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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of the Common Please

Edward W. Miller, Circuit Court Judge
G.D. Morgan, Jr., Circuit Court Judge

Appellate Case No. 2024-002191
Civil Action No. 2022-CP-23-05612

Lakeview Loan Servicing, LLC
and Loan Care LLC,..Appellants,

v.

Andrew E. Lewis, ...Respondent.

APPELLANTS' REPLY BRIEF

BERNIE ELLIS SC Bar No. 64841 **BURR & FOREMAN, LLP** P.O. Box 447 Greenville, South Carolina 29602 Telephone: (864) 271-4940 Facsimile: (864) 271-4015 *Co-Counsel for Appellants, Lakeview Loan Servicing, LLC and LoanCare, LLC*	BENJAMIN CARNAHAN *(Appearing Pro Hac Vice)* KATHRYN L. ENDER *(Appearing Pro Hac Vice)* **DINSMORE & SHOHL LLP** Southeast Financial Center 200 S. Biscayne Blvd., Suite 2401 Miami, Florida 33131 Telephone: (786) 957-1157 Facsimile: (786) 957-1158 *Co-Counsel for Appellants, Lakeview Loan Servicing, LLC and LoanCare, LLC*

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INTRODUCTION

As noted in the LoanCare Defendants' initial brief, this appeal involves a successful attempt by Lewis to exploit the trial court's failure to vacate a technical default against them. As a result, although Lewis paid only one mortgage payment between 2016 and 2022, had otherwise lived in the property rent free for five years, and, ultimately, had his rights to the property extinguished through a foreclosure judgment, Lewis has wrongly profited from his own proscribed actions and the trial court's substantive legal errors to the tune of $593,000.

Lewis wrongfully alleges that this litigation is somehow "independent" of the Foreclosure Action. (RIB4).[1] On the contrary, the source of Lewis's allegations in this litigation rest entirely on the course taken by Lewis during the Foreclosure Action. But for Lewis's failure to pay his mortgage, Lewis's failure to negotiate a loan modification with the LoanCare Defendants, and Lewis's ultimate failure to seek redemption of the Property, we would not be here today. While Lewis may have a different perception of what took place during the Foreclosure Action, it is undisputed that whatever rights Lewis had to the Property were extinguished through

[1] Citations to the Appellants' Initial Brief and Respondents' Initial Brief are designated "AIB[page number]," and "RIB[page number]," respectively. Other citations confirm to those used in Appellants' Initial Brief.

All ***bold italicized*** emphasis is added.

the Foreclosure Action, and that there exists a valid, binding, and unchallenged foreclosure judgment against Lewis for $464,004.22. (Supplemental Judgment). The trial court below ignored these unequivocal facts and entered an unmitigated judgment in Lewis's favor. In doing so, the trial court denied the LoanCare Defendants their fundamental right to a fair trial.

Lewis takes the position in his initial brief that, regardless, the Judgment should be affirmed because the trial court has unbridled discretion to (i) reject the LoanCare Defendants' explanation for the default; (ii) ignore Lewis's failure to plead any valid causes of action; and (iii) accept Lewis's self-serving and unsupported assertions relating to his damages as uncontradicted fact. Nothing in South Carolina law permits the outcome advocated for by Lewis. A trial court's discretion is limited by controlling tenets of law. And "[a]n abuse of discretion amounting to an error of law warrants this Court's intervention." *North Greenville College v. Sherman Constr. Co.*, 270 S.C. 553, 557, 243 S.E.2d 441, 442 (1978).

In this case—as set forth in the LoanCare Defendants' initial brief and this reply—the trial court failed to properly apply controlling law at multiple stages of the litigation. The default should have been vacated, and the LoanCare Defendants should have been permitted to defend this litigation on its merits. Even in the face of a default, Lewis still had the burden to plead a viable cause of action against the LoanCare Defendants and to present a prima facie case of damages. Lewis did

neither. Lewis was not entitled to entry of an award of $593,000 in this case and the Judgement must be reversed.

ARGUMENT IN REPLY

I. LEWIS'S "STATEMENT OF FACTS" IS IMPROPER AND SHOULD BE DISREGARDED BY THIS COURT.

In his initial brief, Lewis sets forth three pages of what he describes as "Facts Deemed Admitted." (RIB5-7). These so-called "Facts Deemed Admitted" are nothing more that Lewis's recitation to the "findings" that are set forth in the Judgment that Lewis, through his counsel, prepared and submitted to the trial court. (*Id.*) (citing the "October 21, 2024 Order"). A trial court's factual findings are not admitted facts. The LoanCare Defendants did not admit the facts contained in the Judgment, especially those pertaining to Lewis's alleged damages, which Lewis had the burden to prove notwithstanding the default. *See Wells Fargo Bank, Nat'l Ass'n v. Marion Amphitheatre, LLC*, 408 S.C. 87, 757 S.E.2d 557 (Ct. App. 2014) ("In a default case, the plaintiff must prove . . . the amount of his damages, and such proof must be by a preponderance of the evidence."). A trial court must act with the controlling law, and "a trial court acts outside of its discretion when its rulings are not supported by the evidence or is controlled by an error of law." *State v. Wallace*, 440 S.C. 537, 542, 892 S.E.2d 310, 312 (2023). Lewis's recitation of the trial court's findings does not make them uncontroverted evidence. They are merely findings by

the trial court that are now on appeal due to the trial court's several errors of law, requiring reversal of the Judgment.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW BY NOT VACATING THE DEFAULT, (AIB19-28).

The trial court committed reversible error by failing to follow the South Carolina Supreme Court's analysis in *Sundown Operating Co. v. Intedge Industries, Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) (hereinafter, "*Sundown*"), and *Wham v. Shearson Lehman Brothers, Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989) (hereinafter, "*Wham*"). (AIB19-23). Under *Sundown*, a trial court must evaluate a defendant's "explanation for the default" and "reasons why vacation of the default entry would serve the interests of justice." *Sundown*, 383 S.C. at 607. A defendant need only set for a "mere 'good cause.'" *Id.* at 607 (quoting Rule 55(c), SCRCP). This is not a stringent standard and, contrary to Lewis's unelaborated assertion in his initial brief, Rule 55(c), SCRCP, does not require "affidavits or internal records" be produced as evidence in support of good cause. (RIB9). *Accord Stevens Builders, LLC v. Garraway*, 2025 S.C. App. Unpub. LEXIS 83, *1-2, 2025 LX 296348, 2025 WL 783979 (S.C. Ct. App. dated Mar. 12, 2025)[2] ("We hold the

[2] The LoanCare Defendants recognized that unpublished opinions do not hold precedential value. *See* Rule 268(d)(2), SCACR. Citation to this opinion is meant only to emphasize the flaw in Lewis's assertion that Rule 55(c), SCRCP, requires affidavits.

circuit court did not abuse its discretion when it found good cause existed and granted TD Bank's motion for relief from entry of default because [Rule 55(c)] does not require oral testimony or affidavits for a court to grant relief from entry of default. . . .") (relying on Rule 55(c), SCRCP; *Sundown*, 383 S.C. at 607-08, 681 S.E.2d at 888; and *Regions Bank v. Owens*, 402 S.C. 642, 647, 741 S.E.2d 61, 54 (Ct. App. 2013)).

There is, likewise, no finding by the trial court that the LoanCare Defendants' explanation was "conclusory and unsupported." (RIB9). The LoanCare Defendants provided a satisfactory explanation meeting the *Sundown* Court's lenient standard for good cause. The record supports the LoanCare Defendants' explanation relating to the failure of their internal litigation tracking system, which caused them to miss the answer deadline. (Motion to Set Aside). The record further establishes that, on learning of the default, the LoanCare Defendants immediately took steps to retain counsel, request leave to plead, and attempt to resolve the litigation amicably with Lewis's counsel. (Motion to Set Aside).

The trial court's Order ignored the LoanCare Defendants' explanation and, instead, improperly focused on the lapse of time between service of the complaint and the LoanCare Defendants' recognition of the error (86 days). (7/6/23 Order at 2). This period may be relevant to the *Wham* factors, but it is not relevant to the threshold finding of a satisfactory explanation for the default under *Sundown*. *See*

Sundown, 383 S.C. at 607-08, 681 S.E.2d at 888 ("This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.").

The trial court's Order then incorrectly equated the LoanCare Defendants' explanation for the default with cases involving conscious disregard and attorney negligence over extended periods of time reaching six months. (7/6/23 Order); (RIB9) (reciting the cases referenced by the trial court without analysis). Such is not the case here. In this case, the LoanCare Defendants were unaware of the complaint and the answer deadline due to a failure of internal tracking system. (Motion to Set Aside).

As set forth in the LoanCare Defendants' Initial Brief, (AIB21-24), the opinions cited by the trial court involve cases where the defendants had knowledge of the complaint and made a deliberate decision not to address it. *See Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994) (addressing the defendant's knowledge of the complaint and attendant deadline, and that the defendants had failed to set forth any reason why they failed to answer the complaint); *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 176-77, 463 S.E.2d 636, 638 (Ct. App. 1995) (concluding that no good cause existed where defendant's employee "overlooked" the deadline to respond to the complaint and failed, for almost three

months, to retain local counsel); *Regions Bank v. Owens*, 402 S.C. 642, 645-47, 741 S.E.2d 61, 53-54 (Ct. App. 2013) (concluding that notice of the complaint and active disregard were not good cause where there was "the record was void of any evidence [a third party] agreed or suggested he would hire an attorney for [defendant]"); *Nelson v. Coleman, Co.*, 41 F.R.D. 7, 9 (D. S.C. 1966) (concluding, under a standard distinguishable from *Wham*, that failure to forward a complaint to counsel, despite notice, was insufficient to show good cause; specifically, an employee who received personal service delayed forwarding the complaint to general counsel, who then delayed forwarding the complaint to South Carolina counsel until after the expiration of time to respond, and the record was silent as to any explanation for the delays).

The trial court also failed to consider the LoanCare Defendants' "reasons why vacation of the default entry would serve the interests of justice." *Sundown*, 383 S.C. at 607, 681 S.E.2d at 888. As the LoanCare Defendants set forth in their motion, setting aside the default would serve the interests of justice because (1) Lewis's claims are baseless in light of the 2017 Foreclosure Action; (2) Lewis did not respond to the LoanCare Defendants' motion; and (3) public policy seeks adjudication of disputes on the merits. (Motion to Set Aside).

The trial court glossed over the LoanCare Defendants' detailed explanation and denied their motion based on factually unsupported legal conclusions. (AIB19-28). Although what constitutes a "satisfactory explanation" is within the trial court's

discretion, the trial court abuses this discretion when its determination is not supported by the evidence. *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994); *Sundown*, 383 S.C. 607, 681 S.E.2d at 888 ("An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support.") (quoting *In re Estate of Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997)). That is what occurred here.

The trial court should have vacated the default and allowed the litigation to proceed on its merits. The trial court's failure to follow the standards articulated by the South Carolina Supreme Court warrant reversal of the Judgment and remand for further proceedings.

III. LEWIS DID NOT PLEAD OR PROVE VALID CAUSES OF ACTION AGAINST THE LOANCARE DEFENDANTS, (AIB28-33).

Aside from one conclusory and unsupported sentence stating that his causes of action were valid, Lewis does not address this argument in his initial brief. *See generally* (RIB10-14) (addressing only damages and the LoanCare Defendants' affirmative defenses). This Court is not under any obligation to "search the record for reasons to affirm" and, therefore, this error, (AIB28-33), warrants reversal on its face. *Campbell v. Carr*, 361 S.C. 258, 266-67, 603 S.E.2d 625, 629 (Ct. App. 20024) (Goolsby, J., concurring) ("[T]his court should not be inclined to do what [the

respondent] neglected to do, i.e., 'search the record for reasons to affirm.'") (quoting *Wierszewski v. Tokarick*, 307 S.C. 441, 444 n.2, 418 S.E. 2d 557, 559 n.2 (Ct. App. 1992) (noting that "it [was] proper to reverse on the points presented rather than to search the record for reasons to affirm")). Lewis's failure to address this issue on appeal is not unlike a party's failure to file a brief and it is within the power of this Court to reverse on this basis alone. *Cf.* Rule 208(a)(4), SCACR ("Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper."); *Turner v. Santee Cement Carriers, Inc.*, 277 S.C. 91, 97, 282 S.E.2d 858, 860 (1981) (observing that failure to file a brief justifies reversal).

As set forth fully in the LoanCare Defendants' initial brief, there is no legal support for the trial court's damages award, as the damages hearing was irregular. (AIB28-33). Lewis ignores this argument in his initial brief, in favor of the conclusory assertion that the damages award was supported by the evidence presented at the hearing. (RIB10-11). Lewis's damages award, however, could not have been supported because the trial court failed to follow the controlling law.

Lewis did not plead a valid cause of action against the LoanCare Defendants. (AIB28-33). Despite this, the trial court prohibited the LoanCare Defendants from challenging the validity of the complaint, under the guise that all the allegations in the complaint—including Lewis's unsupported conclusory allegations—were "deemed admitted." (9/5 Tr. 4:13-15); (Order of Judgment). Even Lewis admits in

his initial brief that only the "well-pleaded allegations of the complaint" are deemed admitted. (RIB10 (quoting *State ex rel. Medlock v. Love Shop, Ltd.*, 286 S.C. 486, 489, 334 S.E.2d 528, 530 (Ct. App. 1985)). The LoanCare Defendants were legally permitted to challenge the sufficiency of the complaint but were improperly precluded from doing so. *See Masters v. Rodgers Dev. Grp.*, 283 S.C. 251, 254, 321 S.E.2d 194, 196 (1984) ("A party seeking a default judgment is entitled to only such relief as is framed by his pleading . . . It follows that if a complaint fails to state a cause of action, the rendering of a default judgment thereon is without authority of law and is therefore reversible error.") (quoting *Mut. Savings & Loan Assoc. v. McKenzie*, 274 S.C. 630, 632, 266 S.E.2d 423, 424 (1980)).

The trial court then prohibited the LoanCare Defendants from cross-examining Lewis on these conclusory allegations based on the default. (9/5 Tr. 27:13-28:5); (*Id.*, Tr. 22:20-21); (*Id.*, Tr. 28:21-22). Notwithstanding the default, the LoanCare Defendants were entitled to explore Lewis's testimony through cross-examination and impeachment. "Traditionally, the judges of this jurisdiction have permitted counsel for a defaulting defendant, upon request, to cross-examine the witnesses and object to the evidence." *Howard v. Holiday Inns., Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880 (1978); *see also Limehouse v. Hulsey*, 404 S.C. 93, 113, 744 S.E.2d 566, 577 (2013) (reaffirming *Howard* which permits a defaulting defendant

to participate in a damages hearing by cross-examining the witnesses and objecting to the evidence).

The trial court's failure to allow the LoanCare defendants the ability to challenge the validity of Lewis's cause of action or otherwise cross-examine Lewis on relevant matters renders the Judgment without authority of law. The result was an award of damages to Lewis that was wholly unsupported by the competent record evidence. (AIB37-39) (addressing the fact that there was no competent evidence to support the award of damages to Lewis and, in fact, due to his negative equity in the Property, his damages should have been zero); *see also* (RIB13) (admitting the trial court refused to consider the LoanCare Defendants' attempts to cross-examine Lewis as to his lack of equity in the Property); (9/5 Tr. 25-31) (sustaining Lewis's objection to the LoanCare Defendants' line of questions relating to Lewis's past modification attempts that resulted in the foreclosure judgment and form the basis of his cause of action and damages in this litigation).

Accordingly, the Judgment is without authority of law and must be reversed on these grounds.

IV. THE TRIAL COURT ERRED AS A MATTER OF LAW BY FINDING THAT LEWIS PRESENTED A PRIMA FACIE CASE OF DAMAGES, (AIB33-39).

Lewis did not present any prima facie evidence that would support his right to "lost equity" in the Property. *Cf.* (RIB12-13). Lewis could not have had "lost

equity" because, during the Foreclosure Action, he chose not to exercise his right of redemption in the Property and voluntarily left. He cannot now demand nonexistent "equity" in the Property in which he holds no interests and owes the LoanCare defendants $462,977.44 due to an unchallenged foreclosure judgment.

As the LoanCare Defendants have thoroughly briefed, Lewis's litigation was barred by the doctrines of collateral estoppel and res judicata. (AIB33-36). These doctrines are directly relevant and applicable here. The Foreclosure Action litigated and decided the issue of Lewis's equity in the Property (or lack thereof), and this finding is conclusive as to Lewis's alleged damages of "lost equity" in this case. *See* S.C. Code Ann. § 15-39-870 (providing that "the proceedings under which [a judicial sale under a decree of a court of competent jurisdiction] is made shall be deemed res judicata . . . ."); *Crestwood Golf Club v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (1997) (barring "relitigation of particular issues actually litigated and decided" through prior litigation); *see also* (9/5 Tr. 29:1-17, 20:4-10, 31:17-21) (admitting that Lewis's "interest in the property had been extinguished" through the Foreclosure Action); (AIB35-36) (discussing South Carolina law that confirms a party's property rights are extinguished through foreclosure).

Lewis argues that this litigation is "independent" from the 2017 Foreclosure Action because it addresses "servicing negligence, misrepresentation, and contractual breach." (RIB4, 11-12). Regardless of how Lewis labels his cause of

action, however, Lewis unquestionably sought damages arising directly from, and which were determined by, the Foreclosure Action. (AIB35-39).

Indeed, Lewis's causes of action against the LoanCare Defendants are founded on the Foreclosure Action and he would not even be able to assert any of his alleged damages but for the Foreclosure Action and judgment. Lewis's claimed damages are nothing more than a transparent attempt to profit from a foreclosure judgment that was caused by his own failure to pay his mortgage or otherwise seek redemption of the Property. Lewis testified to these facts during the damages hearing. (9/5 Tr. 29:1-17, 20:4-10, 31:17-21).

Lewis could not have pled a prima facie case of damages for lost equity where there was never any competent evidence before the trial court that Lewis even had any equity in the Property. The only competent evidence before the trial court was in the form of the judgment in the Foreclosure Action, which established that Lewis ***owed the LoanCare Defendants $462,977.44***. *See* (9/5 Tr.); (Supplemental Judgment). Lewis's damages were, therefore, zero, and the Judgment must be reversed on this ground, too.

V. THE LOANCARE DEFENDANTS REQUEST ORAL ARGUMENT.

The LoanCare Defendants believe that oral argument will aid the Court in resolving the issues in this case. This litigation has a lengthy and complex history dating back to 2017, and the LoanCare Defendants believe that oral argument will assist the Court in its understanding of the nuances of these facts and how they relate to the substantive questions of law at issue on appeal. Accordingly, the LoanCare Defendants respectfully request this Court hold oral argument in this matter.

CONCLUSION

WHEREFORE, based on the above facts and legal authorities and those set forth in the LoanCare Defendants' Initial Brief, Appellants LoanCare LLC and Lakeview Loan Servicing LLC respectfully request this Court reverse the Order of Judgment and either (i) remand for entry of judgment in the LoanCare Defendants' favor or, in the alternative, (ii) remand for further adjudication of this matter on the merits. The LoanCare Defendants further request this Court enter any such other and further relief as it deems necessary and appropriate.

Dated: November 7, 2025.

Respectfully Submitted,

BURR & FORMAN, LLP
/s/ Bernie W. Ellis
Bernie W. Ellis (SC Bar No. 64841)
Weyman C. Carter (SC Bar No. 15255)

Post Office Box 447
Greenville, SC 29602
Tel. (864) 271-4940
Fax. (864) 271-4015
bellis@burr.com
wcarter@burr.com

/s/ *Benjamin D. Carnahan*
Benjamin D. Carnahan (OH Bar #0079737-
Appearing Pro Hac Vice)
DINSMORE & SHOHL LLP
1001 Lakeside Ave, Suite 990
Cleveland, OH 44114
Telephone: (216) 413-3841
Ben.Carnahan@Dinsmore.com

s/ *Kathryn L. Ender*
Kathryn L. Ender (FL Bar #50803-
Appearing Pro Hac Vice)
DINSMORE & SHOHL LLP
1001 Lakeside Ave, Suite 990
Cleveland, OH 44114
Telephone: (216) 413-3841
Katie.Ender@Dinsmore.com

Counsel for Lakeview Loan Servicing, LLC and LoanCare, LLC

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PROOF OF SERVICE

I hereby certify that a copy of the Appellants' Reply Brief and has been duly served on Respondent by sending a copy via electronic mail addressed to Respondent's attorneys of record at the addresses set forth below:

Townes B. Johnson III
tjohnson@sc.legal
filing.sc.legal@gmail.com

Christian H. Thorndike
cthorndike@sc.legal

BURR & FORMAN, LLP
/s/ Bernie W. Ellis
Bernie W. Ellis (SC Bar No. 64841)
Post Office Box 447
Greenville, SC 29602
Tel. (864) 271-4940
Fax. (864) 271-4015
bellis@burr.com
Counsel for Lakeview Loan Servicing, LLC and LoanCare, LLC