is supported by the evidence." *Id*. (citing *Mitchell v. Fortis Ins. Co.,* 385 S.C. 570, 686 S.E.2d 176 (2009)).

> In a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted. A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered.

*Jackson*, 296 S.C. at 529.

In the instant case, the lower court's damages award of $4,161,541.00 was excessive and unsupported by valid evidence in the record. Not only was this award excessive in relation to the $1.14 million in alleged medical expenses plus future medical costs projected by Ms. Reed, but also—and more problematically for Ms. Reed—the alleged medical expenses and future medical costs on which her award were based were not supported by admissible evidence, as described below.

### a. Respondent failed to properly authenticate the documents on which she relied at the damages hearing.

"A party offering evidence must meet 'the requirement of authentication ... as a condition precedent to admissibility.'" *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting Rule 901(a), SCRE). "The authentication requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.'" *Id*. While "'[t]he burden to authenticate is not high'" it requires "that the proponent 'offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'" *Id*. (quoting *United States v. Hassan,* 742 F.3d 104, 133 (4th Cir.2014)).

"Under Rule 901(b)(1), SCRE, evidence may be authenticated by 'having someone with personal knowledge about the writing testify the matter is what it is claimed to be.'" *State v. Hall*, 437 S.C. 107, 118–19, 876 S.E.2d 328, 334 (Ct. App. 2022) (quoting *State v. Green*, 427 S.C. 223, 231, 830 S.E.2d 711, 715 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020)). "This method may be accomplished by testimony from a person who sent or received the writing", though "[o]ne who witnessed the creation or signing of the writing also has the personal knowledge Rule 901(b)(1), SCRE, demands." *Id.* "As long as a witness with *personal knowledge* testifies that an exhibit accurately portrays what it depicts, that should be sufficient to establish its authenticity." *Id*. (emphasis added) (citation omitted). "Alternatively, 'most writings meet the authenticity test through Rule 901(b)(4), SCRE, which enables authentication to be proven by: 'appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.''" *Id*. (quoting *Green*, 427 S.C. at 232, 830 S.E.2d at 715 (quoting Rule 901(b)(4), SCRE)). "Rule 901(b)(4), SCRE, meshes with prior South Carolina law, which has long endorsed authentication by circumstantial proof." *Id.* at 119.

At the damages hearing in this case, Ms. Reed relied heavily on numerous items of evidence that she did not properly authenticate as evidence, as she did not produce witnesses who

had sufficient personal knowledge of the items presented. Indeed, Ms. Reed herself was not present at the hearing. As described above (*see supra* at 9–10), Ms. Reed (1) entered medical records as evidence on the assumption they were related to the subject incident absent any authenticating testimony by Ms. Reed or any medical provider, despite the elderly and ailing Ms. Reed having numerous serious health problems ongoing before the subject incident occurred and also afterward; (2) entered purported medical bills into evidence without authenticating testimony from any party who was responsible for paying the alleged bills or seeking payment for the alleged bills—where a witness for Ms. Reed admitted no bills had yet been paid and where the purported bills contained language stating that they were not, in fact, bills; and (3) entered power of attorney documents with no testimony from any witness who created, signed, or witnessed the documents.

Because Respondent failed to authenticate these items by a witness with personal knowledge and because the circumstances called into question both Respondent's identification of the medical records as resulting from the subject incident and Respondent's assertion that the purported medical bills were in fact bills seeking payment, none of these items were admissible as evidence. The lower court therefore erred in permitting them to be entered as evidence and relying on them in awarding the excessive damages award of over four million dollars in this case. This permissive treatment of improperly authenticated evidence was especially inappropriate where Appellant's liability in this case was established on a narrowly applied technicality in the absence of any evidence.

**b. The expert testimony relied upon by Respondent at the damages hearing was unreliable and therefore inadmissible.**

"The admission of expert testimony is governed by Rule 702, SCRE, which provides: 'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill,

experience, training, or education, may testify thereto in the form of an opinion or otherwise.'" *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (citing Rule 702, SCRE). "[I]n executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony…. Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability." *Id*. Accordingly, "[t]he trial court must evaluate the substance of [expert] testimony and determine whether it is reliable." *Id*. (citing *State v. Council,* 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999)).

"The trial [court] should apply the *Jones* factors to determine reliability." *Matter of Ridley*, 433 S.C. 316, 320, 858 S.E.2d 165, 167 (Ct. App. 2021) (citing *State v. Jones*, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001), and *Council*, 335 S.C. at 20). "The *Jones* reliability factors take into consideration: (1) the publications and peer reviews of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Id*. at 320–321 (citation omitted). "Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate." *Id*. (citation omitted).

"The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony..." *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474–75 (2012). "We overrule *Morgan* to the extent it suggests that only scientific expert testimony must pass a threshold reliability determination by the trial court prior to its admission in evidence…. Nonscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter." *State v. White*, 382 S.C. 265, 273, 676 S.E.2d 684, 688 (2009) (overruling *State v. Morgan*, 326 S.C. 503, 513, 485 S.E.2d

112, 118 (Ct. App. 1997)). "[T]he trial court in the discharge of its gatekeeping role in determining admissibility *must* initially answer the always present threshold questions of qualification and reliability." *White*, 382 S.C. at 274 (emphasis added) (see also *Tapp*, 398 S.C. at 388, 389 ("In *White,* this Court clarified that all expert testimony, not just scientific expert testimony, must be vetted for its reliability prior to its admission at trial…. [u]nder *White,* after qualifying Prodan as an expert, the circuit judge should have then evaluated the substance of Prodan's testimony to determine if it was reliable, as required by Rule 702, SCRE.").

The lower court in the present case did not fulfill this gatekeeping role with respect to Ms. Reed's proffer of expert testimony. Whereas cases like *Watson*, *White*, and *Tapp* make clear that the substance of an expert's testimony *must* be evaluated by the trial court and a finding made with respect to its reliability prior to its admission into evidence, the master-in-equity in this case did not make reference to any such finding either at the damages hearing or in subsequent orders, despite OHM's objections and explicit request for such a ruling. (*See* Transcript of March 31, 2025 Hearing (R.p. ______); Order of Judgment (R.p. _____); Motion to Alter or Amend Pursuant to Rule 59(e) or, in the alternative, Motion for Relief from Judgment Pursuant to Rule 60(b) at 4 (R.p. _____); and May 15, 2025 Form 4 Order denying OHM's Motion to Reconsider or for Relief from Judgment (R.p.____)). Nonetheless, the master-in-equity directly relied on this evidence in arriving at the damages award. (*See* Order of Judgment at 5 (R.p. ____)). That omission of a reliability evaluation under *Jones* was erroneous.

Had the lower court engaged in the required analysis of the expert testimony submitted by Ms. Reed, it is difficult to see how it could have deemed the testimony reliable. In opining on alleged future medical costs, Ms. Reed's expert relied heavily on the cost of residence at a skilled nursing facility, which she projected to be $9,939 per month. (*See* Transcript of March 31, 2025

Hearing at 65:9–23 (R.p. ____)). But the medical records previously submitted by Ms. Reed showed that she was already residing at a skilled nursing facility at less than one-fifth this cost, $1,700 per month. (*Id*. at 63:21–65:1 (R.p. ____)). Remarkably, when cross-examined on this issue, Ms. Reed's expert admitted that she was not even aware that Ms. Reed was currently residing in a skilled nursing facility. (*Id*. at 63:12–14 (R.p. ___)). Such testimony, contradicted by Respondent's own submissions to the court at the hearing, was manifestly not reliable, and therefore inadmissible.

## CONCLUSION

For the reasons stated above, Appellant OHM respectfully requests that this Court reverse the lower court's order denying OHM relief from default, which was founded on improper service and regarding which good cause to set aside was shown, or, in the alternative, reverse the lower court's order denying OHM's motion for relief from judgment, which was excessive and not supported by admissible evidence.

*Signature Page Follows*

Respectfully submitted,

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This 17th day of July, 2025.