

Findings of Fact and Conclusions of Law

Plaintiff filed this action on March 24, 2022. Mr. Markus S. Corley is the registered agent for Defendant Corley Construction Company, LLC. Plaintiff served Defendant with the Summons & Complaint via certified mail, return receipt requested. On April 7, 2022, Plaintiff received the certified mail receipt signed by Markus Corley. On April 11, 2022, Plaintiff filed the signed certified mail receipt as proof of service. Defendant did not file an Answer in response. On October 9, 2024, two and one half years from the date of service on Markus Corley, default was entered against Defendant. On October 17, 2024, Plaintiff mailed the notice of the damages hearing set for December 19, 2024, to Markus Corley at the address where the Summons & Complaint were previously served. The notice provided the date, time, location of the hearing, and how to access the hearing. In addition, Plaintiff provided copies of the notice of hearing e-mailed to Plaintiff's Counsel, Order Entering Default, and the Motion for Damages Hearing. A damages hearing was held on December 19, 2024. Defendant failed to appear for the damages hearing.

I. Defendant Failed to Timely File Its Affidavit As Required By Rule 6(d), SCRCPP.

Rule 6(d), SCRCPP, requires an affidavit supporting a motion to be filed with the motion. Defendant's Motion to Set Aside Judgment was filed on May 5, 2025. Defendant failed to file an affidavit with the Motion. The hearing on Defendant's Motion to Set Aside Judgment was scheduled for July 9, 2025. Defendant failed to file an affidavit prior to the hearing. Defendant filed a Memorandum in Support on July 20, 2025. Defendant failed to file an affidavit with the Memorandum. On July 24, 2025, 80 days after its motion was filed, Defendant filed its affidavit. Consequently, this Court did not consider Defendant's affidavit on the basis that it was not timely filed with Defendant's Motion to Set Aside Judgment, as required by Rule 6(d), SCRCPP.

II. Defendant Failed to Present Evidence to Support Its Arguments to Vacate Plaintiff's Judgment.

It is well-settled that the moving party in a Rule 60(b) motion has the burden of presenting evidence entitling him to relief. *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011). Evidence is usually provided by affidavits. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). A memorandum in support of a motion is not evidence. *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011). "Mere allegations, denied by the other party, are not evidence." *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (Ct. App. 1991). Arguments of counsel are not evidence. *Id.*

In light of Defendant's failure to timely file an affidavit supporting its position, the Defendant has failed to provide evidence to support its arguments. Defendant has relied on allegations, assertions, a memorandum in support, and arguments of its counsel to supports its Motion. South Carolina law is clear that Defendant carries the burden of proof to submit evidence to support its position that it is entitled to relief in this matter. Defendant has not met that burden.

Accordingly, this Court hereby DENIES Defendant's Motion to Vacate Default Judgment pursuant to Rule 60(b), SCRCP.

IT IS SO ORDERED.



Richland Common Pleas

Case Caption: Richard E R Johnson vs Corley Construction Company
Case Number: 2022CP4001507
Type: Order/Set Aside Judgment

So Ordered

s/ Daniel Coble, 2774