THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Haigh Porter, Master-in-Equity

Appellate Case No. 2025-001115
Civil Action No. 2024-CP-21-00548

Shirley Reed,

Respondent,

v.

OHM Florence, LLC,

Appellant,

INITIAL REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases **Page(s)**

Statutes

Rules

Other Authorities

ARGUMENT IN REPLY

I. OHM Did Not Waive Its Improper Service Argument.

Respondent Shirley Reed ("Reed") argues that by "appear[ing], mov[ing] to set aside the default on a new ground (an affirmative defense), s[eeking] summary judgment, s[eeking] dismissal, cross-examin[ing] Ms. Reed on liability and damage issues, clos[ing] on the sufficiency of the damages evidence, and request[ing] a zero verdict," Appellant OHM Florence, LLC ("OHM") voluntarily appeared and waived any argument regarding the default that was entered against it and that resulted in a default judgment. *See* Brief of Respondent at 11. Reed's argument, however, lacks legal support, would view any defendant seeking relief from default as waiving arguments against default based on improper service, and, if accepted, would force defendants to choose between preserving for appeal an already-denied motion for relief from default based on improper service or contesting damages at a subsequent default damages hearing.

Reed's argument first of all appears to erroneously contend that the default against OHM was proper because OHM allegedly voluntarily appeared in the case after the default was entered. It is admittedly true that a defendant can be held in default for failing to answer even an improperly served summons and complaint if the defendant has voluntarily appeared in the case. *See Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007) ("Although a court commonly obtains personal jurisdiction by the service of the summons and complaint, it may also obtain personal jurisdiction if the defendant makes a voluntary appearance" (citing Rule 4(d), SCRCP ("Voluntary appearance by defendant is equivalent to personal service")). A default in fulfilling the obligation to answer, however, must logically follow *after* the creation of the obligation to answer via the filing of a complaint and the

gaining of jurisdiction over a defendant by proper service or by voluntary appearance. *See, e.g.*, *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009) ("Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default"); *see also* Rule 55(a), SCRCP. None of the cases cited in Reed's brief affirm a default entered prior to the attainment of jurisdiction over a defendant via voluntary appearance. *See, e.g.*, *Stearns Bank Nat. Ass'n*, 373 S.C. 331 (finding the court properly entered a default *after* the defendant voluntarily appeared and failed to answer the complaint); *cf. Connell v. Connell*, 249 S.C. 162, 166, 153 S.E.2d 396, 398–99 (1967) ("Under the aforesaid section and our decisions, a defendant's time to answer so as to avoid a default is extended until disposition of his attack upon the jurisdiction" (citing *Cheraw Motor Sales Co. v. Seymour*, 130 S.C. 307, 126 S.E. 39 (1925))).

Still more problematically, Reed's waiver argument points to OHM's pursuit of relief from default as putative grounds for denial of relief from default, stating as indications of OHM's purported waiver of its improper service defense: "Defendant appeared, moved to set aside the default on a new ground (an affirmative defense)…" (Brief of Respondent at 11). It would be nonsensical to hold a defendant's pursuit of relief from default under the *Wham* factors—including *Wham*'s meritorious defenses factor—as a waiver of that defendant's ability to also contest whether service was proper, and indeed case law does not support such a position. *See, e.g., New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 49, 435 S.E.2d 377, 378 (Ct. App. 1993) ("[W]e are convinced Bey's appearance at the foreclosure hearing was limited to setting aside the default and was not a voluntary appearance as contemplated by Rule 4(d)[;]. . . . [t]he thrust of Bey's presentation of evidence addressed the requirement of showing a basis for setting aside the default.").

Importantly, the remaining actions to which Reed points as further indications of OHM's purported waiver of its improper service argument—"s[eeking] summary judgment, s[eeking] dismissal, cross-examin[ing] Ms. Reed on liability and damage issues, clos[ing] on the sufficiency of the damages evidence, and request[ing] a zero verdict" (Brief of Respondent at 11)—all occurred *after* Judge Porter had already denied OHM's motion for relief from default based on improper service on September 4, 2024 and denied OHM's motion to reconsider that decision on October 30, 2024. *See* Order Denying Defendant's Amended Motion to Set Aside Entry of Default (R.p.___) and October 30, 2024 Form 4 Order denying the Motion to Reconsider (R.p.____). OHM's improper service argument was thus fully argued and was in no way waived before it was erroneously rejected by the court below. OHM cannot have waived an argument that it fully exhausted before the trial court to no avail. *See Ex parte Trustgard Ins. Co.*, 442 S.C. 485, 507, 900 S.E.2d 448, 459 (Ct. App. 2023) ("Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised[;] [a] waiver is a voluntary and intentional abandonment or relinquishment of a known right[;] [w]aiver requires a party to have known of a right and known that right was being abandoned" (citing *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156, 165 (2003); Rule 4(d), SCRCP; and *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 685 S.E.2d 600, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009)).

II. Reed's Argument that OHM's Registered Agent Authorized Another Person to Accept Service on OHM's Behalf Contradicts Settled Case Precedent.

As already described in OHM's own brief (*see* Brief of Appellant at 14–15), service was not proper in this case because it was not accepted by OHM's registered agent, Sagar Patel, but rather by another person, whom Reed states was an accountant named Mr. Lightheart (*see* Brief of Respondent at 18). Pursuant to Rule 4(d)(8), SCRCP, "default or judgment by default shall be

set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person," and the only person authorized to accept service on behalf of a domestic corporation under S.C. Code Section 15-9-210 is that corporation's registered agent. *See* Rule 4(d)(8), SCRCP; S.C. Code § 15-9-210(a). Rule 4(d)(1) does not alter this equation, providing that service may be affected "by delivering a copy to an agent authorized by appointment or by law to receive service of process." *See* Rule 4(d)(1), SCRCP.

Attempting to create a more expansive framework for service, Reed begins by citing to case law involving service on a corporation's employee, as though there were no difference between service on a corporation via an employee of the corporation impliedly authorized to accept service on its behalf on the one hand and Reed's proffered service on a corporation via service on an individual allegedly authorized by the corporation's registered agent to accept service on the agent's behalf on the other. *See* Brief of Appellant at 17–19. These cases cited by Reed are simply inapposite to the question before this Court on appeal, and their reasoning does not justify creation of "sub-agents" for statutory service upon a company via registered agent. *See Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009) (discussing validity of service on a hotel via the hotel's receptionist); *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App. 1996) (discussing validity of service on a law firm via the law firm's receptionist).

In fact, the central argument Reed's brief advances in support of the purported service of process in this case has already been considered and rejected by the Supreme Court of South Carolina. In *Roberson v. Southern Finance of South Carolina, Inc.,* 365 S.C. 6, 615 S.E.2d 112 (2005), the Supreme Court held that service on a clerical employee of the registered agent was improper, rejecting the plaintiff's argument in that case that the registered agent had impliedly

authorized his employee to accept service on behalf of the defendant, the registered agent's principal:

> Whether apparent authority can suffice to show authorization to accept service under Rule 4 is an unsettled question. *See Schultz v. Schultz,* 436 F.2d 635, 637 (7th Cir.1971) (describing as "dubious" the "assumption that such authority may be implied in some situations"); *see also Chatman v. Condell Med. Ctr.,* 2002 WL 737051, at *3 (N.D.Ill. Apr.22, 2002) (collecting cases).
>
> **Even if apparent authority suffices, however, it is established based upon manifestations by the principal, not the agent**. *See Shropshire v. Prahalis,* 309 S.C. 70, 419 S.E.2d 829 (Ct.App.1992). **An apparent agency may not be established solely by the declarations and conduct of an alleged agent.** *Frasier v. Palmetto Homes,* 323 S.C. 240, 473 S.E.2d 865 (Ct.App.1996). There is no evidence in the record that Southern Finance manifested Bair was its apparent agent in any way.
>
> Neither do the circumstances support the conclusion that Bair had implied authority to accept service for Southern Finance. Again, **there is no evidence Southern Finance authorized Bair to act as its registered agent.** Furthermore, an agent has no implied authority unless she herself believed she had such authority. 2A CJS Agency § 136 (2004). Bair testified she has never been authorized to accept service.

Roberson v. S. Fin. of S.C., Inc., 365 S.C. 6, 11, 615 S.E.2d 112, 115 (2005) (emphases added).

While Reed does point to Mr. Lightheart's having performed work for OHM as an accountant as an ostensible manifestation by OHM that Mr. Lightheart was authorized to accept service on its behalf (*see* Brief of Appellant at 18), the real thrust of Reed's argument is that Mr. Lightheart was authorized to accept service for OHM because Mr. Lightheart "resides at the registered [agent's] address with his wife", such that "**Mr. Patel** [the registered agent] placed Mr. Lightheart in a position to accept service of the pleadings and therefore impliedly, if not expressly, authorized him to sign the green card" (*see id*.) (emphasis added). This theory of apparent authority was explicitly rejected by the Supreme Court in *Roberson*: no action of Mr. Patel as OHM's registered agent could authorize Mr. Lightheart to accept service on behalf of OHM, as *OHM* is the relevant principal in this agency analysis for service of process.

Furthermore, despite Reed's inapposite citation to *Roche v. Young Bros. of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995), which opinion affirmed the validity of service upon a corporation through its corporate officers (in that particular case, the corporation's vice president), there is no precedent for service upon a corporation by virtue of apparent authority via delivering the summons and complaint to a professional—like the accountant Mr. Lightheart—who has rendered professional services to the corporation.

Reed's argument that service in this case was proper is thus unsupported by *Roche* and directly countermanded by *Roberson* and its precedents, including *Shropshire* and *Frasier*. Reed's service argument should accordingly be rejected.

III. Reed Continues to Confuse Satisfactory Explanation of How the Default Occurred with Good Cause for Setting Aside the Default.

Reed's brief continues to labor under the same confusion regarding the *Sundown* good cause analysis that led the master in equity to erroneously deny relief from default, mistakenly collapsing the threshold *Sundown* satisfactory explanation and subsequent *Wham* good cause factors into an analysis of whether service was validly effected on the registered agent by virtue of his actual notice of the suit. *See, e.g.,* Brief of Respondent at 20 ("Defendant never states exactly what the 'good cause' is that required the Master to then analyze the *Wham* factors"); Transcript of August 12, 2024 Hearing at 22:18–27:12 (R.p. ____); Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. ____).

As an initial matter on this point, Reed's apparent misreading of OHM's brief must be addressed. Reed asserts that

> Defendant contends, in conclusory fashion, that "good cause existed to set aside the default." (App. Br. p.15). The remainder of the argument sets forth the standards for reviewing that decision (App. Br. pp. 15-16) and an attack on the sufficiency of the Master's order. (App. Br. pp. 16-18). Defendant never states exactly what the 'good cause' is . . . .

> … Defendant asserted that… OHM mistakenly concluded that responsive action was still unnecessary, and that it did not forward that document to its insurer, either.[] (App. Br. p. 4). This is the only "cause" the Defendant offers in its brief to support turning to the *Wham* factors…

(Brief of Respondent at 19–20, 21).

While OHM's brief does contend that the master in equity refused to engage in any good cause analysis, its argument is not conclusory on the issue of whether good cause existed under the *Wham* factors. At Pages 3 through 8 of OHM's brief, OHM summarized its extensive argument below regarding good cause and evidence in support, providing not only the explanation OHM offered to the court below regarding its understanding (at that time) of how the default occurred, but also providing argument and evidence for why good cause existed to set aside the default under the *Wham* factors, including the timeliness of the motion by OHM for relief from default, the lack of prejudice to Reed due to the recent nature of the incident, and OHM's meritorious defenses to liability, including that the elderly Ms. Reed's already-evident difficulties with walking may have predominated in causing her injuries and that OHM had turned over the obligation for sweeping of the parking lot to its lessee, Thunderbird. *See* Brief of Appellant at 3–8. After demonstrating the master in equity's legal error in failing to consider or rule upon these arguments, OHM's brief cites its prior recitation of those arguments and evidence, concluding that "[i]ndeed, a review of the record shows that had the Court engaged in the proper analysis, the evidence in the record—liberally construed per *Melton*, 379 S.C. at 54—supports only the conclusion that good cause existed to set aside the default against OHM. (*See supra* at 3–8)." There is nothing amiss in OHM's reliance on internal cross-reference within its brief to avoid needless repetition.

Reed's brief also makes much of the fact that OHM's discovery production efforts eventually revealed that OHM's registered agent, Sagar Patel, had emailed OHM's insurance

broker a copy of the complaint on the day it was improperly served. *See* Brief of Respondent at 21–22. This argument is misdirected for two reasons. First, this information was not before the master in equity at the time that he denied OHM's motions for relief from default, as the information did not enter the record until Reed's April 28, 2025 response in opposition to OHM's motion to alter or amend the default judgment, after the master's orders denying relief from default were entered on September 4, 2024 and April 14, 2025, respectively.[1] *See* Brief of Respondent at 21.

Second, far from being prejudicial to OHM's arguments, this latter information would actually cast OHM in a more favorable light for purposes of relief from default because it shows that OHM's registered agent quickly took affirmative steps to address the complaint: any failure on the part of the broker on whom OHM's registered agent relied, in the totality of the circumstances shown by OHM in this case, does not rebut OHM's showing of good cause. *See Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 609, 681 S.E.2d 885, 889 (2009) ("Although the presence of other factors, in the totality of the circumstances, may amount to a showing of 'good cause,' a defendant may not be relieved from the entry of default *solely* because it relied to its detriment on a negligent insurance agent") (citing *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987) (holding that good cause was shown in the totality of circumstances involving misplaced reliance on insurance agent)).

In sum, OHM provided a satisfactory explanation for how the default occurred—whether that explanation is considered to be the explanation provided by OHM to the court below based on its investigations *at that time of its motions for relief from default* or the latter explanation discovered by OHM in its production efforts and provided to the court by Reed *after* the denial

[1] The April 14, 2025 Order, of which OHM was seeking reconsideration, did also deny OHM's renewed motion for relief from default.

of OHM's motions for relief. OHM also repeatedly provided substantial evidence and argumentation in support of good cause for relief from default under the *Wham* factors. It was clear error amounting to abuse of discretion for the master in equity to collapse the good cause inquiry[2] into the entirely distinct question whether the default was void for improper service, especially in light of OHM's repeated but unsuccessful attempts to have their good cause arguments reviewed by the master in equity.

IV. OHM Has Adequately Argued that the Trial Court's Damages Award Was Excessive and Not Supported by Admissible Evidence.

Reed's brief asserts that OHM's argument regarding the excessive and unsupported nature of the default damages award below is merely conclusory and should therefore be considered waived, despite OHM having spent five pages of its brief (*see* Brief of Appellant at 18–23) arguing this issue. *See Whitehurst v. Town of Sullivan's Island*, 446 S.C. 137, 919 S.E.2d 402 (2025) (finding conclusory argument to have been abandoned); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) ("An issue is deemed abandoned if the argument in the brief is only conclusory"); *see also First Sav.*

[2] We first address the court of appeals' holding that the master properly denied Johnson's Rule 55(c) and Rule 60(b)(1) motions. Under *Wham v. Shearson Lehman Bros.* and its progeny, a party seeking relief under Rule 55(c), SCRCP, from an entry of default must establish "good cause" for the entry of default to be lifted. 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App. 1989). The defaulting party must first provide a satisfactory reason for not timely answering an opposing party's pleading. If a satisfactory reason is given, the trial court must consider the following: (1) the timing of the motion for relief; (2) the degree of prejudice to the nonmoving party if relief is granted; and (3) whether the defaulting party has a "meritorious defense." *Id.* at 465, 381 S.E.2d at 502. To obtain relief from a default judgment under Rule 60(b)(1), SCRCP, the defaulting party must make a more particularized showing of mistake, inadvertence, surprise, or excusable neglect. To obtain relief from a default judgment under Rule 60(b)(1), the moving party must also show he has a meritorious defense. *Tri-County Ice & Fuel*, 303 S.C. at 242, 399 S.E.2d at 782 (citing *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct. App. 1988)).

Green v. Johnson, 446 S.C. 326, 338–39, 919 S.E.2d 894, 900 (2025).

Bank v. McLean, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant next asserts that the special referee abused his discretion by failing to grant all the relief he sought in his motion to reconsider[;] Appellant fails to provide arguments or supporting authority for his assertion[:] [t]hus, he is deemed to have abandoned this issue." (citing *Matthews v. City of Greenwood,* 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991))).

None of the challenges to the damages award presented in OHM's brief should be deemed waived because none of those arguments were conclusory, including OHM's argument that the "award [was] excessive in relation to the $1.14 million in alleged medical expenses plus future medical expenses projected by Ms. Reed." (Brief of Appellant at 18). As supporting authority for this argument, OHM cited three cases, two from the Supreme Court of South Carolina and one from the South Carolina Court of Appeals. *See id*. OHM also provided in its brief detailed information regarding the damages alleged and awarded at the damages hearing, including analysis of the insufficiency of the evidence provided by Reed to support her alleged damages due the inadmissibility of that evidence. *See id*. at 8–11; 19–23.

Taken together these facts, authorities, and assertions sufficiently raised OHM's proportionality argument to this Court, as "our Supreme Court has held that a judgment should be vacated on general equity principles where the award is patently and greatly out of proportion to the wrongs alleged in the complaint." *Williams By & Through Williams v. Vereen*, 284 S.C. 219, 223, 325 S.E.2d 337, 340 (Ct. App. 1985) (citing *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 274 S.E.2d 290 (1981) and 46 Am.Jur.2d *Judgments* § 807 (1969)). *See also Green v. Johnson*, 446 S.C. 326, 338, 919 S.E.2d 894, 900 (2025) (affirming master-in-equity's reduction of original damages award where "the original awards for bodily injury and punitive damages were egregiously out of proportion to the evidence presented at the default damages hearing.").

The proportionality prong of OHM's challenge to the trial court's default damages award is simple and was accordingly set forth succinctly in OHM's brief. The award of $4,161,541.00 was patently out of proportion with the $1.14 million in alleged medical expenses plus future medical expenses projected by Ms. Reed, especially where the alleged medical expenses, past and future, were not supported by admissible evidence, as further discussed at length in OHM's brief. *See* Brief of Appellant at 18–23. Reed's assertion of waiver in an attempt to avoid OHM's challenge to the award on this appeal, therefore, should not be countenanced.

Respectfully submitted,

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This 19th day of November, 2025.