IN THE COURT OF APPEALS OF SOUTH CAROLINA

APP. CASE NO.: 2024-000679

JOSEPH AND LAUREN JACO,
Respondents,

v.

J.N. GREEN & ASSOCIATES, LLC, BIG BLUE EXPRESS, LLC, AND JOE N. GREEN,
Appellants.

APPELLANTS' REPLY BRIEF

Adrianne L. Turner
Counsel for Appellants
Turner Law, LLC
887 Pine Log Ford Road
Travelers Rest, SC 29690
803-467-8687
Aturner@turnerlawsc.com

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BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996)

Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991).

ARGUMENT

I. Respondents' Argument on Timeliness of the Appeal is Without Merit

Respondents' assertion that this appeal is untimely is factually and legally incorrect. Appellants timely filed and paid the filing fee for their Motion for Reconsideration within ten (10) days of receipt of the Special Referee's final order, as required by Rule 59(e), SCRCP. It is undisputed the Notice of Appeal was filed well within 30 days of the Special Referee's announcement that he would not hear the 59(e) Motion for Reconsideration.

The motion was filed through the Court's electronic filing (E-Filing) system and was initially accepted without objection. However, early on in this litigation, the Special Referee expressly advised the parties that he did not have access to the case through the Court's E-Filing system and therefore could not file his own orders or receive automatic notices of party filings. In recognition of this limitation, counsel for Appellants promptly sent a direct email to the Special Referee and to opposing counsel notifying them of the filing of the Motion for Reconsideration and attaching a copy of the motion. The Special Referee expressly acknowledged receipt of this email and the motion.

The procedural irregularity arose only later, when the Clerk's Office contacted counsel to advise that the Motion for Reconsideration had inadvertently been filed twice, with duplicate filing fees. Counsel immediately contacted the Court, was told the duplicate payment could be corrected by rejecting one payment, and was assured that the filing would relate back to the original filing date—especially given the documented notice to both the Special Referee and opposing counsel on the date of the original filing.

At no time prior to the Special Referee's later ruling did either the Court or Respondents assert that the Motion for Reconsideration was not pending. In fact, the Special Referee and Respondents treated the motion as pending for the entire period until the Special Referee unexpectedly announced that he did not consider the motion to be pending because it did not appear on the public index. Again, the Special Referee and all parties had treated the Motion for Reconsideration as pending for weeks at the point the Special Referee announced he would not hear the motion, including several emails back and forth pertaining to the motion, scheduling matters, and the ordering of the transcript from the hearing.

This sequence of events demonstrates that any alleged defect in the payment or docketing process was the result of a clerical or technical irregularity—not any delay or neglect by Appellants. Under South Carolina law, such circumstances cannot serve as the basis to defeat appellate jurisdiction. See, e.g., Ex parte

Jackson, 380 S.C. 1, 667 S.E.2d 103 (2008) (courts should not elevate form over substance where a filing was timely and all parties had notice); Goodson v. Am. Bankers Ins. Co. of Fla., 295 S.C. 400, 368 S.E.2d 687 (Ct. App. 1988) (technical filing defects should not deprive parties of substantive rights where opposing party is not prejudiced).

Here, the timely filing, the undisputed notice to all parties, the Special Referee's acknowledgment, and the Clerk's assurance that the filing would relate back to the original date remove any doubt as to the motion's timeliness. The Respondents' attempt to dismiss this appeal on procedural grounds should be rejected.

II. Refusal to Set Aside Entry of Default

Respondents' arguments in defense of the default judgment misstate both the law and the factual record. South Carolina law is clear that service by publication is a last resort and must be conducted in a manner "reasonably calculated" to provide actual notice. Montgomery v. Mullins, 325 S.C. 500, 506, 480 S.E.2d 467, 470 (Ct. App. 1997); Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950).

Here, the order authorizing service by publication did not specify the publication to be used, and Plaintiffs unilaterally chose a digital-only Camden newspaper with no printed circulation and no connection to Appellants. This choice failed the due process standard because Appellants were not in Camden, had no operations there, and had no reason to review that publication.

Respondents' assertion that Appellants "knew they had to respond" is unsupported. Appellants had never been personally served, nor were they proven to have evaded service. Roche v. Young Bros., Inc., 318 S.C. 207, 456 S.E.2d 897 (1995) makes clear there is no duty to assist in one's own service. Appellants' belief that no obligation to answer arose until proper service was achieved was both reasonable and legally correct.

Even assuming arguendo that service was effective, Appellants showed "good cause" under Rule 55(c), SCRCP, based on excusable neglect—they were in ongoing contact with Plaintiffs, had taken remedial measures, and had no reason to believe litigation was imminent. This is exactly the type of situation where South Carolina's strong policy favoring adjudication on the merits should apply. Davis v. Davis, 288 S.C. 313, 316, 342 S.E.2d 587, 589 (Ct. App. 1986).

III. Liability of Big Blue Express, LLC and Joe N. Green

Respondents' argument that default "established" alter ego liability is legally flawed. Default admits well-pleaded facts, not conclusory legal statements. Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 182, 826 S.E.2d 585, 589 (2019). The Complaint contains only a single conclusory sentence about alleged alter ego relationships, located in the jurisdictional section, without any supporting factual allegations showing unity of interest, lack of corporate separateness, or fraud/injustice.

Every substantive factual allegation in the Complaint attributes conduct to J.N. Green & Associates, LLC—not Big Blue Express or Joe N. Green personally. The absence of factual allegations to pierce the corporate veil means that liability could not be established against these parties, even by default. Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984).

IV. Compensatory Damages Award Is Unsupported by Competent Evidence

South Carolina law draws a clear distinction between the effect of default as to liability and as to damages. A default judgment admits only the well-pleaded facts as to liability; it does not admit the amount of damages claimed. Howard v. Holiday Inns, Inc., 271 S.C. 238, 240, 246 S.E.2d 880, 881 (1978); Lyman v. Nationwide Mut. Fire Ins. Co., 343 S.C. 646, 653, 541 S.E.2d 273, 277 (Ct. App. 2001). The burden remains on the plaintiff to prove damages by competent evidence, even when the defendant is in default.

The South Carolina Supreme Court has held that "damages must be proven by the greater weight or preponderance of the evidence" and "may not be based on speculation, conjecture, or guesswork." Roche v. Young Bros., Inc., 332 S.C. 75, 80, 504 S.E.2d 311, 313 (1998). Likewise, in Smith Co. of Greenville, Inc. v. Hayes, 311 S.C. 358, 428 S.E.2d 900 (Ct. App. 1993), the Court of Appeals reversed a damages award in a default case where the plaintiff's proof was unsupported by competent, admissible evidence.

These principles apply equally in default hearings. Rule 55(b)(2), SCRCP contemplates that the court "shall" conduct a hearing or require proof to establish damages. This ensures that the award is grounded in reliable, admissible testimony and documentary evidence, subject to the rules of evidence. Unsupported assertions, hearsay, or speculative estimates are not a lawful basis for an award of compensatory damages.

In this case, the Special Referee did not require Plaintiffs to meet their evidentiary burden. The only damages witness relied on inadmissible hearsay and speculative valuations without a verifiable methodology. This failure to apply the proper standard of proof resulted in an inflated and legally

unsupportable damages award.

Respondents' defense of the $500,000 compensatory damages award ignores the unreliability of Plaintiffs' proof. Their sole damages witness, Brian Taylor, relied on an out-of-state contractor's cost estimate that was excluded as hearsay. While Rule 703, SCRE, allows experts to rely on inadmissible data, it does not permit an expert to merely parrot excluded hearsay without conducting an independent assessment.

Taylor lacked qualifications in hydrology or construction cost estimation, failed to perform sediment sampling or water testing, and offered wildly divergent cost ranges without explaining the methodology. These defects render his testimony insufficient to meet even the evidentiary standards applicable in default damages hearings. At a minimum, the matter should be remanded for an independent damages assessment by a qualified expert.

Here, the Special Referee erred in refusing to exercise his authority to appoint a qualified expert to assess damages. Counsel for Appellant specifically requested that the Special Referee appoint an independent expert to assess damages, given the deficiencies in Plaintiffs' proof. The Special Referee declined, stating that he did not have the authority to do so. This determination was erroneous as a matter of law.

Rule 53(c), SCRCP expressly provides that "the referee shall have and exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties…," and further that "the referee shall have the powers of a circuit judge" unless restricted by the order of reference. There was no such restriction here. South Carolina courts have long recognized that a referee's powers are coextensive with those of the circuit court in matters referred. Harrison v. Harrison, 298 S.C. 333, 336, 380 S.E.2d 471, 473 (Ct. App. 1989) (referee "was empowered to take any action a circuit judge could take" within the scope of the reference).

Moreover, Rule 706(a), SCRE authorizes the court to "appoint any expert witnesses of its own selection" and to require the expert to testify or provide reports. This authority is not limited to jury trials or contested hearings and applies equally in default damages contexts. As the referee stands in the shoes of the circuit judge, he had identical authority to appoint an expert sua sponte to ensure the damages determination was based on competent, reliable evidence.

Persuasive authority from other jurisdictions confirms the propriety of such action. See Hewitt v. Felderman, 756 N.W.2d 807, 810–11 (Wis. Ct. App. 2008)

(trial court acted within its discretion to appoint an expert to assess damages in a default judgment hearing where plaintiff's evidence was inadequate); Wilson v. Taylor, 733 N.E.2d 960, 964–65 (Ind. Ct. App. 2000) (affirming appointment of neutral expert where the damages claim was unsubstantiated by competent evidence); City of Rome v. United States, 450 F. Supp. 378, 384 (D.D.C. 1978) (recognizing inherent power to appoint neutral experts to aid the court in reaching a just determination).

Here, the Special Referee's refusal to exercise this well-established authority resulted in a damages award grounded in inadmissible hearsay and speculation. His mistaken belief that he lacked such authority was legal error and deprived Appellant of a fair and reliable determination of damages.

V. Punitive Damages Award Was Improper

Respondents' attempt to justify a $2 million punitive damages award ignores the absence of clear and convincing evidence of willful, wanton, or reckless conduct, as required by Lisenby v. Lear, 341 S.C. 486, 534 S.E.2d 319 (Ct. App. 2000). The Special Referee's reliance on a single speculative email is legally insufficient to support punitive damages.

Punitive damages in South Carolina are an extraordinary remedy, awarded not to compensate but to punish and deter particularly egregious conduct. To warrant punitive damages, a plaintiff must prove by clear and convincing evidence that the defendant's conduct was willful, wanton, or in reckless disregard of the plaintiff's rights. Wise v. Broadway, 315 S.C. 273, 276, 433 S.E.2d 857, 859 (1993); S.C. Code Ann. § 15-32-520(E).

South Carolina courts have consistently held that punitive damages are appropriate only in cases involving truly outrageous behavior. For example:

In Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991), punitive damages were upheld where a nursing home's gross neglect caused repeated injuries and suffering to an elderly patient.

In Mattison v. Dallas Carrier Corp., 947 F.2d 95 (4th Cir. 1991) (applying South Carolina law), punitive damages were affirmed where a truck driver knowingly violated federal safety regulations, resulting in a fatal crash.

In Clark v. Cantrell, 339 S.C. 369, 529 S.E.2d 528 (2000), the court upheld punitive damages against a drunk driver whose conduct was "so grossly negligent as to show a conscious indifference to the rights of others."

By contrast, the record here contains no such evidence of malicious intent, conscious wrongdoing, or grossly indifferent conduct by Appellant. The Special Referee relied on unsubstantiated, speculative, and hearsay-laden testimony to infer wrongdoing, without identifying any act that could meet the "clear and convincing" threshold. Mere allegations of breach of contract, property damage, negligence or business disputes, even if accepted as true in default, do not automatically warrant punitive damages. See Austin v. Specialty Transp. Servs., Inc., 358 S.C. 298, 594 S.E.2d 867 (Ct. App. 2004) (reversing punitive damages where conduct amounted to breach of contract and negligence but lacked the requisite recklessness).

Punitive damages cannot substitute for actual damages (Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996)), yet here the award appears to have been used to compensate for the weaknesses in Plaintiffs' compensatory case. Moreover, the 4:1 punitive-to-compensatory ratio fails the proportionality standard in BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996) and Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991).

Because no admissible evidence demonstrated conduct rising to the level required for punitive damages, the award here was contrary to law and must be vacated.

CONCLUSION

For the foregoing reasons, and those set forth in Appellants' Initial Brief, Appellants respectfully request that this Court reverse the Special Referee's decision and grant the relief requested therein.

Respectfully submitted,

/s/ Adrianne L. Turner

Adrianne L. Turner

Counsel for Appellants

Turner Law, LLC

887 Pine Log Ford Road

Travelers Rest, SC 29690

803-467-8687

Aturner@turnerlawsc.com

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APPEAL FROM KERSHAW COUNTY
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Jeremy C. Hodges, Esquire, Special Referee
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Appellate Case No.: 2024-000679

Joseph & Lauren Jaco…… Respondents,

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J.N. Green & Associates, LLC, Big Blue Express, LLC, and Joe N. Green……. Appellants.

PROOF OF SERVICE

I hereby certify that, on this date, the APPELLANTS' INITIAL REPLY BRIEF was served upon counsel for Respondents via email, with a courtesy copy by email, pursuant to the South Carolina Rules of Appellate Procedure, as follows:

Ian T. Duggan, Esquire
Callison Tighe & Robinson, LLC
iduggan@callisontighe.com

Attorney for Respondents
Joseph & Lauren Jaco

I further certify that all other counsel of record in this matter were served via their email addresses as shown in the court's records.

/s/ Adrianne L. Turner
Adrianne L. Turner (SC Bar No. _____)
Turner Law, LLC
887 Pine Log Ford Road
Travelers Rest, SC 29690
aturner@turnerlawsc.com

Dated: August 11, 2025