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THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M Young, Circuit Judge
The Honorable Daniel F Pieper, Circuit Judge

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SC Court of Appeals

Case No 06-CP-10-1578

Lawton Limehouse, Jr — Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC — Appellant

FINAL BRIEF OF RESPONDENT

CISA & DODDS, LLP

Frank M Cisa
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464
Phone (843) 881-6530
Fax (843) 881-5433
E-mail frank@cisadodds com

Attorneys for the Respondent

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STATEMENT OF THE CASE

The Respondent, Lawton Limehouse, Jr , ("Limehouse") filed this action in the Court of Common Pleas for Charleston County on April 19, 2006 seeking recovery against the Appellants, Paul H Hulsey and The Hulsey Litigation Group, LLC, collectively ("Hulsey") pursuant to a cause of action for defamation (R pp 00038-00044, Complaint) The Appellant, Paul H Hulsey, was served with the Summons and Complaint on April 21, 2006 (R p 00132, Affidavit of Service) The Appellant, The Hulsey Litigation Group, LLC was served with the Summons and Complaint on April 20, 2006 (R p 00133,Affidavit of Service) Hulsey filed a Notice of Removal to Federal District Court on May 5, 2006 (R pp 00045-00102,Notice of Removal) Limehouse filed a Motion to Remand to State Court on June 2, 2006, on the basis that the Limehouse's Complaint alleged a cause of action for common law defamation which does not arise under federal law or involve a substantial question of federal law (R pp 00103-00108,Plaintiff's Motion to Remand and Memorandum in Support of Plaintiff's Motion to Remand)

The federal court, by Order of Judge C Weston Houck, dated July 19, 2006, remanded the case to the state court on the basis that federal question jurisdiction was not present Judge Houck's remand order is dated July 19, 2006 and was entered in the clerk's office for the federal court on July 20, 2006 (R pp 0022,filed Order of Remand) The clerk of the federal court electronically filed the order of remand in the clerk's office of the state court on July 21, 2006 (R pp 0022-0026,filed copy of order of remand to state court together with federal court's docket report)

On July 27, 2006, the Charleston County Clerk of Court mailed a notice of filing of the remand order to all counsel of record (R p 00021,clerk's notice of entry of remand order dated July 27, 2006)

On August 22, 2006, Limehouse filed a Request for Entry of Default along with the Affidavits of Services and Affidavits of Default in the Charleston County Clerk of Court's office (R pp 00132-00137,Requests for Entry of Default, Affidavit of Service and Affidavit of Default)

The Charleston County Clerk of Court entered defaults against Hulsey on August 22, 2006 (R pp 00138-00139, clerk's entry of defaults) On August 24, 2006, the clerk mailed the notices of entry of default to all counsel of record (R pp 00119-00120,Clerk's notice of entries of default dated August 22, 2006)

On August 29, 2006, Hulsey filed a Motion to Set Aside Entry of Default pursuant to Rule 55(c) SCRCP (R pp 00140-00233,Motion to Set Aside Entry of Default)

The Motion to Set Aside Entry of Default came before Judge Danny Pieper on December 15, 2006 for hearing By Order filed February 7, 2007, Judge Pieper denied Hulsey's motion to set aside default and allow untimely answer and ordered that Hulsey should be given notice of any unliquidated damages hearing (R pp 00010-00018,Order of Judge Danny Pieper filed February 7, 2007)

The case came before Judge Roger M Young who presided over a jury trial on damages on November 9-13, 2009 The jury returned a verdict of $1,000,000 00 in actual damages and $2,600,000 00 in punitive damages against Hulsey The judgement was entered on November 17, 2009 (R pp 00005-00006,Jury Verdict/Judgment)

Hulsey then filed post-trial motions Hulsey moved to dismiss for lack of subject matter jurisdiction, moved for relief from judgment based on mistake and/or neglect, moved for Judgment on not withstanding the verdict or for a new trial absolute, and moved for a new trial on punitive damages (R pp 00381-00419, motions filed November 23, 2009) By Order dated January 7, 2010, Judge

Young denied Hulsey's post-trial motions (R p 00004,Order dated January 7, 2010)

By Order dated January 7, 2010, Judge Young reviewed the award of punitive damage (R pp 00001-00003,Order of Roger M Young, dated January 7, 2010)

Hulsey served and filed Notices of Appeal on January 27, 2010 and January 29, 2010 (R pp 00420-00424,Notices of Appeal) By Order, this Court consolidated the cases for appeal

STATEMENT OF THE FACTS

This is an appeal from the following orders (1) Judge Danny Pieper's Order denying Defendants' Motion to Set Aside Default filed February 7, 2007, (2) Judge Roger M Young's Order Denying Defendants' Motion to Dismiss for Lack of Jurisdiction dated May 22, 2008, (3) the judgment entered on the jury's verdict on November 17, 2009, (4) Judge Roger M Young's, Order denying Defendants' post-trial motions filed January 7, 2010,and (5) Judge Roger M Young's Order dated January 7, 2010, reviewing the jury's award of punitive damages

As alleged in the Complaint this case arose from false and defamatory statements made by Hulsey at a press conference or made to a reporter with the Charleston Post and Courier The statements included

A That the Plaintiff engaged in a classic racketeering scheme,

B That the Plaintiff's conduct set the community 150 years,

C That the Plaintiff engaged in a blatant case of indentured servitude,

D That the Plaintiff created a perfect racketeering enterprise just like Tony Saparano

(R p 00040 Complaint, paragraph 11)

Limehouse and his Father owned and operated an employment staffing agency, L&L Services,

LLC in Charleston County Limehouse had worked and devoted his full time and efforts to establish the staffing agency since 1999 (Rp 00039,Complaint paragraphs 6 and 8)

Paul H Hulsey is a licensed practicing attorney, with Appellant, The Hulsey Litigation Group, LLC, which has its principal place of business in Charleston County, South Carolina (R p 00038, Complaint, paragraph 2)

In 2004, Hulsey filed a class action lawsuit on behalf of certain individuals against Limehouse and L&L Services, LLC, which lawsuit alleged improper action and conduct on the part of Limehouse and L&L Services, LLC (R pp 00039-00040,Complaint paragraph 9)

The Statements made by Hulsey to the Post and Courier reporter were made within the intent of bolstering the class action lawsuit which Hulsey filed against Limehouse with the intent to attract individuals who would become members of the class action suit so that Hulsey could potentially earn large sums of money as legal fees (R pp 00041-00042, Complaint paragraph 16)

The statements made by Hulsey were published in the Post and Courier on April 24, 2004 According to the testimony of the Director of Circulation for the Post and Courier 99,147 newspapers were sold on April 24, 2004 (R pp 00042, Complaint, paragraph 18) and the newspaper was read by 246,876 people (R pp 00699-00700) The newspaper article that was published by the Post and Courier on April 24, 2004 came out on Saturday At the time the newspaper publication came out Limehouse s staffing agency employed approximately 200 people and had 200 customers (R pp 00526-00534) On the following Monday Limehouse's customers started calling and cancelling Limehouse's employees On the Monday following the publication, Limehouse was out of business (R p 00551)

According to the testimony of Limehouse's expert, Limehouse's business, L&L Services, LLC, was valued at $1,371,170 00 as of April 24, 2004 when the newspaper article was published (R p 00661) Limehouse owned a fifty (50%) interest in L&L Services, LLC and therefore Limehouse's damages for the loss of the business totaled $685,585 00 (R p 00658)

Limehouse testified that in May of 2004 he was placed in a psychiatric ward at St Frances Hospital and treated for depression After he was discharged from St Frances, the next five or six months he spent his time sitting on the sofa crying He had problems sleeping and was prescribed antidepressant medication He was still taking antidepressant medication at the time of the trial (R pp 00555-00557) Prior to the publication, Limehouse attended church but after the publication he quit because he didn't want people to see him (R pp 00558-00559) After the publication Limehouse had difficulty finding a job and took a job in Georgia which was 305 miles from his home (R pp 00560-00562) Limehouse became socially withdrawn and was embarrassed and humiliated (R pp 00776-00777)

According to the testimony of Limehouse s banker, following the newspaper publication, Limehouse lost his business and had to liquidate his business assets and personal assets to pay down the debt that Limehouse owed to the bank (R pp 00758-00759)

According to testimony of Berndette Dewitt, employed with Bank of America, the Appellant, Paul H Hulsey filed a financial statement with the Bank of America on May 17, 2006 Paul H Hulsey's financial statement indicated that he had a net worth of $81,556,986 51 (R pp 00708-00710)

Limehouse prayed for actual and punitive damages alleging that he had suffered damages

including embarrassment, humiliation, mental suffering and special damages including the loss of the business (R p 00044,Complaint paragraph 26)

ARGUMENT

I The lower court properly applied Rule 55, SCRCP

A The lower court did not use the wrong standard in considering whether there was good cause to set aside the Entry of Default under Rule 55(c)

The Supreme Court of South Carolina in *Sundown Operating Co , Inc v Intedge Industries, Inc 681 S E 2d 885, 383 S C 601* (S C 2009) stated that "the standard for granting relief from an entry of default under Rule 55(c) is mere "good cause" The standard requires a party seeking relief from entry of default to provide an explanation for the default and give reasons why vacation of the default entry would serve the interest of justice 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 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 "

Before the trial court considers the factors enumerated in *Wham*, id , the trial court must first determine whether a party has put forth a satisfactory explanation for the default If the trial court finds there is sufficient evidentry support in the record for the finding of lack of good cause the trial court does not need to make specific findings of fact concerning each factor

In this case Judge Pieper clearly understood the standard for granting relief from entry of default

under Rule 55(c) Judge Pieper states in his Order "In deciding whether good cause exist to set aside default, the trial court should consider the following factors

1 the timing of the Defendant's motion for relief,

2 whether the Defendant has a meritorious defense, and

3 the degree of prejudice to the Plaintiff if relief is granted "

(R p 00011, Order filed February 7, 2007, Page 2) Judge Pieper found, however, that there was no good reason presented by the Defendants for their failure to file a timely Answer other than attorney confusion about the deadline for which an Answer was due

Judge Pieper stated "It first must be noted that there was no good reason presented by the defendants for their failure to file a timely answer other than attorney confusion about the deadline for when an answer was due The courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting defendant *Roberts v Peterson, 292 S C 149, 151, 355 S E 2d 280, 281 (Ct App 1987)* This premise is most clearly laid out in *Williams v Vanvolkenburg, 312, S C 373, 440 S E 2d 408 (Ct App 1994)*, in which the defendants were charged with their attorney's failure to answer the complaint The fact that the defendants are attorneys and/or a law firm only bolsters the argument that the defendants should be liable for their attorney's mistakes " (R p 00016,Order filed February 7, 2007, Pg 7)

Judge Pieper expressly found that 'good cause does not exist for the Defendants failure to timely filed an answer based on South Carolina jurisprudence on attorney error as opposed to client error " (R p 00007, Order filed February 7, 2007, Pg 8)

Recently, the Supreme Court of South Carolina made it clear that insurance companies and

attorneys are held to a higher standard than clients In *Richardson v P V, Inc 383 S C 610, 682 S E 2d 263, 267 (S C 2009)* the Supreme Court stated that "We hold that even assuming that the insurance company was at fault for not answering the complaint, Appellants failed to show good cause Negligence of an insurance company is imputed to a defaulting litigant and cannot constitute good cause to relieve Appellants from the entry of default *See Roberts v Peterson, 292 S C 149, 355 S E 2d 408 (Ct App 1994) (*observing that the "courts of this state have consistently held that the negligence of an attorney or insurance company is imputable to a defaulting litigant") and *Williams v Vanvolkenburg, 312 S C 373, 440 S E 2d 408 (Ct App 1994)*(imputing an attorney's negligence to a defaulting litigant) "

Hulsey contends that the trial court used an improper standard to determine whether good cause exists because the trial court referenced the Rule 60(b) factors Rule 60(b) factors are relevant to the Rule 55(c) analysis as a Rule 60(b) factor is sufficient to show good cause See *Sundown Operating Co, Inc v Intedge Industries, Inc 383 S C 601, 607, 681 S E 2d 885,888 (S C 2009)* The lower court did not find good cause lacking based upon the absence of Rule 60(b) factors The lower court found that no good cause was presented by the Appellants in that failure to file a timely answer was based upon attorney error

The South Carolina Court of Appeals in Williams v Vanvolkenburg, 312 S C 373, 374 440 S E 2d 408, 409 (S C App 1994) stated that

> A court may set aside an entry of default for good cause shown ' Rule 55(c) SCRCP Whether good cause is established is within the discretion of the court Winn v Shearson Leaman Brothers, Inc 298 S C 462, 381 S E 2d 499 (Ct App 1989) This Court will not disturb a discretionary ruling on an appeal unless it appears the ruling is without evidentry support or controlled by some error of law Stanton v Town of Pawley's Island, 309 S C

126, 420 S E 2d 502 (1992) "

It ıs not whether thıs Court belıeves good cause exısted to set asıde the default, but whether Judge Pıeper's determınatıon ıs supported by the evıdence and not controlled by an error of law

B The Entry of Default should not be set asıde because the Answers were late

Hulseys' answers were clearly late Hulsey fıled theır answer on August 29, 2006 ın response to the clerk's notıce to hım that default had been entered (R pp 00234-00241), defendants' answer, (R p 00019, Clerk s notıce of entry of default dated August 24, 2006) Paul H Hulsey's answer was 100 days late and the Appellant, The Hulsey Lıtıgatıon Group, LLC Answer was 101 days late The Appellant, Paul H Hulsey was served wıth the Summons and Complaınt on Aprıl 21, 2006 (R p 00132, Affıdavıt of Servıce of Paul H Hulsey) Hıs Answer was due on May 21, 2006 The Appellant, The Hulsey Lıtıgatıon Group, LLC was served wıth the Summons and Complaınt on Aprıl 20, 2006 (R p 00133, Affıdavıt of Servıce of The Hulsey Lıtıgatıon Group, LLC) The Hulsey Lıtıgatıon Group, LLC's Answer was due on May 21, 2006

The fılıng of a notıce of removal does not toll the tıme for answerıng Rule 81(c), FRCP states as follows

(1) Applıcabılıty These rules apply to a cıvıl actıon after ıt ıs removed from a state court

(2) Further Pleadıng After removal, repleadıng ıs unnecessary unless the court orders ıt

A Defendant who dıd not answer before removal must answer or present other defenses or objectıons under these rules wıthın the longest of these perıods

a 20 days after receıvıng-through servıce or otherwıse a copy of the ınıtıal pleadıng statıng the claım for relıef,

b 20 days after beıng served wıth the summons for an ınıtıal pleadıng on fıle at the tıme of servıce, or

c 5 days after the notice of removal is filed

Pursuant to Rule 81(c), FRCP, the defendants' answers were due within 20 days after being served with the Summons and Complaint The time for answering is not stayed by the filing of a notice of removal In fact, the time for answering is shortened under the Federal Rules of Civil Procedure (Rule 81(c) FRCP)

C Jurisdiction was revested in the state court as soon as the order of remand was entered in the federal court

Hulsey alleges that jurisdiction did not revest in state court because the district court clerk failed to send a certified copy of the remand order to the state clerk of court The Fourth Circuit has held, however, that when the federal district court's remand order is entered in federal court that the federal court is divested of jurisdiction even though no certified copy of the order of remand was mailed to the state court

In In re Lowe, 102 F 3rd 731, (4th Cir 1996) the remand order was entered on the district court docket and the district court clerk sent a copy of the order to the state court, however, the copy that the state court received lacked the blue backing stating that it was "certified" "

In holding the Federal Court loses its jurisdiction over a case as soon as an order to remand the case is entered, the Court In In re Lowe stated

> "Logic also indicates that it should be the action of the court (entering an order of remand) rather than the action of a clerk (mailing a certified copy of the order) that should determine the vesting of jurisdiction Citing Van Ryn v Korean Air Lines, 640 F Supp 284, 284 (C D Cal 1985) To hold otherwise would impermissibly elevate substance over form One party should not arbitrarily receive a second opportunity to make its arguments due to a clerical error In sum, the plain language of the statute, the policy behind it, and logic all support the conclusion that § 1447 divests a district court

of jurisdiction upon the entry of its remand order "

The Fourth Circuit in Bryan v Bellsouth Communications, Inc 492 F 3rd 231, 242(4th Cir 2007) stated that

> "a remand is effective when the district court mails a certified copy of the remand order to the state court, see 28 U S C A §1447(c) (West 2006), or, if the remand is based on the lack of subject-matter jurisdiction or a defect in the removal process, when the remand order is entered "Citing re Lowe, 102 F 3d 731, 734-36 (4th Cir 1996)

In this case, Judge Houck remanded the case to state court because federal question jurisdiction was not present (R p 00022, Order of Judge Houck dated July 19, 2006) Judge Young was correct in holding that the mere entry of the order of remand by the federal district court deprived the federal court of jurisdiction (R p 00008, Order filed May 22, 2008)

In this case, Judge Weston Houck's order of remand was entered in district court on July 20, 2006 (R p 00022, filed order of remand dated July 19, 2006) The clerk of the district court then electronically filed the order of remand with the clerk of the state court on July 21, 2006 (R p 00022, state court clerk's filed copy of the order of remand)

In *State v Columbia Ry , Gas & Electric Co 112 S C 528, 100 S E 355, 357 (S C 1919)* our Court stated that

> "when the federal court remanded the case it was the duty of the state court to proceed as though no removal had been attempted "

By Order of Chief Judge of the United States District Court, Joseph F Anderson, Jr , dated February 18, 2005 the district court established an electronic case filing system (ECF) effective February 28, 2005 (R pp 01104-01105, Order of Chief Judge Joseph F Anderson, Jr , dated February 18, 2005) Judge Anderson's order also states that

"the United States District Court of the District of South Carolina shall establish an ECF system by adoption of the ECF policies and procedures "

(R p 01104, Order of Judge Anderson dated February 18, 2005)

The ECF policies and procedures of the District Court of South Carolina which were in effect at the time the remand order was entered states"when a document is filed electronically, the electronic record constitutes the official record The filed document is binding as the official record "(R p 01095, ECF policies and procedures of the District Court of South Carolina, paragraph 6 2)

Hulseys' argument concerning subject matter jurisdiction makes no sense They request this Court to find that neither the federal court or state court had jurisdiction over Limehouse's case even though the case was properly filed and served in Charleston County

II The lower court did use the procedure set out in Rule 55, SCRCP

A The procedure for obtaining a default judgment pursuant to Rule 55, SCRCP was followed by the trial court

Rule 55(a) SRCP provides

(a) Entry 'When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavits or otherwise, the clerk shall enter his default upon the calendar(file book) "

On August 22, 2006, Limehouse filed a Request for Entry of Default along with the Affidavits of Service and Affidavits of Default in the Charleston County Clerk of Court's office (R pp 00132-00139,Requests for Entry of Default, Affidavit of Service and Affidavit of Default)

The Charleston County Clerk of Court entered defaults against Hulsey on August 21, 2006 (R pp 00138-00139 clerk's entry of defaults) On August 24, 2006, the clerk mailed the notices of

entry of default to all counsel of record (R pp 00119-00120,Clerk's notice of entries of default dated August 24, 2006)

The Charleston County Clerk of Court followed the procedure set out in Rule 55(a) SCRCP relative to entry of default

Rule 55(b)(2) provides that "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 therefore has been made pursuant to Rule 38 and not withdrawn, or when and as required by any statute "

Limehouse made a demand for a jury trial by endorsing the demand upon the first page of his Complaint (R p 00038, Complaint) See Rule 38, SCRCP

The case was set for a day certain trial to commence on November 9, 2009 Hulsey had notice of the jury trial and fully participated

The Trial Court relied upon *Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 (1978)* relative to the issue of how Hulsey could participate in the default damages trial, not for the procedure to be followed as dictated by Rule 55, SCRCP

B Rule 55 does not alter the procedure for allowing a defaulting defendant to participate in a damages hearing as dictated by Howard v Holiday Inn, Inc

In *Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 882 (1978)* the Supreme Court of South Carolina determined what right a defaulting defendant had to participate at the damages hearing The Supreme Court adopted an approach which would "allow damages to be ascertain with defense counsel's participation limited to cross examination and objection to Plaintiff's evidence " Rule

55 did not overrule Howard or alter the right of a defaulting defendant to participate in the damages hearing

The Supreme Court of South Carolina in *Roche v Young Bros , Inc of Florence 332 S C 75, 504 S E 2d 311 (S C 1998)* held that "it is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability *Howard v Holiday Inn, Inc 271 S C 238, 246 S E 2d 880 (1978)*, *Schenk v National Health Care, Inc , 322 S C 316, 471 S E 2d 736 (Ct App 1985), State ex rel Medlock v Love Shop, Ltd , 286 S C 486, 334 S E 2d 528 (Ct App 1985)*

Limehouse alleges in his Complaint "on or about April 23, 2004, the Defendants held a press conference or otherwise made false statements about the Plaintiff to certain news agencies including but not limited to a reporter from the Post and Courier " Limehouse went on to allege that "during the news conference and/or during the Defendant, Paul H Hulsey, meeting with members of the news media including a reporter from the Post and Courier staff, the Defendant, Paul H Hulsey made false and defamatory statements concerning the Plaintiff "(R p 00040, Complaint, Paragraphs 10 and 11) Since Hulsey is in default, these allegations are deemed to be admitted

In refusing to allow Hulsey to introduce newspaper articles into evidence the trial court followed the dictates of *Howard* Hulsey was not entitled to introduce evidence

Hulsey complains that the jury was permitted to hear that Hulsey's net worth was $81,556,686 51 based on his financial statement dated May 17 2006 One of the factors to be considered in determining the amount of punitive damages is the Defendants ability to pay Gamble v Stevens 305 S C 104, 406 S E 2d 350 (S C 1991) During the trial Limehouse offered the testimony

of Berndette Dewitt, who was a Banking Manager and Assistant Vice President with Bank of America Ms Dewitt testified that Mr Hulsey submitted a financial statement dated May 17, 2006 incident to obtaining a loan and the financial statement showed a net worth of $81,556,986 51 (R pp 00708-00710) He now complains that the financial statement which he gave to Bank of America is not accurate and his net worth is only $32,802,776 27 He has now reduced his tobacco receivable to present value but that is not what he represented to Bank of America when he applied for a loan If Mr Hulsey's net worth was misstated it was due to his own misrepresentation concerning his net worth when he applied for a loan with Bank of America

Hulsey was permitted to cross examine the bank manager concerning present value of Hulsey's share of the so called "tobacco receivable" (R pp 00716-00720)

C Rule 55 sets out the procedure to be followed when a defendant is in default, but it does not dictate how the defaulting defendant may participate in the proceeding to assess damages

Husley contends that he should been allowed to engage in discovery, however, he cites no South Carolina case which allows a defaulting defendant to engage in discovery In ***Howard, supra,*** the Court considered three possible approaches relative to a defaulting defendant's participation in the proceeding to determine damages One of the approaches considered was to 'allow damages to be ascertained after a full adversary contest, including the right of the defendant to produce evidence in rebuttal or mitigation " This approach was rejected by the Supreme Court of South Carolina

The trial court did not prohibit Hulsey from cross examining witnesses as to damages The trial court did prevent Hulsey from attempting to introduce evidence and attempting to have Limehouse's

hospital discharge summary and newspaper articles submitted into evidence The documents constituted hearsay Furthermore Hulsey was not entitled to introduce evidence at the damages hearing In ruling on an objection to Hulsey reading from Limehouse's hospital discharge summary the trial court stated "it is a hearsay document and you are quoting from it" (R p 00584)

Hulsey was also allowed to cross examine Limehouse concerning whether or not his reputation was effected by the allegations that he was using illegal immigrants, that he was using substandard housing, that he was fined, that he failed to pay overtime, the impact of other newspaper articles, that the postal inspector seized records of L&L Services, and a RICO Complaint had been filed against him (R pp 00610-00615)

Hulsey contends that the trial court allowed the jury to impose actual and punitive damages based upon facts introduced into evidence by Limehouse that were not prayed for in the Complaint Specifically Hulsey alleges that Limehouse was allowed to testify that Hulsey had run the defamatory Post and Courier article on his website for the last three (3) years Limehouse did testify, that Hulsey's law firm had continued to provide a link on its website to the Post and Courier article published April 24, 2004,until February 12 2008 (R pp 00580-00581) Limehouse contends that the testimony was proper and relevant to the issue of punitive damages As set forth in Gamble v Stevenson, 305 S C 104, 111-12 406 S E 2d 350, 354 (S C 1991), and in accordance with Judge Young's jury charge (R p 00880), the duration of the Defendant's conduct is a factor that the jury may consider in awarding punitive damages The fact that Hulsey continued to provide a link to the defamatory Post and Courier article on his website for over three (3) years was clearly relevant on the issue of punitive damages

III The Trial Court did not err in denying Hulsey's Rule 60(b) motion

Pursuant to Rule 60(b)(1) " The court may relieve a party or its legal representative from a final judgment, order or proceeding for the following reasons (1) Mistake, inadvertence, surprise or excusable neglect " In this case, Hulsey was given notice of the default damages hearing and fully participated at the hearing Rule 60(b)(1) has no application to the facts of this case

Hulsey's Rule 55(c) motion was previously denied by the Order of Judge Pieper (R p 00010, Order filed February 7, 2007)

IV The trial court did not err in allowing evidence on damages to Limehouse's reputation as the defamatory statements were about Limehouse

"It is well settled that by suffering default, the defaulting party is deemed to have admitted the truth of the Plaintiff's allegations and have to conceded liability *Roche v Young Bros , Inc of Florence, 332 S C 75, 81, 504S E 2d 311, 314 (S C 1998)*

Hulsey contends that the defamatory statements were not about Limehouse Hulsey needs to read Limehouse s Complaint Limehouse alleges in paragraph 11 of his Complaint the following

During the news conference and or during the Defendant, Paul H Hulsey s meeting with members of the news media including a reporter from the Post & Courier staff, the Defendant, Paul H Hulsey, made false and defamatory statements concerning the Plaintiff with the knowledge and intent that said statements be published by the Post & Courier newspaper as well as by other media located in the Charleston County area which statements included the following to wit

a That the Plaintiff had engaged in a classic racketeering scheme,

b that the Plaintiff's conduct set the community back 150 years,

c that the Plaintiff engaged in a blatant case of indentured servitude,

d that the Plaintiff created a perfect racketeering enterprise just like Tony Soprano (R pp 00040, Complaint)"

Limehouse also alleges in paragraph 19 of the Complaint that the defamatory statement caused the loss of his business The allegation is as follows

"That the aforesaid statements made by the Defendant have caused the Plaintiff to suffer great mental anguish and depression caused by the injury to his reputation and further the Plaintiff has suffered special damages in that he has lost income and has lost his businesses all to his damage and determent (R p 00042, Complaint) "

Limehouse did not seek damages to his LLC's reputation

Hulsey also contends that Limehosue was not able to show whether the allege statements by Hulsey about Tony Saprano were in fact the cause of any damage to his reputation Liability, however, has been established by the default and the allegations are deemed to have been admitted Liability is conceded and the reason or cause of the damage is likewise conceded

In *Ammons v Hood 288 S C 278, 341 S E 2d 816 (S C App 1986)* the Court of Appeals affirmed the trial court's ruling which denied the Defendant's right to examine Ammons on matters of Ammons' employment Ammons sued his employer, Hood, for negligence resulting from Ammons slipping and falling while walking down the steps of Hood's office Hood failed to timely respond to the Complaint and was found to be in default At the damages hearing, Ammons claimed loss wages totaling $3,500 00 Hood sought to cross examine Ammons concerning matters related to Ammons employment The Court of Appeals in affirming the trial court's denial of Hood's request stated that "in a default action, the default judgment settles the issue of liability The hearing is held solely to determine

what damages should be awarded The trial judge properly allowed Hood to cross examine the witnesses regarding damages and Hood is entitled to no more "

Again, in _Doe v S B M 327, S C 352, 488 S E 2d, 878 (S C App 1997)_ S B M appealed the trial court's ruling which prohibited S B M from cross examining Doe regarding the reason Doe lost his job Doe sued S B M alleging tort theories of a violation of the right to privacy and intentional infliction of emotional stress Doe and S B M were involved in a homosexual relationship which ended Thereafter, S B M contacted Doe's employer and informed him of the parties homosexual relationship S B M also threaten to call Doe's customers and vandalized Doe's car Doe's employer asked him to resign from the insurance company and Doe was unemployed for two months S B M went into default and appeared at the default damages hearing At the default damages hearing S B M tried to cross examined Doe on the reason Doe lost his job S B M claimed that Doe was issued a citation by the Greenville City Sheriff's Department and as a result that caused Doe to loose his job S B M claimed that Doe's loss of employment was an element of damage not a question of liability The trial court disagreed and ruled that S B M could not cross examine Doe about the cause of the damages, but only the amount of the damages The Court of Appeals agreed with the trial court and stated "we agree with the trial judge that the queries emanating from S B M related to the liability rather than damages Consequently, the Court properly prohibited S B M from cross examining Doe as to the reason he was asked to resign from his job

Furthermore, there was overwhelming evidence that the defamatory statements caused Limehouse significant damage Limehouse testified that following the publication of the April 24, 2004 article the business of L&L Services collapsed The business was completely shut down (R p 00555)

According to Limehouse's expert the business was valued at $1,371,170 00 (R pp 00661) Limehouse owned one-half (½) of the business (R pp 00524 and 00658) After the business collapsed Limehouse was placed in a psychiatric ward at St Frances Hospital for a week and was treated for depression Following his release from St Frances Hospital he became socially withdrawn and sat on his sofa and cried for five to six months He had problems sleeping and was still taking antidepression medication as of the time of trial (R pp 00555-00557) Limehouse no longer fished and hunted He attended church prior to the publication but afterwards he stopped going to church because he didn't want people to see him He was no longer able to provide for his family and had great difficulty finding employment Limehouse ultimately took a job in Georgia in February of 2005 which was 305 miles away from his home (Rpp 00560-00562) Limehouse's sister also testified concerning Limehouse's mental health following the article's publication She testified that he became socially withdrawn, that he cried, that he was embarrassed, that he felt worthless, that he was depressed, that he had to borrow money from her, and that he was subject to public ridicule (Rpp 00776-00779) Limehouse s mother also testified that after the publication Limehouse was depressed, that he cried, that he was sad, that he lost his business, that he could not support his family, and that he could not purchase insulin (R pp 00785-00787) There was a great deal of evidence as to Limehouse's damages

V The award of punitive damages is not founded on trial error and does not constitute a denial of due process

Hulsey complains that the trial court erred in failing to independently make a threshold determination as to whether the Appellant's conduct rises to the level of culpability to justify the

imposition of punitive damages Hulsey, however, failed to object or make a motion during the trial to strike punitive damages and also failed to move for a directive verdict as to the issue of punitive damages In *Washington v Whitaker 317 S C 108, 451 S.E.2d 894, 898 (S C 1994)* the Supreme Court of South Carolina stated "Unlike the federal courts, this Court does not recognize a "plain error" rule Rather, it is well settled that a contemporaneous objection must be made to preserve an argument for appellate review *Taylor v Bridgebuilders, Inc 275 S C 236, 269 S E 2d 337 (1980)* (where no objection made to as to applicability of statute until motion for JNOV, issue not preserved) Here, City failed to raise a contemporaneous objection to the punitive damages pursuant to City of Newport and, therefore, cannot do so upon appeal *Talley v S C Higher Educ Tuition Grants Committee, 289 S C 483, 347 S E 2d 99 (1986)* (challenge to constitutionality of Act was procedurally barred)"

Since Hulsey failed to object to the submission of the issue of punitive damages to the jury or move for a directed verdict, the issue is not preserved for appellant review

Hulsey also complains that the trial court improperly allowed Limehouse to use the fact of the procedural default as a weapon to inflame the jury Hulsey complains that the trial court's explanation of the procedural posture of the case inferred to the jury that Hulsey has done something wrong which could be punished by an award of punitive damages Limehouse submits that there is nothing in the record to support Hulsey's contentions Limehouse submits that neither his counsel or the trial Judge inferred that Hulsey deliberately refused to play by the rules or that he thumbed his nose at the system The issue was addressed by the trial court prior to opening statements The trial judge instructed Limehouse's counsel that he could not say that Hulsey was deliberately in default (R p 00469) The trial court did advise the jury that Mr Hulsey and his law firm did not answer the lawsuit in the time

frame that is allowed in our court rules and therefore the allegations in the Complaint that Mr Limehouse filed are deemed to be admitted The judge went on the instruct the jury that the trial was a damages hearing and that Limehouse was required to prove his damages by the greater weight of the evidence (R pp 00484-00486)

Hulsey contends that Limehouse should not have been allowed to testify that Hulsey had run the defamatory Post and Courier article on his website from May of 2004 until February 12, 2008 Limehouse did testify, that Hulsey's law firm had continued to provide a link on its website to the Post and Courier article published in April 24, 2004 (R pp 00580-00581) Limehouse contends that the testimony was proper and relevant to the issue of punitive damages As set forth in _Gamble v Stevenson, 305 S C 104, 111-12 406 S E 2d 350, 354 (S C 1991)_, and in accordance with Judge Young's jury charge (R p 00880), the duration of the Defendant's conduct is a factor that the jury may consider in awarding punitive damages The fact that Hulsey continued to provide a link to the defamatory Post and Courier article on his website for over three (3) years was clearly relevant on the issue of punitive damages

The trial court did not err in affirming the award of punitive damages under Gamble Hulsey alleges that the trial court erred in finding that there was clear and convincing evidence presented at the damages hearing, that Hulsey intentionally defamed the Plaintiff by holding a press conference Limehouse alleged in his Complaint that "on or about April 23 2004, the Defendant held a press conference or otherwise made false statements about the Plaintiff to certain news agency including but not limited to a reporter from the Post and Courier staff The Post and Courier is widely distributed newspaper in Charleston County and throughout other areas of the State of South Carolina '

(R p 00040,Complaint, paragraph 10) Limehouse also alleged in his Complaint that "during the press conference or during the Defendant, Hulsey's meeting with members of the news media including a reporter from the Post and Courier, the Defendant, Paul H Hulsey, made false and defamatory statements about the Plaintiff with the knowledge and intent that said statements be published by the Post and Courier newspaper as well as by other media located in the Charleston County area " (R p 00040,Complaint, paragraph 11) The trial judge's finding that there was clear and convincing evidence which would support a jury's finding that Hulsey intentionally defamed Limehouse is supported by the record

Hulsey also alleges that the trial judge erred in finding that the allegations were not spontaneous and that the press conference was planned as part of filing a lawsuit against the Plaintiff

Limehouse in his Complaint alleged "that the statements made by the Defendant, Paul H Hulsey, as aforesaid were made with the intent of bolstering the class action lawsuit which he filed against the Plaintiff and Plaintiff's company and also with the intent to attract individuals who would become members of the class action suit so the defendants could potentially earn large sums of money as legal fees " (R pp 00041-00042,Complaint, paragraph 16)

Limehouse testified that the article ran on Hulsey's website for over three (3) years (R pp 00580-00581) The trial court's finding that Hulsey's conduct took place over a period of weeks if not months is supported by the record

Lastly, Hulsey alleges that the trial court erred in finding that he was "privy to most if not all the evidence the Defendants wished to present" (R p 00003,1/7/10 order) At the trial of this case, Hulsey attempted to present evidence and made numerous arguments to the trial judge concerning what he

concerning what he wanted and intended to show The trial judge's findings is supported by the record

CONCLUSION

There is nothing novel, exceptional or extraordinary concerning this case Judge Pieper denied the Defendants' Motion to Set Aside Default on the basis that the Defendants failed to show good cause The defendants argued that there Answer was not late when, in fact, the Defendants were at least 100 days late in filing an Answer

Likewise there was nothing novel, exceptional or extraordinary concerning the trial to assess damages The trial judge followed the dictates of Howard and allowed Hulsey to cross-examine witnesses and object to evidence

Limehouse respectfully requests that this Court affirm (1) Judge Danny Pieper's Order denying Defendants' Motion to Set Aside Default filed February 7, 2007, (2) Judge Roger M Young's Order Denying Defendants' Motion to Dismiss for Lack of Jurisdiction dated May 22, 2008, (3) the judgement entered on the jury's verdict on November 17, 2009, (4) Judge Roger M Young's Order denying Defendants' post-trial motions filed January 7, 2010, and (5) Judge Roger M Young's Order dated January 7, 2010, reviewing the jury's award of punitive damages

CISA & DODDS, LLP

Frank M Cisa
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464
(843) 881-6530
Fax (843) 881-5433
Attorneys for the Respondent

This 6th day of December, 2010

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M Young, Circuit Judge
The Honorable Daniel F Pieper, Circuit Judge

Case No 06-CP-10-1578

Lawton Limehouse, Jr — Respondent

Paul H Hulsey and
The Hulsey Litigation Group,
LLC — Appellant

CERTIFICATE OF COUNSEL

The undersigned certified that this Final Brief complies with Rule 211 (b), SCACR

CISA & DODDS, LLP

Frank M Cisa
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464
Phone (843) 881-6530
Fax (843) 881-5433
E-mail frank@cisadodds com

Attorneys for the Respondent

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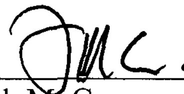
LLC — Appellant

PROOF OF SERVICE

I certify that I have served a copy of the Respondent's Final Brief by United States Mail, postage prepaid, on December 7, 2010, addressed to the Appellant, The Hulsey Litigation Group's attorneys of record, Robert H Hood, Esquire and James B Hood, Esquire, located at Hood Law Firm, P O Box 1508 Charleston, SC 29402 and the Appellant, Paul Hulsey's attorneys of record, A Camden Lewis, Esquire and Ariail E King, Esquire, located at Lewis & Babcock, LLP, P O Box 11208, Columbia, SC 29211



Frank M Cisa
Cisa & Dodds, LLP
858 Lowcountry Blvd , Suite 101
Mt Pleasant, SC 29464
(843) 881-6530
Attorney for the Respondent

December 7th, 2010