

**FORM 13
BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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OCT 22 2025

SC Court of Appeals

APPEAL FROM YORK COUNTY
Master in Equity

Teasa K. Weaver, Master in Equity

Case No. 2025-000826

Ronald Leon Mitchell,

Respondent,

v.

Major Lewis Mitchell,

Appellant.

INITIAL BRIEF OF APPELLANT

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October 17, 2025

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STATEMENT OF ISSUES ON APPEAL

1. WHETHER THE MASTER-IN-EQUITY COMMITTED REVERSIBLE ERROR BY ENTERING FINAL JUDGMENT WITHOUT FIRST ENTERING DEFAULT UNDER RULE 55(A) S.C. R. Civ. P., FAILING TO PROVIDE NOTICE OF A MOTION FOR DEFAULT JUDGMENT UNDER RULE 55(B) S.C. R. Civ. P., AND THEN DENYING THE APPELLANT AN OPPORTUNITY TO ASSERT DEFENSES ON THE MERITS DESPITE NO FORMAL DEFAULT EVER BEING ENTERED.
2. DID THE COURT OF COMMON PLEAS ABUSE ITS DISCRETION IN DENYING THE APPELLANT'S MOTION TO SET ASIDE THE ENTRY OF DEFAULT UNDER RULE 55(c) S.C. R. Civ. P. BY APPLYING A STANDARD MORE CONSISTENT WITH RULE 60(b) S.C. R. Civ. P. "EXCUSABLE NEGLIGENCE" RATHER THAN THE "GOOD CAUSE" STANDARD REQUIRED UNDER RULE 55(c) S.C. R. Civ. P.?

STATEMENT OF THE CASE

On October 30, 2023, Respondent filed a Summons and Complaint in the York County Court of Common Pleas, Sixteenth Judicial Circuit, alleging claims concerning a parcel of real property measuring approximately 1.207 acres located off of Leach Road. (R. p. ___, Compl. ¶ 3). Respondent alleged that the parties entered into an oral agreement wherein Respondent would retain and pay a surveyor to measure the property, and Appellant would thereafter deed the agreed-upon portion to Respondent. (R. p. ___, Compl. ¶ 5). The Complaint further alleged that Appellant failed to execute the deed and thereby breached the agreement. (R. p. ___, Compl. ¶¶ 7–9). Respondent asserted causes of action for (1) specific performance, (2) fraud, and (3) negligent misrepresentation. (R. p. ___, Compl.).

On November 6, 2023, Respondent filed an Affidavit of Service indicating that Appellant was served on November 3, 2023. (R. p. ___, Aff. of Service). On December 5, 2023, Respondent filed an Affidavit of Default. (R. p. ___, Aff. of Default).

On December 28, 2023, Appellant, through counsel, filed an Answer denying the allegations. (R. p. ___, Answer). On January 6, 2024, Respondent filed a Motion to Strike Appellant's Answer based on the pending Affidavit of Default. (R. p. ___, Mot. to Strike). On February 6, 2024, Appellant filed a Motion to Set Aside the Affidavit of Default. (R. p. ___, Mot. to Set Aside). After a hearing on February 16, 2024, the circuit court granted Respondent's Motion to Strike and denied Appellant's Motion to Set Aside. (R. p. ___, Form 4 Order).

In May 2024, the circuit court referred the matter to the Master-in-Equity for a final hearing. (R. p. ___, Order of Referral). A final hearing was held before the Master-in-Equity on October 31, 2024. (R. p. ___, Hr'g Tr.). On March 31, 2025, the Master-in-Equity entered a Final

Order granting specific performance and awarding the 1.207-acre parcel to Respondent. (R. p. ___, Final Order). Appellant timely served a Notice of Appeal on April 30, 2025. (R. p. ___, Notice of Appeal).

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 circuit court. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). The circuit court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 322 (Ct.App.1988). An abuse of discretion occurs when the judgment is controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997).

FACTS

The Appellant and the Respondent are brothers. The property at issue was originally part of a 119-acre parcel of land, which has been transferred over time through various deeds among family members. (Tr. (Oct 31), p. 19, ll. 24–25; Tr. (Oct. 31), p. 20, l. 1).

The Appellant was the owner of approximately 7.1 acres of this original parcel. (R. p. ___, Compl. ¶ 3; R. p. ___, Compl. Ex. 3, Plat). The Respondent filed a summons and complaint alleging that the parties entered into an oral agreement. (R. p. ___, Compl. ¶ 5). Under this alleged agreement, the Appellant would transfer 1.207 acres of his 7.1-acre parcel to the Respondent by deed, in exchange for the Respondent conducting a survey of the 1.207-acre portion. *Id.*

The Respondent claims he completed the required survey but that the Appellant subsequently refused to execute a deed conveying the 1.207 acres. (R. p. ___, Compl. ¶¶ 7–9). The Appellant denies ever agreeing to transfer any portion of his property to the Respondent or to execute a deed reflecting such a transfer. (R. p. ___, Def.'s Answer; Tr. (Oct. 31), p. 44, ll. 12–23).

ARGUMENTS

I. THE MASTER IN EQUITY ERRED WHEN IT FAILED TO HEAR THE APPELLANTS DEFENSES ON THE MERITS WITHOUT FIRST RECORDING AN ENTRY OF DEFAULT UNDER RULE 55(A) OR ENTERING A DEFAULT JUDGEMENT UNDER RULE 55(b) OF THE SOUTH CAROLINA RULES OF CIVIL PROCEDURE

Rule 55(a) of the South Carolina Rules of Civil Procedure requires that an entry of default be made on the record before a party may seek a default judgment. The rule provides:

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 affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

Rule 55(a), S.C. R. Civ. P.

In the present case, no such entry of default was made by the clerk or the court. Although Respondent submitted an affidavit titled "Affidavit of Default," it was not accompanied by a formal motion requesting entry of default under Rule 55(a), nor did the court issue an order entering default. The Appellant was never served by the Respondent with a motion for entry of default or for default judgment, as required by Rule 55(b)(2) S.C. R. Civ. P., which governs cases involving claims not for a sum certain. While the Appellant received notice of a final hearing, there is no record the Appellant was served with notice of a motion for a default judgment.

Rule 55(b)(2) S.C. R. Civ. P. provides in relevant part:

In all other cases, the party entitled to a judgment by default shall apply to the court therefor... If the party against whom judgment by default is sought has appeared in the action, the party... shall be served with written notice of the motion or application for judgment at least 3 days prior to the hearing on such application.

Rule 55(b)(2), S.C. R. Civ. P.

Despite this requirement, there is no record that the Respondent filed a motion for default judgment, and Appellant was never served with notice of any such motion or hearing. Instead, after the court granted Respondent's motion to strike Appellant's answer, without citing legal authority or granting an actual entry of default, the Court of Common Pleas issued an order of reference to the Master in Equity. (R. p. __, Order of Reference). That order characterized the case as a default proceeding, stating that the Master was to "hold a hearing(s) and enter final judgment" despite the absence of a Rule 55(a) default entry or a Rule 55(b) motion for default judgement by the Respondent. *Id.*

At the hearing before the Master in Equity, Appellant appeared and attempted to present meritorious defenses. (R. p. ___ Oct. 31, Tr. p. 70, ¶ 16.). However, the Master declined to consider those defenses, relying on the mistaken belief that the case was in default. The resulting final judgment fails to identify itself as a default judgment under Rule 55(b), includes no findings supporting default, and fails to explain why Appellant's defenses were not considered. *Id.*

A. The Master In Equity Erred By Proceeding To Final Judgment Without First Entering A Default On The Record As Required By Rule 55(A) Of The South Carolina Rules Of Civil Procedure

Under the South Carolina Rules of Civil Procedure Rule 55 (a) the clerk shall enter default on the record:

- (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 affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).

Rule 55(a), S.C. R. Civ. P. Furthermore, the notes to the rules states that “[t]hese Rules 55(a) and 55(b)(1) are drawn from Federal Rule 55 with two changes. This Rule 55(a) **requires that the Court enter all judgments by default** and preserves Circuit Rule 15.” See note 1 to Rule 55, S.C. R. Civ. P.

South Carolina Case Law states that an entry of default is a ministerial act which a clerk is required to perform once default is made to appear by the affidavit of the moving party. *See Thynes v. Lloyd*, 294 S.C. 152, 153-54, 363 S.E.2d 122, 123 (Ct.App.1987) (holding that "whether default was actually entered is of no consequence since the entry of default is a purely ministerial act which the clerk was required to perform once the default was made to appear by the affidavit" of the moving party).

While *Thynes* emphasized that the absence of a formal entry of default does not negate its legal effect, the procedural posture in *Thynes* differs significantly from the present case. In *Thynes*, the appeal concerned an interlocutory order denying a motion to set aside default. Because no final judgment had yet been entered, the court still retained authority to permit the clerk to enter default under Rule 55(a), followed by a default judgment under Rule 55(b). Therefore, the appeals court refused to hear the case.

In contrast, the present case involves a final judgment issued without a prior entry of default under Rule 55(a). Moreover, in the present case the final order does not cite Rule 55, nor does it explain why the Appellant’s meritorious defenses were excluded from consideration. This deviation from the required procedural steps is material and distinguishes the current case from *Thynes*.

B. The Master In Equity Erred When It Refused To Hear The Appellants Defenses On The Merits.

An evidentiary hearing was held on October 31, 2024, during which the Respondent was permitted to present evidence, including testimony that the parties allegedly entered into an oral agreement whereby the Appellant would convey 1.2 acres of land to the Respondent upon the completion of a survey. The Respondent also submitted the Plat/survey into evidence. (R. p. ___ Oct 31 Tr. p. 63, ¶ 6). At the conclusion of the Respondent's presentation of evidence, counsel for the Appellant moved to dismiss the Complaint on the grounds that the claim was barred by the statute of frauds. (R. p. ___ Oct 31 Tr. p. 70, ¶ 16.). The Respondent objected to the motion, arguing that the statute of frauds defense had not been affirmatively pled. (R. p. ___ Oct 31 Tr. p., p. 72, ¶ 3.). The Master-in-Equity summarily denied the motion, stating only that the "motion [is] denied at this stage of the proceeding," without issuing any legal analysis or findings of fact to support the ruling. (R. p. ___ Oct 31 Tr. p. 73, ¶ 5.).

Under South Carolina law, a party is barred from litigating on the merits only after a valid entry of default. Rule 55(a), S.C. R. Civ. P., provides that the clerk shall enter default "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Once default is entered, Rule 55(b)(2) S.C. R. Civ. P. allows the court to enter judgment only upon motion by the party entitled to default and, where the opposing party has appeared, only after service of written notice of the default hearing. In this case,

however, no formal entry of default was ever entered by the clerk pursuant to Rule 55(a) S.C. R. Civ. P.. Although the Respondent filed an Affidavit of Default and a Motion to Strike the Appellant's Answer, the record does not reflect that a motion for default judgment under Rule 55(b)(2) S.C. R. Civ. P. was ever filed. Further, there is no evidence that the Appellant was served with notice that the October 31 hearing would be treated as a default judgment hearing, as required by Rule 55(b)(2) S.C. R. Civ. P. The Order of Reference to the Master-in-Equity likewise contains no language indicating that the hearing was intended as a default proceeding. (R. p. _____ Order of reference).

Despite this, the Master precluded the Appellant from litigating his defenses, including a dispositive statute of frauds defense. This ruling constituted legal error. Under South Carolina law, an abuse of discretion occurs when a decision is based on an error of law or lacks evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997). Here, the procedural record is fatally deficient. There was no entry of default by the clerk, no motion for default judgment filed, and no notice to the Appellant that the October 31 hearing would be treated as a default hearing. Under these circumstances, the Master's refusal to allow the Appellant to present defenses was procedurally improper and legally unsupported.

Moreover, the statute of frauds defense raised by the Appellant was dispositive. The Respondent testified that the parties entered into an oral agreement under which the Appellant would transfer 1.2 acres of land to the Respondent upon completion of a survey. (R. p. _____ Tr. p. 63, ¶ 6.). However, S.C. Code Ann. § 32-3-10 requires that any contract for the sale or conveyance of land be in writing and signed by the party to be charged. No such writing was

introduced into evidence. Therefore, even if the Master had properly permitted the case to proceed on the merits, the Appellant's statute of frauds defense would have barred enforcement of the alleged oral agreement.

The Master-in-Equity's decision to deny the Appellant's motion to dismiss without legal explanation or citing Rule 55 S.C. R. Civ. P., and to grant specific performance on the basis of an unenforceable oral agreement, without a valid entry of default, without a motion or notice under Rule 55(b)(2) S.C. R. Civ. P., and while barring the Appellant from raising a dispositive legal defense, constituted an abuse of discretion and warrants reversal.

II. THE COURT OF COMMON PLEAS ABUSED ITS DISCRETION BY APPLYING THE HEIGHTENED "EXCUSABLE NEGLIGENCE" STANDARD OF RULE 60(B) INSTEAD OF RULE 55(C)'S MORE LENIENT "GOOD CAUSE" STANDARD.

The Court of Common Pleas committed reversible error when it denied Appellant's motion to set aside an entry of default by applying the heightened "excusable neglect" standard under Rule 60(b) S.C. R. Civ. P, rather than the more lenient "good cause" standard required by Rule 55(c) S.C. R. Civ. P. Although the court's order expressly cited Rule 55(c) S.C. R. Civ. P. and concluded that "no good cause was shown," the reasoning and analysis employed reflect a misapplication of the appropriate legal standard, specifically, an improper conflation of the more lenient "good cause" standard under Rule 55(c) S.C. R. Civ. P. with the more stringent "excusable neglect" standard applicable under Rule 60(b). (R. p. _____ Order of reference).

This misapplication of the law constitutes an abuse of discretion and warrants reversal as it directly undermines the purpose for which the South Carolina Courts have distinguished Rule 55(c) S.C. R. Civ. P. and Rule 60(b) S.C. R. Civ. P.

Rule 55(c) S.C. R. Civ. P provides that an entry of default, not a default judgment, may be set aside “for good cause shown.” In contrast, Rule 60(b) S.C. R. Civ. P. applies only after a default judgment has been entered and demands a more rigorous showing of “excusable neglect” or other enumerated grounds for relief. The South Carolina Supreme Court has made clear that these two rules are distinct and must not be conflated. As stated in *Sundown Operating Co. v. Intedgen Indus., Inc.*, 383 S.C. 601, 609, 681 S.E.2d 885, 889 (2009) “We take this opportunity to reassert the basic legal premise that the standard for granting relief under Rule 60(b) S.C. R. Civ. P. 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. Intedgen Indus., Inc.*, 383 S.C. 601, 609, 681 S.E.2d 885, 889 (2009).

Under the correct Rule 55(c) S.C. R. Civ. P. standard, a party seeking relief must present a satisfactory explanation for the default and show that setting aside the entry of default would serve the interests of justice. Courts then evaluate three factors: (1) the timing of the motion, (2) whether the defendant has a meritorious defense, and (3) the degree of prejudice to the plaintiff. *Id.* (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989)).

Here, Appellant acted in good faith and without undue delay. The answer was filed only seven weeks after service of the summons and complaint, during which time Appellant was

actively attempting to secure legal representation. (R.p. ___ Answer). Appellant also presented a meritorious defense under the Statute of Frauds, as Respondent's claim rests entirely on an alleged oral contract related to interest in land.

Crucially, Respondent has shown no prejudice resulting from the brief delay. No default judgment had been entered, no discovery had commenced, and there is no indication that the seven-week period impacted Respondent's ability to prosecute the case.

The distinction between Rule 55(c) S.C. R. Civ. P. and Rule 60(b) S.C. R. Civ. P. exists to protect parties from default when a party may not be adverse in the legal proceedings while balancing judicial efficiency and potential prejudice to the Plaintiff. The policy underlying Rule 55(c) S.C. R. Civ. P. reflects the judiciary's strong preference for resolving disputes on the merits rather than by procedural default. (See *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) "This is consistent with South Carolina's policy favoring the disposition of issues on their merits rather than on technicalities"). It seeks to preserve access to justice for defendants who, while perhaps unsophisticated in legal procedures, are making genuine efforts to engage the system. Applying the harsher Rule 60(b) S.C. R. Civ. P. standard defeats this purpose and imposes an unnecessarily high barrier at a stage where the court is supposed to exercise flexibility.

Applying the stricter Rule 60(b) S.C. R. Civ. P. standard at the early stage of this case defeated that purpose of the distinction and improperly denied Appellant the opportunity to defend on the merits. Because the court applied an incorrect legal standard and failed to consider

the factors required under Rule 55(c) S.C. R. Civ. P., its ruling constitutes an abuse of discretion. This Court should reverse the order denying Appellant's motion and remand the matter for further proceedings.

CONCLUSION

For the reasons stated, this Court should reverse the final judgment of the Master in Equity.

Respectfully submitted,

October 17, 2025

/s/ Millie Shaw

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**FORM 7
PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Teasa K. Weaver, Master in Equity

Case No. 2023-CP-4603404

Ronald Leon Mitchell,

Respondent,

v.

Major Lewis Mitchell,

Appellant.

PROOF OF SERVICE

I certify that I have served the Initial Brief and the Designation of Matter to be Included in the Record on Appeal, on The Honorable Jenny Abbott Kitchings by electronic filing and by depositing a copy of it in the United States Mail, postage prepaid, on October 17, 2025, addressed to PO Box 11629, Columbia, South Carolina 29211.

/s/ Millie Shaw

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October 17, 2025

Attorney for Appellant

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SC Court of Appeals

FORM 8
LETTER TO THE APPELLATE COURT CLERK

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OCT 22 2025

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Ronald Leon Mitchell v. Major Lewis Mitchell, Case No. 2023-CP-46-03404.

Dear Ms. Kitchings:

Enclosed for filing is the Initial Brief for the appeal in the above case. Also enclosed are the:

- (1) Appellant's Initial Brief,
- (2) Designation of Matter to be Included in the Record on Appeal,
- (3) Proof of service of the Designation of Matter to be Included in the Record on Appeal and Initial Brief on the respondent,
- (4) Proof of service of the Designation of Matter to be Included in the Record on Appeal and Initial Brief on the South Carolina Court of Appeals Clerk.

Sincerely,

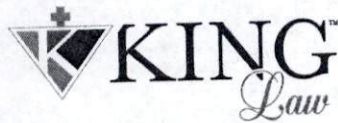
/s/ Millie Shaw

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