

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
COUNTY OF UNION)	SIXTEENTH JUDICIAL CIRCUIT
)	
Michael J. Osten and)	
Shawntell L. Osten,)	CIVIL ACTION NO. 2024-CP-44-0097
Plaintiffs,)	
vs.)	
)	ORDER DENYING DEFENDANTS
Sandra Malikowski,)	MOTION TO VACATE OR SET
Defendant.)	ASIDE DEFAULT JUDGMENT
)	

This matter was before the Court for Defendant’s Motion to Vacate or Set Aside Default Judgment on September 15, 2025. The hearing was held virtually via WebEx. Present for the hearing on behalf of the Defendant was attorney Kyle Parker of Pope, Parker, and Jenkins, P.A. Present for the hearing on behalf of the Plaintiff was J. Patrick Anderson of Anderson & Moore, LLC. Prior to the hearing Defendant’s counsel submitted a Memorandum in Support of said Motion, as well as numerous affidavits and a transcript from the Default Judgment hearing that was heard on February 24, 2025. Prior to the hearing Plaintiff’s counsel submitted a Memorandum in Opposition to the Defendant’s Motion, with several attached exhibits, as well as Plaintiff’s Packet in Support of Preliminary Injunction that was submitted to the Court at a previously heard Motion for Preliminary Injunction on May 28, 2024 and also submitted to the Court at the Motion for Default Judgment and Damages on February 24, 2025.

This action was commenced by the filing of a Summons and Verified Complaint on March 6, 2024. The Defendant was properly personally served with the Summons and Verified Complaint on April 29, 2024. Proper service was not disputed in the Defendant’s Motion and was evident based on Plaintiff’s Affidavit of Service regarding the Summons and Verified Complaint, which was filed with the Union County Clerk of Court on May 8, 2024. No responsive pleadings were filed by the Defendant. Plaintiffs counsel filed a Motion for Preliminary Injunction on March 6, 2024, said Motion being heard at the Union County Courthouse on May 28, 2024. The Motion for Preliminary Injunction was denied by Judge McKinnon. The case was scheduled for trial during the Monday December 16, 2024 term of Common Pleas Circuit Court but was continued by Judge Knie pursuant to Plaintiff’s request.

Plaintiffs counsel filed an Affidavit of Default and Motion for Default Judgment and Damages on January 6, 2025. The Plaintiff’s Motion for Default Judgment and Damages was scheduled



virtually via WebEx on February 24, 2025 before Judge McCutchen, who entered a Default Judgment against the Defendant in the amount of \$280,862.58.

When considering a Motion to set aside a Default Judgment, the Court must look to Rule 60(b)(1) of the South Carolina Rules of Civil Procedure. Relief from a final judgment, and in this case specifically a default judgment, is only allowed upon the narrowly and particularly defined grounds as laid out in Rule 60(b)(1). The Defendant's Motion to Vacate or Set Aside Default Judgment specifically referenced Rule 60(b)(1) regarding "mistake, inadvertence, surprise, or excusable neglect". The Defendant submitted to the Court her sworn affidavit that laid out numerous reasons for failing to answer or otherwise respond to the Plaintiff's Summons and Verified Complaint. However, none of the reasons provided to the Court can overcome the requirements under Rule 60(b)(1); specifically, "mistake, inadvertence, surprise, or excusable neglect" as referenced in the Defendant's Motion. The fact remains that the Defendant was properly personally served with the Summons and Verified Complaint on April 29, 2024. This is not disputed by the Defendant. Despite that fact, the Defendant failed to file responsive pleadings or retain counsel to do so on her behalf during the entire pendency of this action. This action was pending for almost one year before a Default Judgment was granted, which included a Motion for Preliminary Injunction during which the Defendant did retain counsel in a strictly limited capacity for that specific Motion. It is evident the Defendant knew enough about the litigation to retain an attorney for the limited purpose of a Motion for Preliminary Injunction, yet failed to file responsive pleadings on a pro se basis or retain an attorney to submit the same. Despite being properly personally served with the Summons and Verified Complaint, the Defendant took no action regarding answering the Summons and Verified Complaint or filing any responsive pleadings. Rule 60(b)(1) is not intended to protect litigants from their own inexcusable neglect and delay and the Court was presented with no evidence that would excuse the Defendant's failure to answer or otherwise plead in this matter.

To obtain relief from a default judgment under Rule 60(b)(1) the moving party must also show that they have a meritorious defense and must present factual allegations and not generalized statements or generalized denials that are conclusory in nature. While the Defendant's sworn affidavit does reference what could be construed as defenses, as submitted they are just what the Court referenced above; blanket denials that are conclusive in nature. The Defendant's sworn affidavit does not rise to the level of overcoming the requirements of Rule 60(b)(1), nor do any of the supporting sworn affidavits from other individuals. In addition, the Defendant provided no documents or exhibits that substantiated her sworn affidavit that, nor any of the others, that would in turn support a

meritorious defense. And contrary to the lack of substantiation on the Defendant's part, the Court also considered the Plaintiff's Packet in Support of Preliminary Injunction, which was previously submitted to Judge McKinnon at the Motion for Preliminary Injunction hearing on May 28, 2024, and also submitted to Judge McCutchen at the Motion for Default Judgment and Damages on February 24, 2025, as evidenced by its reference in the transcript from said hearing that was filed by Defendant's counsel on September 14, 2025. The Court also took into consideration testimony as referenced in the transcript from the Motion for Default Judgment and Damages. Lastly, the Court would point out that one hundred thirty-three days passed between the granting of the Default Judgment and the Defendant filing this Motion to Vacate or Set Aside Default Judgment. Defendant's counsel argued that the Defendant did not know anything about the Default Judgment as she did not receive notice of it, and that she retained counsel when she was ultimately served with the Plaintiff's subsequently filed foreclosure action. However, as Plaintiff's counsel argued, the Defendant had a history of simply not participating in the legal process, and at no time did she participate in this litigation after the Motion for Preliminary Injunction on May 28, 2024. As such, the Court finds that the Defendant has not presented a meritorious defense that would satisfy the requirements of Rule 60(b)(1).

The Defendant raised the issue of irregularities specific to the Defendant's correct address throughout the pendency of the action, and also regarding the notice for the Motion for Default Judgment and Damages hearing on February 24, 2025; specifically, the Defendant's correct address of 202 Gibert Street, Union, South Carolina, versus the use of 202 Gilbert Street, Union, South Carolina. Plaintiff's counsel acknowledged the irregularities regarding the incorrect address. Defense counsel submitted that the Defendant did not receive notice of the Motion for Default Judgment and Damages hearing on February 24, 2025, as the Notice of Hearing and the Certificate of Service, both filed with the Union County Clerk of Court, referenced 202 "Gilbert" Street, and not 202 "Gibert" Street. Plaintiff's counsel acknowledged the notice for the Motion for Default Judgment and Damages hearing was addressed to 202 Gilbert Street, and the record shows the same. In response, Plaintiff's counsel referenced the notice for Plaintiff's Motion for a Preliminary Injunction on May 28, 2024, which was sent via United States Mail return receipt requested to the incorrect address of 202 "Gilbert" Street. The postal service certified mail receipt, Notice of Motion Hearing, and Certificate of Service referenced Gilbert Street, and were filed with the Union County Clerk of Court on May 15, 2024, and all were attached as Exhibit 1 to Plaintiff's Memorandum in Opposition to Defendant's Motion to Vacate or Set Aside Default Judgment. Plaintiff's counsel further advised that

the United States Postal Service return receipt “green card”, which was also attached as Exhibit 1 to Plaintiff’s Memorandum in Opposition, also listed 202 “Gilbert” Street, and that despite the typographical error the Defendant received the mailed notice, as the “green card” was clearly signed for by the Defendant. Plaintiff’s counsel argued that the United States Postal Service delivered the subsequent notice for the Motion for Default Judgment and Damages to the Defendant, despite the use of 202 Gilbert Street, as they had done before, and further advised that at no point during the litigation was any mail that sent to the Defendant at 202 Gilbert Street returned by the United States Postal Service. Lastly, Plaintiff’s counsel referenced the Defendant’s sworn affidavit wherein she claimed she did not receive notice of mediation at the Law Offices of Ken Anthony. Plaintiff’s counsel provided the mediation notice as Exhibit 2 to Plaintiff’s Memorandum in Opposition and noted the Defendant’s address was correctly listed as 202 “Gibert” Street. Plaintiff’s counsel argued that the mediation notice directly contradicted the Plaintiffs sworn affidavit advising she did not receive notice of the same.

It does appear that there were irregularities regarding the Defendant’s address throughout the pendency of the action specific to the correct address of 202 Gibert Street, Union, South Carolina, versus the Plaintiff’s use of 202 Gilbert Street, Union, South Carolina. However, it does appear that the United States Postal Serviced delivered the notice for the preliminary injunction, as evidenced by Exhibit 1 to Plaintiff’s Memorandum in Opposition. Despite the inconsistencies regarding the use of Gibert versus Gilbert, the Court finds that the Defendant received notice of the Motion for Default Judgment and Damages.

Based on the aforementioned reasons, the Defendant’s Motion to Vacate or Set Aside Default is **HEREBY DENIED**.

IT IS SO ORDERED this _____ day of _____, 2025 at Union, South Carolina.

Judge Daniel Coble
Presiding Circuit Court Judge
Sixteenth Judicial Circuit



Union Common Pleas

Case Caption: Michael J Osten , plaintiff, et al VS Sandra Malikowski

Case Number: 2024CP4400097

Type: Order/Vacate Judgment

So Ordered

s/ Daniel Coble, 2774