

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Thomas Scott Jackson,

Plaintiff,

vs.

Candelabra, Inc. D/B/A Meadow Blu,
D/B/A Lyndon Leigh, and Whitney
Moore,

IN THE COURT OF COMMON PLEAS

FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2024-CP-10-04878

**ORDER DENYING DEFENDANT
CANDELABRA’S MOTION TO VACATE
AND GRANTING PLAINTIFF’S MOTION
TO DISMISS**

Hearing Date: August 4, 2025

Counsel for Plaintiff: Emmanuel J. Ferguson, Sr., Ferguson Law and Mediation, LLC

Counsel for Defendant: Jerry Theos, E. Gordon Hay, VI, Theos Law Firm, LLC

On August 4, 2025, the Court held a hearing on two motions in this matter. Defendant Candelabra, Inc. d/b/a Meadow Blu, d/b/a Lyndon Leigh (“Candelabra”) filed a Motion to Vacate under Rules 55(b) and 60(d) of the South Carolina Rules of Civil Procedure (“SCRCP”). Plaintiff, Thomas Scott Jackson (“Jackson”) filed a Motion to Dismiss the Counterclaims asserted by Defendant Whitney Moore (“Moore”) pursuant to Rule 12(b)(6), SCRCP. Both matters were briefed, and arguments were made before the Court on each Motion.

For the reasons set forth below, the Court **DENIES** Defendant Candelabra’s Motion to Vacate and **GRANTS** Plaintiff’s Motion to Dismiss.

FACTUAL SUMMARY

I. Candelabra’s Motion to Vacate

On September 28, 2024, Plaintiff filed a Summons and Complaint naming Candelabra D/B/A Meadow Blu, D/B/A Lyndon Leigh, and Whitney Moore as Defendants. Plaintiff alleges Defendant Candelabra failed to pay Plaintiff for his work as an employee of Candelabra and breached an employment agreement. Plaintiff’s Complaint includes causes of action for 1)

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violation of the South Carolina Payment of Wages Act; 2) breach of contract; 3) tortious interference with a contract; 4) breach of contract with fraudulent intent; 5) civil conspiracy; 6) defamation; and 7) intentional infliction of emotional distress.

Pursuant to Rule 4(d)(8), SCRCPP, the Summons and Complaint were served on Candelabra on October 1, 2024, by way of certified mail through the U.S. Postal Service with a return receipt requested. The Summons and Complaint were delivered to the address of Candelabra's registered agent at 1944 Long Grove Road, Suite 1 in Mt. Pleasant, SC 29464 (the "Long Grove Road" address). The store manager for Candelabra, Claire Huff, signed the certified mail receipt on October 1, 2024.¹ It is undisputed that Defendant Moore is the named registered agent for Candelabra and works remotely from home on a full-time basis.² Ms. Huff called Defendant Moore to inform her the Summons and Complaint were delivered to Candelabra by way of certified mail. Defendant Moore told Ms. Huff to give the envelope containing the Summons and Complaint to Mona Flinn ("Flinn"), a Candelabra employee who, like Moore, works from home. Ms. Flinn is tasked with picking up the mail from the Long Grove Road Address and delivering it to Moore's home address.³

¹ There is some disagreement about which entity employed Ms. Huff. However, the record is clear she was paid by Candelabra and worked as an employee of Candelabra with the ability to accept mail on behalf of Candelabra, hire/fire employees, and hold herself out as a person with business authority. See Plaintiff's Exhibit 1 (07.07.25 Affidavit of Claire Huff, Attachment 1 - Candelabra Pay Statement); Plaintiff's Exhibit 14 (January 9, 2025, Email to Claire Huff regarding Collection of Mail).

² Defendant's Exhibit A (Affidavit of Whitney Moore). Moore's home address is *not* the Long Grove Road address or listed as an address where the registered agent of Candelabra can be located.

³ Defendant's Exhibit C (Affidavit of Mona Flinn).

Ms. Huff sent a text message to Ms. Flinn with a picture of the envelope containing the Summons and Complaint with her instructions from Moore to give it to Ms. Flinn.⁴ Ms. Flinn responded that she would pick up the envelope. It is uncontested this process is standard for Candelabra.⁵

Candelabra did not file an answer or otherwise respond to Plaintiff's Complaint and Plaintiff moved for entry of default judgment. Candelabra was provided notice of the hearing on November 21, 2024, by way of U.S. Mail to the Long Grove Road address. This notice was also sent to Defendant Moore by way of U.S. Mail to her home located at 2101 Cheswick Lane, Mt. Pleasant, SC, 29466 on November 21, 2024. The notice was also emailed to Moore's business email address on November 22, 2024.⁶

Notably, Plaintiff attempted personal service of the Summons and Complaint on Defendant Moore at her home located at 2101 Cheswick Lane, Mt. Pleasant, SC, 29466. *Plaintiff made no less than twenty (20) attempts by way of a legal intern, a professional process server, and two private investigators.*⁷ However, Defendant Moore made overt, purposeful attempts to avoid service. Notably, the Affidavit of the process server employed with Falcon Express includes the following notes:

11/18/2024 – 10:45 a.m. Attempted service at 2101 Cheswick Drive, Mt. Pleasant, SC 29466. No answer. There is a vehicle here **I was told she would not answer the door.**

⁴ Plaintiff's Exhibit 1 (07.07.25 Affidavit of Claire Huff). Notably, in her Affidavit Ms. Huff attached the text message she sent to Flinn showing an image of the envelope containing the Summons and Complaint.

⁵ See, Defendant's Exhibit A (Affidavit of Whitney Moore); Defendant's Exhibit C (Affidavit of Mona Flinn); Plaintiff's Exhibit 5 (Affidavit of Thomas Jackson).

⁶ Plaintiff's Exhibit 2 (November 21 and 22, 2024, Email and Letter of Notice of Default Hearing).

⁷ Plaintiff's Exhibit 3 (January 20, 2025, Affidavit of Process Server); Plaintiff's Exhibit 4 (April 11, 2025, Affidavit of Process Server/Private Investigator); Plaintiff's Exhibit 17 Affidavit of Madison Barrett.

12/03/2024 – 6:05 p.m. Attempted service at 2101 Cheswick Drive, Mt. Pleasant, SC 29466. No answer. [...] Lights on inside and on porch. **Dog inside was scratching at the door until someone was whispering and took dog to back of the house.**

12/09/2024 – 9:20 a.m. Mt. Pleasant, SC 29466. Attempted service at 2101 Cheswick Drive, Mt. Pleasant, SC 29466. No answer. Light on inside. Dog was at door then only heard dog from back of house. **She is obviously avoiding and if anyone lives with her, they are also not coming to the door.**⁸

Further, the process server made attempts to serve Moore at the Long Grove Road address and the employee there stated Moore, “*doesn’t come here.*”⁹ Notably, Defendant Moore has boasted about her ability to evade legal service and has instructed her employees to limit the information they give to any person attempting to locate her.¹⁰

Plaintiff has spent \$2,432.32 to date in filing fees and attempting to serve Defendants Moore and Candelabra. Moreover, Defendant Moore demonstrated awareness of the importance of promptly addressing legal matters. On March 27, 2024, Defendant Moore emailed Plaintiff from her Candelabra email address and instructed Plaintiff to inform her of any attempt to take legal action so she could get her attorney involved.¹¹ On August 12, 2024, counsel for Plaintiff sent a preservation letter to Candelabra and Moore by way of U.S. Mail and hand delivery.¹² Counsel for

⁸ Plaintiff’s Exhibit 3 (January 20, 2025, Affidavit of Process Server).

⁹ Plaintiff’s Exhibit 3 (January 20, 2025, Affidavit of Process Server).

¹⁰ Plaintiff’s Exhibit 5 (Affidavit of Thomas Scott Jackson).

¹¹ See, Plaintiff’s Exhibit 6 (March 27, 2024, Email from Moore to Plaintiff) (Moore states to Plaintiff, “*If you decide to have your attorney involved, we will need to have their information to give to Nelson-Mullins*”).

¹² Plaintiff’s Exhibit 7 (Letter to Defendants Moore and Candelabra Dated August 6, 2024); Plaintiff’s Exhibit 17 (Affidavit of Madison Barrett).

Plaintiff also emailed the preservation letter to Defendant Moore's business email address three times on August 12, August 26, and August 30, 2024.¹³

In this case, the Court could have entered a default judgment against Candelabra without a hearing since Plaintiff sought a sum certain amount and the defaulting party did not make an appearance.¹⁴ However, out of an abundance of caution, the Court held a hearing on the matter and ensured Defendant Candelabra was given notice of the hearing. Notice of the hearing on Plaintiff's Motion for Default was mailed to Defendant Candelabra on November 21, 2024.¹⁵ Further, notice was mailed to Defendant Moore's home and emailed to her company email address on November 22, 2024.¹⁶

On December 17, 2024, the Court held a hearing on Plaintiff's Motion for Default. The Court found that, pursuant to Rule 4(d)(8), SCRPC, service of the Summons and Complaint on Candelabra was proper and effective on October 1, 2024, the date of delivery as shown on the return receipt of the certified mailing to its registered agent. The Order also found that, pursuant to Rule 12, SCRPC, the deadline for Defendant Candelabra to file a responsive pleading was November 5, 2024.¹⁷ The Court found Defendant Candelabra was in Default and entered its Judgment and Order of Default on February 13, 2025.

¹³ Plaintiff's Exhibit 8 (August 12, 2024, Email to Whitey Moore); Plaintiff's Exhibit 9 (August 26, 2024, Email to Whitney Moore); Plaintiff's Exhibit 10 (August 30, 2024, Email to Whitney Moore).

¹⁴ *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 510-11, 602 S.E.2d 99, 103 (Ct. App. 2004) ("Rule 55(b)(1), SCRPC, entitled 'Cases Involving Liquidated Damages or Sum Certain,' provides that where the amount sought is a sum certain and the defaulting party has *not* made an appearance, the judge may enter default judgment for the amount sought without holding a hearing").

¹⁵ Plaintiff's Exhibit 2 (November 21 and 22, 2024, Email and Letter of Notice of Default Hearing).

¹⁶ Plaintiff's Exhibit 2 (November 21 and 22, 2024, Email and Letter of Notice of Default Hearing).

¹⁷ The deadline for Candelabra to Respond was November 5, 2024, 35 days after service. See Rule 6(e), SCRPC (Additional Time After Service by Mail or Upon Statutory Agent. "Whenever a party has the right or is required to do some act or take some proceedings within a prescribed period

The Court entered a Judgment and Order of Default against Candelabra for a sum certain amount based on Plaintiff's breach of contract claim and his claim under the South Carolina Payment of Wages Act (the "Order"). Further, the Court ordered a damages hearing on the remaining causes of action which Candelabra was found to be in default. Again, Defendant Candelabra was notified of the Default Judgment.¹⁸ Again, copies of the Order were mailed to Defendant Moore's home address and emailed to her business email address.¹⁹

On April 1, 2025, *one hundred fifty-two (152) days* after the deadline to file a responsive pleading, Defendant Candelabra filed its Motion to Vacate. Defendant Candelabra's Motion to Vacate does not identify a basis for its Motion under Rule 60.²⁰ Moreover, Defendant's memorandum does not identify a proper ground under Rule 60(b) to justify relief from judgment.²¹

II. Moore's Counterclaims Against Plaintiff

On April 28, 2025, Defendant Moore, on (behalf of herself as an individual Defendant) filed an Answer to Plaintiff's Complaint. There is no dispute that Moore, as an individual, needed

after the service of a notice or other paper upon him and the notice or paper is served upon him by mail or upon a person designated by statute to accept service, five days shall be added to the prescribed period.").

¹⁸ Further attempts were made to notify Defendant Moore of the Judgment by U.S. Mail and by the Charleston County Sheriff at her home address.

¹⁹ Plaintiff's Exhibit 11 (February 13, 2025, Letter and Email to Defendant Candelabra).

²⁰ See Rule 7(b)(1), SCRCPC ("Motions and Other Papers. An application to the court for an order shall be by motion which, unless made during a hearing or trial in open court with a court reporter present, shall be made in writing, *shall state with particularity the grounds therefor*, and shall set forth the relief or order sought. The requirement of writing is fulfilled if the motion is stated in a written notice of the hearing of the motion.") (emphasis added).

²¹ See, Rule 60, SCRCPC ("On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application.").

to be served personally and this was accomplished by the second process server hired by Plaintiff on March 30, 2025. Moore's Answer also included counterclaims against Plaintiff for 1) conversion; 2) breach of contract; 3) breach of fiduciary duty; 4) breach of loyalty; and 5) negligence, gross negligence, and/or recklessness.

In her Answer, Defendant Moore admits Defendant Candelabra, is a retail sales business that does business under the name "Meadow Blu." (Answer, ¶ 7). Moore further admits Plaintiff was employed by Candelabra as its Chief Operating Officer by way of an employment contract (Answer, ¶¶ 12-15). Defendant Moore cites the same document Plaintiff identified in his Complaint as the contractual agreement between Plaintiff and Candelabra (Answer, ¶ 86).

Defendant Moore alleges Plaintiff began his employment with *Defendant Candelabra* on or about September 5, 2023 (Answer ¶, 87).²² Defendant Moore further alleges that, as *an employee of Candelabra*, Plaintiff "failed to meet his duties, responsibilities, and/or obligations as an employee..." (Answer, ¶ 88). The counterclaim goes on to identify various alleged actions undertaken by Plaintiff during *his employment with Candelabra*. (Answer ¶ 88). Defendant Moore alleges that "upon information and belief" Plaintiff converted products, inventory, goods, and/or assets from Defendant(s) and utilized said assets of Defendant(s) for his personal benefit and gain." (Answer, ¶ 92). In fact, each of the substantive allegations Defendant Moore makes against Plaintiff are not based on any alleged fact but, instead, are premised upon Defendant Moore's "information and belief" (Answer, ¶¶ 92, 93, 101, 102, 106, 107).

Defendant Moore's claim for conversion fails because she has not alleged ownership of the property she claims to be the subject of her conversion claim.²³ Further, Defendant Moore was

²² Notably, Defendant Moore *does not allege* Plaintiff was an employee of *Moore*.

²³ The counterclaim also fails to identify the property alleged to have been converted by Plaintiff.

not a party to the employment contract between Plaintiff and Candelabra. Plaintiff did not owe any duty, fiduciary duty, or duty of loyalty to Moore. Therefore, even if the Court accepts Moore's allegations are true, Moore's counterclaim must fail because they do not assert a cause of action that can be brought by Moore.

LEGAL STANDARD

I. Standard for Relief Under Rule 55(c)

“A plain reading of S.C. R. Civ. P. 55(a) allows entry of default when a pleading or defense is asserted in a manner noncompliant with the Rules of Civil Procedure. To hold otherwise would render the requirements in S.C. R. Civ. P. 12(a) meaningless.” *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 506, 602 S.E.2d 99, 100 (Ct. App. 2004). Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." *Sundown Operating Co. v. Intedge Industries*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

II. Standard for Relief Under Rule 60(b)

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCF. The standard of relief requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. at 608. “Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCF.” *Id.* “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). *Id.* (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), SCRCPP). “The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.” *Id.*

III. Standard for Service of Process

“Service by mail cannot be the basis for a default judgment unless the return receipt shows ‘acceptance by the *defendant*.’” *Roche v. Young Bros.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995) (quoting Rule 4(d)(8), SCRCPP (emphasis in original). “However, any default judgment may be set aside if the *defendant* ‘demonstrates to the court that the return receipt was signed by an unauthorized person.’” *Id.* (citing Rule 4(d)(8), SCRCPP) (emphasis in original). “Under Rule 4(d)(8) the defendant, not the plaintiff, must prove that the receipt was signed by an unauthorized person. ***The plaintiff need only show compliance with the rules.***” *Id.* “Rule 4(d)(8) requires that the return receipt be restricted to the addressee and show acceptance by the defendant. **The rule simply does not require the specific addressee to sign the return receipt.**” *Roche v. Young Bros.*, 318 S.C. 207, 211, 456 S.E.2d 897, 900 (1995) (emphasis added).

IV. Rule 8, SCRCPP

“Rule 8(b), SCRCPP, requires that a defendant provide a statement ‘in short and plain terms [of] the facts constituting his defenses to each cause of action asserted.’” *Rotec Servs. v. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). “The Rule further mandates that a pleading contain ‘ultimate facts’ rather than ‘evidentiary facts’ to state a cause of action. *Id.* (citing *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001)). “Ultimate facts fall somewhere between the verbosity of evidentiary facts and the sparsity

of 'legal conclusions.'" *Id.*

V. Rule 12, SCRPC

“Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action.” *Flateau v. Harrelson*, 355 S.C. 197, 201-02, 584 S.E.2d 413, 415 (Ct. App. 2003) (citing *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E.2d 805 (Ct. App. 2002)). “Generally, in considering a 12(b)(6) motion, the trial court must base its ruling solely upon allegations set forth on the face of the complaint.” *Flateau*, 355 S.C. at 201 (citing *Stiles v. Onorato*, 318 S.C. 297, 457 S.E.2d 601 (1995). See also, *Brown v. Leverette*, 291 S.C. 364, 353 S.E.2d 697 (1987) (trial court must dispose of motion for failure to state cause of action based solely upon allegations set forth on face of complaint).

“However, while the facts alleged in the complaint are taken as true, the court need not adopt a party's legal conclusions based on those facts.” *Long Pt*, 2020 S.C. C.P. LEXIS 6407, *4 (citing *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293, 296 (1981); *HHHunt Corp. v. Town of Lexington*, 389 S.C. 623, 635, 699 S.E.2d 699, 705 (Ct. App. 2010); *Charleston Cnty. Sch. Dist. v. Laidlaw Transit, Inc.*, 348 S.C. 420, 425, 559 S.E. 2d 362, 364-65 (Ct. App. 2001)). “An allegation of a mere legal conclusion is insufficient to state a cause of action.” *Id.* (citing *Jones v. Gilstrap*, 288 S.C. 525, 343 S.E.2d 646 (1986); *Smith v. Ashmore*, 184 S.C. 316, 192 S.E. 565 (1937)).

“When considering a motion to dismiss, the court may consider the pleadings, exhibits attached thereto, and documents incorporated therein by reference.” *Long Pt*, 2020 S.C. C.P. LEXIS 6407, *4 (citing S.C.R.Civ.P. 10(c) (“A copy of any plat, photograph, diagram, document, or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached

to such pleading.")); *Carolina First Corp. v. Whittle*, 343 S.C. 176, 190 n.7, 539 S.E.2d 402, 410 n.7 (Ct. App. 2000) ("Generally, a court may consider documents outside of the complaint if the complaint incorporates the documents by reference.").

ANALYSIS

I. Defendant's Motion to Vacate

A. The Court Must View Defendant's Motion to Vacate Under Rule 60 SCRPC.

As an initial matter, Defendant Candelabra's Motion to vacate under Rule 55 is improper. "Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC." *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888-89 (2009). "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)." *Id.* (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.* (citing Rule 60(b), SCRPC). *Id.* "The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default." *Id.*

Here, the Court entered its Order of Default Judgment on February 13, 2025. Because the Court has entered default judgment, the proper vehicle to seek relief from a judgment is by way of a motion under Rule 60, SCRPC. As a result, the standard for granting relief is under the more stringent analysis of Rule 60, SCRPC, rather than that under Rule 55, SCRPC. It is Defendant Candelabra's burden to show the Judgment should be vacated due to mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or misconduct.

The Judgment in this case will not be vacated because Defendant Candelabra cannot establish a showing of any of the reasons under Rule 60.

B. Defendant Candelabra Has Not Met the Standard to Vacate Under Rule 60, SCRPC.

During the hearing on Plaintiff's Motion for Entry of Default held on December 17, 2024, the Court determined that service of the Summons and Complaint on Candelabra was proper. Defendant cannot now seek to vacate a judgment for reasons not based on mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or misconduct as required by Rule 60, SCRPC. Defendant Candelabra does not identify any new evidence that supports vacating the Court's February 13, 2025, Order.

Notably, in *Fassett v. Evans*, 364 S.C. 42, 50, 610 S.E.2d 841, 845-46 (Ct. App. 2005), the Court of Appeals held:

Rule 60(b)(2), SCRPC, clearly states new evidence must be that "which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b)." Although the information contained in the affidavits was evidence not previously before the trial court, [defendant] was personally aware of the information prior to the commencement of the action. Thus, it was not newly discovered evidence, but merely newly presented evidence. Accordingly, we find no abuse of discretion in the denial of relief from the judgment pursuant to Rule 60(b)(2), SCRPC.

Here, Defendant does not provide the Court with any newly discovered evidence to support its Motion to Vacate under Rule 60.

1. Service of the Summons and Complaint were proper.

As stated above, Defendant has not met its burden to show a reason to vacate the Judgment under Rule 60. However, even if the Court were to consider the arguments made by Defendant Candelabra regarding service of the Summons and Complaint, the Court finds Defendant Candelabra was properly served and the Court's previous Order of Default Judgment should not

be vacated. In fact, the evidence presented by Defendant further establishes the fact that Candelabra was properly served.

By way of her affidavit, Defendant Moore testified that she is the sole person authorized to accept service on behalf of Candelabra, yet Moore works from her home on a full-time basis. Moore further testified the Long Grove Road address is the address where service on Candelabra should be delivered. Moore testified that Flinn (who also works from home on a full-time basis) collects the mail from the Long Grove Road address. By way of Claire Huff's affidavit, which attached the text message exchange between her and Flinn, it is clear the Summons and Complaint were received by Candelabra by way of certified mail at the Long Grove Road location and provided to Flinn. Moreover, Huff's affidavit and the attachments show she was authorized to accept mail on behalf of Candelabra and the notified Moore of the Summons and Complaint. As stated in *Roche*, "Rule 4(d)(8) requires that the return receipt be restricted to the addressee and show acceptance by the defendant. **The rule simply does not require the specific addressee to sign the return receipt.**" *Roche v. Young Bros.*, 318 S.C. 207 (1995) (emphasis added).

Here, it is clear the Summons and Complaint were properly served on Defendant Candelabra and accepted by Candelabra at the office of its registered agent. Rule 4(d)(8) does not require Moore sign the certified mail receipt, only that Defendant Candelabra receive service of the Complaint at the location where Candelabra has specified service to be made. Here, it is undisputed that the office of Candelabra's registered agent is the Long Grove Road address and the Summons and Complaint were delivered there. Further, it is clear that Huff, as a manager of Candelabra, was authorized to accept mail on behalf of Candelabra.²⁴ Even further, the record

²⁴ Plaintiff's Exhibit 14 (January 9, 2025, Email to Claire Huff regarding Collection of Mail); Plaintiff's Exhibit 1 (07.07.25 Affidavit of Claire Huff).

undoubtedly shows that Huff alerted Moore and Flinn the Summons and Complaint were delivered to Candelabra on October 1, 2024.²⁵ The Summons and Complaint were properly served on Defendant Candelabra and there is no mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or “other misconduct of an adverse party” to support Defendant’s Motion to Vacate under Rule 60, SCRCF.

2. Service of the Summons and Complaint complied with Rule 4, SCRCF.

The South Carolina Supreme Court made clear that losing track of a summons and complaint within the management structure of a corporation is not a ground to set aside a default judgment. *Roche*, 318 S.C. at 212. In *Roche*, an employee of Defendant business testified he “...*signed the return receipt*. He testified that he *places the mail on the secretary's desk* and she distributes the mail. The summons and complaint, however, *never reached either ... the registered agent or ... the general manager of the corporation.*” *Id.* (emphasis added). See also, *White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 12, 753 S.E.2d 537, 543 (2014) (holding that “losing a complaint was not a satisfactory explanation for failing to timely respond” under Rule 55(c)).

Here, a member of Candelabra’s management *signed the return receipt at the address of the registered agent*, provided the letter to Flinn, the person who sorts the mail, and (as alleged by Candelabra) lost the Complaint *somewhere at the location where service was to be provided*. Notably, Claire Huff testified and provided proof by way of her text message exchange with Mona Flinn, that she provided the Summons and Complaint to Defendant Candelabra after she received it at the Long Grove Road address on October 1, 2024. Ms. Flinn acknowledged the message and implied she would provide it to Defendant Moore. However, even if Defendant Moore did not

²⁵ Plaintiff’s Exhibit 1 (07.07.25 Affidavit of Claire Huff (and text message attachment)).

receive the envelope from Flinn, it was properly served on Candelabra at the address of its registered agent and Defendant Moore knew of its delivery.

Moreover, there have been numerous attempts to directly contact Defendant Moore and Candelabra. Defendant now asserts that no person ever received any mailing from counsel for Plaintiff.²⁶ In short, based on the evidence presented to the contrary, Defendant's position lacks credibility. However, even if the Court accepts Defendant's position as true, the South Carolina Supreme Court made clear that losing a complaint is not a satisfactory explanation for failing to respond timely.

Even further, Defendant's argument that service is not proper because Claire Huff is not named as a registered agent with the South Carolina Secretary of State is misguided. First, the certified letter was served by way of restricted delivery to the address of the registered agent *Candelabra* provided to the Secretary of State. The Long Grove Road address is the location of the retail business and the address of the registered agent. This is where service is required to be made. The fact that Whitney Moore did not sign for the letter is immaterial as long as a person with appropriate authority, such as Claire Huff, accepted the mailing. To require *only* the individual named as the registered agent sign the certified mailing *only at the location* of the registered agent would produce an absurd result.²⁷ Likewise, to require a Plaintiff locate a

²⁶ Defendant Moore makes no mention of the multiple emails sent to Moore's corporate Candelabra email address or the mailings sent to her home address.

²⁷ By way of example, the registered agent for Walmart, Inc. is a "person" named "CT Service Corporation" at the address of "2 Office Park Court Suite 103 Columbia, South Carolina 29223." Likewise, the registered agent for "Charleston Adult Baseball League" is a "person" named "TLC Accounting Solutions LLC" at the address of "107 S Main Street, Summerville, South Carolina 29483." To take Defendant's view on service of process on a registered agent, service on these entities (and thousands of other businesses in the State) could never be accomplished. Moreover, Defendant Candelabra admits that Whitney Moore was rarely, if ever, at the location where Candelabra was to be served. Therefore, Defendant's position with respect to service would make it nearly impossible and overly burdensome to serve Candelabra at the Long Grove Road address.

registered agent at some unknown location or address not registered with the Secretary of State would also produce an absurd result and render the identification of an address where the registered agent can be found meaningless.

In the final analysis, Defendant Candelabra was served with the Summons and Complaint in compliance with Rule 4, SCRCF. However, even if there is a technical deficiency- which there is not- service is still proper. "*The [Supreme Court] has never required exacting compliance with the rules to effect service of process, but instead looks to whether the plaintiff substantially complied with the rules such that the court has personal jurisdiction over the defendant and the defendant has notice of the proceedings.*" *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 511, 900 S.E.2d 448, 462 (Ct. App. 2023) (citing *White Oak Manor, Inc.*, 407 S.C. at 10, 753 S.E.2d at 542) (emphasis added).

Here, it is abundantly clear Defendants Moore and Candelabra had notice of the lawsuit on October 1, 2024. First, it was Moore herself who requested Plaintiff notify Moore of Plaintiff's intent to bring suit in March of 2024. Second, Plaintiff provided Defendants Moore and Candelabra with a preservation letter by hand delivery and email. Third, Plaintiff provided copies of letters, notices, and other filings to her business email on multiple occasions, without response. Fourth, the Summons and Complaint were provided to the office of the registered agent and were specifically communicated to Defendant Moore by Claire Huff, a management level employee of Candelabra. Fifth, Plaintiff attempted to contact Moore by way of process server and private investigator *no less than twenty (20)* times, incurring costs of over \$2,000 in process server and private investigator services.

There is no way Defendants Candelabra or Moore can credibly claim they were not aware of the Summons, Complaint, Default Judgment, Default Judgment Hearing, or any other proceeding related to this matter.

3. Defendant Candelabra was properly served with notice of the Default Judgment hearing.

Defendant Candelabra was properly served with the notice of the default judgment hearing even when service of the notice of the damages hearing was not necessary. Rule 5, SCRCRCP states, in part, “**(a) Service: When Required.** Unless otherwise ordered by the court because of numerous defendants or other reasons, all [...] pleadings subsequent to the original summons and complaint, [...] and (11) other similar papers shall be served upon each of the parties of record. *No service need be made on parties in default for failure to appear*, except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for serving of summons in Rule 4, and notice of any trial or hearing on *unliquidated* damages shall also be given to parties in default.” (emphasis added). See also, *Thomas & Howard Co. v. T. W. Graham & Co.*, 318 S.C. 286, 290, 457 S.E.2d 340, 343 (1995) (“We find that notice is required under Rule 5(a) only in those cases in which the trial court, exercising its discretion under Rule 55, deems a hearing necessary”).

Further, to the extent notice was required, notice was sent to Defendant Candelabra by U.S. Mail (and by email to Whitney Moore’s business email address). This method of notice was adequate to inform Candelabra of the date, time, and location of the default judgment hearing.

4. The exhibits were included in the mailing served on Defendant Candelabra.

Defendant claims two exhibits incorporated in the Complaint were not served on Candelabra. The first exhibit was the July 2023 employment contract between Plaintiff and

Candelabra. The second exhibit was a June 2024 letter from the South Carolina Department of Labor, Licensing and Regulation (the “LLR”). It is true both of these exhibits were initially omitted from the *e-filed* Summons and Complaint, however, there is no evidence these documents were not included with the copy mailed to Defendant Candelabra, and Candelabra’s assertion otherwise lacks credibility. Notably, Defendant *Candelabra claims it never received the mailing*, despite Huff testifying she called Moore to notify her of the mailing and providing a text message with a photo of the envelope she sent to Flinn. Therefore, Defendant Candelabra cannot show the exhibits were not included in the filing served on Candelabra.

However, even if these documents were not included in the original filing, it does not make service improper. Both the employment agreement and the LLR letter were referenced in the Complaint and Defendants had knowledge of their existence outside of the Complaint. The employment agreement was drafted and executed by Candelabra with Moore’s signature. Moreover, the exact same agreement is referenced by Defendant Moore her Answer to the Complaint. Further, the LLR sent Candelabra a citation as referenced in the June 2024 letter. Therefore, Candelabra was aware of the existence of the exhibits absent their inclusion in the Complaint. Moreover, even if the exhibits were not known to Candelabra, they were not necessary to the Complaint and Defendant was on notice of the claims without their addition to the Complaint.

5. There are no facts to support any Rule 60 factors to vacate the Judgment.

As stated in detail above, Candelabra cannot show any reason why the Default Judgment should be vacated. Candelabra filed its Motion to Vacate on April 1, 2025, which is *one hundred fifty-two (152) days* after the deadline to file its responsive pleading. Candelabra failed to act promptly, even after the deadline to file a responsive pleading.

Further, there is no mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or “other misconduct of an adverse party” to support Defendant’s Motion to Vacate. See, *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009) (explaining the standard for granting relief from a default judgment under Rule 60(b) “requires a more particularized showing of mistake,” which “underscore[s] the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment”); *Williams v. Watkins*, 384 S.C. 319, 324, 681 S.E.2d 914, 917 (Ct. App. 2009) (explaining “[i]n order to gain relief under Rule 60(b)(1), SCRCF, a party must first show a *good faith mistake of fact* has been made” (emphasis added)); *Rouvet v. Rouvet*, 388 S.C. 301, 310, 696 S.E.2d 204, 208 (Ct. App. 2010) (“[L]ack of familiarity with legal proceedings is not an acceptable excuse and the court will hold a layman to the same standard as an attorney.”).

Moreover, there is no fact to support Defendant Candelabra’s neglect was excusable or there is a meritorious defense. In fact, there is an abundance of evidence to show Candelabra’s neglect of the lawsuit was intentional and the LLR determined Candelabra improperly withheld Plaintiff’s pay. See, *Hill*, 345 S.C. at 310, 547 S.E.2d at 897 (Ct. App. 2001) (holding the trial court properly denied a motion for relief from default judgment where the defendant failed to establish a good reason for his failure to answer the complaint); *Tri-County Ice*, 303 S.C. at 243, S.E.2d at 783 (holding that “[h]aving concluded there is an insufficient factual basis for finding excusable neglect, we need not decide whether [the defendant] has shown a meritorious defense”); *ITC Commercial Funding, LLC v. Crerar*, 393 S.C. 487, 496, 713 S.E.2d 335, 339-340 (Ct. App. 2011) (holding that “[h]aving concluded . . . [the defendant] was not entitled to relief on any of the grounds specific in Rule 60(b), SCRCF, we need not address whether [the defendant] has a meritorious defense”).

II. Plaintiff's Motion to Dismiss

A. Defendant Moore's conversion claim fails.

“Conversion is defined as an unauthorized assumption and exercise of ownership over goods or personal chattels belonging to another to the exclusion of the owner's rights.” *Austin v. Indep. Life & Accident Ins. Co.*, 296 S.C. 156, 161, 370 S.E.2d 918, 921 (Ct. App. 1988) (citing *Steele v. Victory Savings Bank*, 295 S.C. 290, 368 S.E. (2d) 91 (Ct. App. 1988)). “Conversion may arise by some illegal use or misuse, or by illegal detention of another's chattel.” *Steele*, 295 S.C. at 296. “To prevail in a conversion action, [the party asserting the claim] must prove either title to or the right to possession of the [property] at the time of the alleged conversion.” *Id.* “Conversion is a tort and cannot spring from the exercise of a legal right.” *Id.*

The assets of a corporation belong to the corporation and not the individual stockholders, and the liability of directors or officers of a corporation for loss to the corporation due to their mismanagement is an asset of the corporation and that any recovery on such a cause of action belongs solely to the corporation. See, *Davis v. Hamm*, 300 S.C. 284, 287, 387 S.E.2d 676, 676 (Ct. App. 1989) (“...(1) the assets of a corporation belong to the corporation and not the individual stockholders, and (2) the liability of directors or officers of a corporation for loss to the corporation due to their mismanagement is an asset of the corporation **and that any recovery on such a cause of action belongs solely to the corporation**”) (emphasis added).

Here, Defendant Moore's counterclaim for conversion does not identify any goods, assets, or inventory of any kind to serve as the basis of her conversion claim. Instead, the counterclaim simply alleges, “[u]pon information and belief, the Plaintiff converted products, inventory, goods, and/or assets from Defendant(s) and utilized said assets of Defendant(s) for his personal benefit and gain” (Answer, ¶ 92). Defendant Moore's allegations are insufficient to state a cause of action

for conversion for two reasons.

First, Defendant Moore's counterclaim lacks the identification of the property alleged to have been converted by Plaintiff. The counterclaim, as stated, does not place Plaintiff on notice of what Defendant Moore claims to have been the subject of conversion.²⁸ Moreover, the mere fact that Defendant Moore alleges Plaintiff converted property "upon information and belief" shows she lacks any factual basis that Plaintiff converted any property.

Second, the property alleged to have been converted by Plaintiff was not owned by Defendant Moore.²⁹ In her counterclaim, Defendant Moore alleges Plaintiff converted and/or misappropriated "products, inventory, goods, property, and/or assets" while employed with Candelabra (Answer, ¶ 88). The counterclaim makes no allegation that Defendant Moore owned the alleged converted property. Therefore, based on the allegations in the counterclaim, Defendant Moore has no standing to bring a conversion claim because the alleged converted property, if any, was not owned by Moore.

B. Defendant Moore's breach of contract claim fails.

1. It is undisputed that Candelabra terminated the employment contract between Candelabra and Plaintiff.

In her counterclaim, Defendant Moore alleges Plaintiff's contract with Candelabra was terminated (Answer, ¶ 89). Based on this allegation alone, it is impossible for Defendant Moore's breach of contract claim to succeed. It is undisputed Candelabra terminated the employment

²⁸ In every conversion case the undersigned has reviewed, the specific item that was the subject of a conversion claim was plainly identified (a cashier's check, stock, a car, etc.). Defendant Moore's counterclaim fails to identify what property she claims Plaintiff unlawfully exercised ownership over.

²⁹ Nothing in this Motion or Memorandum in Support is intended to act as a waiver of Plaintiff's right to claim Defendant Moore commingled her personal assets with assets of Defendant Candelabra.

contract between Candelabra and Plaintiff. Therefore, even when viewed in a light most favorable to Defendant Moore, she cannot state a claim that *Plaintiff* breached any employment agreement because *Candelabra* terminated the employment contract.

2. Defendant Moore was not a party to the employment agreement.

“Generally, one not in privity of contract with another cannot maintain an action against him in breach of contract, and any damage resulting from the breach of a contract between the defendant and a third party is not, as such, recoverable by the plaintiff.” *Windsor Green Owners Ass'n v. Allied Signal, Inc.*, 362 S.C. 12, 17, 605 S.E.2d 750, 752 (Ct. App. 2004) (citing *Bob Hammond Constr. Co. v. Banks Constr. Co.*, 312 S.C. 422, 424, 440 S.E.2d 890, 891 (Ct. App. 1994)) and *Clardy v. Bodolosky*, 383 S.C. 418, 429-30, 679 S.E.2d 527, 533 (Ct. App. 2009). See also, *Drafts v. Shull Sausage Co.*, 276 S.C. 52, 54, 275 S.E.2d 577, 578 (1981) (citing 17A C.J.S., Contracts, § 520; *Nationwide Mutual Ins. Co. v. Chantos*, 293 N.C. 431, 238 S.E. (2d) 597 (1977) (“Moreover, since [a third party] was not a party to the original contract, between [the parties], it owed no duty or obligation thereunder.”)).

Here, even if Plaintiff breached an employment agreement- which he did not- Plaintiff did not have an employment agreement with *Defendant Moore*. Defendant Moore alleges Plaintiff breached the contract with Candelabra by failing to take various work-related actions (i.e. “[b]y failing to obtain Defendants’ permission, consent, and/or authorization prior to executing contracts and/or agreements with individuals, entities, independent contractors, or third parties, to include any contracts or agreements related to digital or online marketing for the company; [b]y failing to adequately screen, vet, hire, and/or select competent and appropriate employees, agents, representatives, independent contractors, and/or third parties that were able to meet the needs and expectations of Defendants; [b]y failing to use due care and good business judgment in executing

contracts and/or agreements with individuals, entities, independent contractors, or third parties, to include any contracts or agreements related to digital or online marketing for the company; [b]y improperly disclosing sensitive and/or confidential information regarding the company to vendors, suppliers, and/or other third parties; [b]y not conducting all of his efforts to the business of Defendants while employed or acting in the course or scope of his employment; etc.) (Answer ¶ 88).

Defendant Moore's allegations fail to state a claim for breach of contract. First, the counterclaims do not identify the terms of the contract Moore claims Plaintiff breached. Although Defendant Moore's counterclaim incorporates the written employment agreement in her allegations, she fails to identify the specific terms of the contract she claims Plaintiff breached. The above-mentioned allegations Moore uses to articulate her breach of contract claim are not mentioned in the employment contract attached to the counterclaims. In other words, Defendant Moore has not identified any action that, even if undertaken by Plaintiff, constitutes a breach of the employment contract.

Second, Moore, as an owner of Candelabra, executed the agreement between *Plaintiff and Candelabra*. Moore, in her individual capacity, was not a party to the employment agreement. Therefore, Moore does not have a claim she can assert in her individual capacity against Plaintiff. *See Drafts v. Shull Sausage Co.*, 276 S.C. 52, 54, 275 S.E.2d 577, 578 (1981) (holding defendant who was not party to contract "owed no duty or obligation thereunder"); *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (stating "duty of good faith arising under contract does not extend to a person who is not a party to the

insurance contract" including an adjuster).³⁰

C. Defendant Moore’s breach of fiduciary duty, breach of loyalty, and negligence claims should be dismissed.

1. Breach of Fiduciary Duty and Breach of Loyalty.

“A ‘fiduciary relationship’ is founded on trust and confidence reposed by one person in the integrity and fidelity of another. It exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence.” *Steele v. Victory Sav. Bank*, 295 S.C. 290, 291, 368 S.E.2d 91, 91 (Ct. App. 1988).

“To date, a tort cause of action for breach of implied covenant of good faith and fair dealing appears only in the insurance arena under a claim for bad faith refusal to pay benefits.” *Williams v. Riedman*, 339 S.C. 251, 267, 529 S.E.2d 28, 36 (Ct. App. 2000). “Because an insurance relationship is decidedly different from an employment relationship, *we decline to permit tort recovery for this* [employment contract] *cause of action*. *Id* (emphasis added). “The employment relationship is not sufficiently similar to that of insurer and insured to warrant judicial extension of the proposed additional tort remedies in view of the countervailing concerns about economic policy and stability, the traditional separation of tort and contract law, and finally, the numerous protections against improper terminations already afforded employees.” *Williams*, 339 S.C. at 273 (quoting *Foley v. Interactive Data Corp.*, 47 Cal. 3d 654, 765 P.2d 373, 254 Cal. Rptr. 211 (Cal. 1988)).

³⁰ Likewise, Defendant Moore’s claims for breach of fiduciary duty, breach of loyalty, and negligence should also be dismissed. See, *Carolina Bank & Tr. Co. v. St. Paul Fire & Marine Co.*, 279 S.C. 576, 581, 310 S.E.2d 163, 166 (Ct. App. 1983) (holding complaint failed to state a cause of action against insurer's agent because "duty of good faith in the performance of obligations based on or arising under the contract does not extend to a person who is not a party to the insurance contract").

Here, Defendant Moore's claims for breach of fiduciary duty and breach of the duty of loyalty are not cognizable under the terms of an employment contract. The law does not recognize these causes of action in this context, and for good reason. To do otherwise is to invite a cause of action for the termination of every employment relationship. Because claims for breach of fiduciary duty and breach of loyalty are not cognizable in this context, Defendant Moore's claims should be dismissed.

2. Negligence, Gross Negligence, and Recklessness.

"A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty." *Thomasko v. Poole*, 349 S.C. 7, 11-12, 561 S.E.2d 597, 599 (2002) (Internal citations omitted). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Id.* (citing *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)).

Here, Defendant Moore has not adequately pled any element necessary to state a claim for negligence, gross negligence, or recklessness. As stated above, Plaintiff did not owe a duty to Defendant Moore, in her individual capacity. Second, it is impossible for Defendant Moore to identify a duty owed to her based on an employment contract between Plaintiff and Candelabra. Third, there is no allegation in Defendant Moore's counterclaim that she suffered any damage as a result of any action undertaken by Plaintiff. Fourth, even if Moore identified some kind of damages- which she does not- she fails to allege how her damages were proximately caused by any act of Plaintiff. In short, Defendant Moore's cause of action for negligence against Plaintiff, a former employee of Candelabra, fails to adequately state a claim. Even if the allegations in

Defendant Moore's counterclaim are true, they do not create a cause of action that can be maintained by Moore.

CONCLUSION

For the foregoing reasons, the Court **DENIES** Defendant Candelabra's Motion to Vacate and **GRANTS** Plaintiff's Motion to Dismiss Defendant Moore's counterclaims.

IT IS SO ORDERED!

The Honorable Benjamin H. Culbertson
Presiding Circuit Court Judge



Charleston Common Pleas

Case Caption: Thomas Scott Jackson VS Candelabra Inc , defendant, et al

Case Number: 2024CP1004878

Type: Order/Other

Presiding Circuit Court Judge

s/Benjamin H. Culbertson, Judge Code 2148