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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Scott F. Talley, Special Referee

Court of Appeals Appellate Case No. 2025-001073

Angelica Shelest,……..……....……..……Respondent,

v.

Martin Maina Gitau and Mark One Freight & Logistics, LLC,..……..Appellants.

RESPONDENT'S RETURN TO APPELLANTS' MOTION FOR LIMITED REMAND

Respondent Angelica Shelest submits this Return in opposition to Appellants' Motion for Limited Remand. This appeal arises out of an Order of Judgment entered by a Special Referee as to two defendants in default—the Appellants. During the proceedings in circuit court, the Appellants did not contest the Special Referee's authority but actually conceded his authority under the Order of Reference. Appellants' Notice of Appeal does not include an appeal of the Order of Reference.

Appellants now move this Court to remand the case to allow them to make a second, belated Rule 60(b)(4), SCRCP, motion to challenge the Order of Reference. The motion is untimely and improper. The argument Appellants want to make is unpreserved. This appeal has been pending for six months with no progress to move it forward. Appellants should not be permitted to file an appeal and then delay resolution by trying to avoid the issue preservation rules and their prior consent. The Court should deny the motion in its entirety and let the appeal

proceed.

FACTUL AND PROCEDURAL BACKGROUND[1]

This case arises out of a July 24, 2020 collision in which Appellant-Defendant Martin Maina Gitau hit a vehicle driven by Respondent-Plaintiff Angelica Shelest, while he drove a tractor-trailer owned by Appellant-Defendant Mark One Freight & Logistics. Gitau was traveling behind Shelest and failed to notice that she was turning. To avoid hitting the back of Shelest's vehicle, Gitau swerved to the left and hit her as she was turning. The impact of the wreck tore off the bumper of Shelest's vehicle, flattened the left front tire, and bent the left front wheel.

Shelest went to the hospital for neck and back pain, headache, and nausea. She was diagnosed with cervical and lumbar strain. Shelest continues to have ringing in her ears, severe headaches, dizziness, and nausea during vertigo. The accident changed her life and ability to work. Shelest works for the South Carolina Department of Social Services in child protective services. A co-worker testified that, after the collision, Shelest cannot go to home visits to see clients because of headaches and dizziness.

A neurologist that treated Shelest testified that she had no prior history of migraines but, after the accident, she got severe headaches on a daily basis, along with tightness in her neck, dizzy spells, blurred vision, and nausea occurring with the headache. The neurologist diagnosed Shelest as suffering from a mild concussion with residual symptoms. She will need quarterly botulinum toxin injections for post-concussive headaches. Shelest is thirty-one-years old with a 51-year life expectancy, and there is no identified treatment to cure her debilitating symptoms. The projected cost for her future medical treatment is $743,407.28.

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[1] The facts are taken from the Amended Complaint, Order of Judgment, and Order Denying Defendants' Motion to Set Aside Entry of Default and Default Judgment. (Exhs. A, E, & G).

On January 11, 2022, Shelest filed a Complaint against Gitau and John Doe Trucking Company. Gitau was properly served but did not answer.

On May 26, 2022, Plaintiff filed an Amended Complaint against Gitau and replaced John Doe with Mark One as a Defendant. Mark One owned the tractor-trailer driven by Gitau, and Gitau is the owner of Mark One. On November 8, 2022, the Amended Summons and Complaint were properly served through personal service on Gitau individually and as the registered agent for Mark One. The Appellants did not answer or appear. They do not dispute proper service.

On May 16, 2023, the Court entered an Order of Default as to Appellants. On June 26, 2023, Shelest filed a proposed order to refer the case to a special referee. (Exh. B). On June 26, 2023, this case was referred to a Special Referee pursuant to Rule 53, SCRCP. (Order of Reference, Exh. H). Appellants did not move to reconsider or appeal the Order of Reference. It was not included in the Notice of this appeal.

On September 20, 2023, Shelest sent Appellants notice of the damages hearing before the Special Referee, which occurred on October 3, 2023. (Notice, Exh. I). Neither Appellant appeared. On February 26, 2024, the Court entered a judgment against Appellants in the amount of $5,136,817.82 in actual damages. (Order of Judgment, Exh. E).

On December 19, 2024, Appellants filed a Rule 60(b), SCRCP, motion to vacate the judgment. (Mot., Exh. J). The motion does not mention or challenge the Order of Reference. On January 14, 2025, the motion appeared on a Court roster in circuit court. (Email, Exh. F). Counsel for Shelest notified the Court about the Order of Reference, but Appellants' counsel initially said he did not consent to the Special Referee hearing the motion. *Id.* However, the next day, Appellants notified the Court that, "upon further review of the Order of Reference to Special Referee, I **agree** that [the Special Referee] will **need** to hear this motion." *Id.* (emphasis added).

On April 1, 2025, the Special Referee heard the motion, and Appellants did not challenge the Order of Reference at the hearing. On April 30, 2025, the Special Referee entered an Order denying the motion to set aside the default judgment. (Order, Exh. G).

On May 30, 2025, Appellants filed a Notice of Appeal of only the order denying the motion to set aside the default judgment. (Not. of Appeal). They did not appeal the Order of Reference.

On July 22, 2025, Appellants moved certify this case to the Supreme Court and stated they would file a remand motion when the Court transferred the case. The Supreme Court denied that motion on October 21, 2025.

On October 22, 2025, Appellants filed a motion for limited remand asking this Court to remand the case to the Circuit Court to allow them to make a second Rule 60(b), SCRCP, motion to argue for the first time that the Order of Reference is void. (Mot. for Remand).

ARGUMENT

Appellants ask the Court to allow them to stall their own appeal and remand the case to raise an issue for the first time, challenge something they waived and consented to in circuit court, and, ultimately, appeal from an order that Appellants did not include in their Notice of Appeal. Each of these procedural hurdles is sufficient to deny the motion and, cumulatively, they are a legal roadblock to Appellants' belated attempt to challenge the Order of Reference.

Appellants were represented by counsel in their challenge to the Judgment. After counsel's review of the Order of Reference, Appellants consented to the Special Referee deciding the Rule 60(b), SCRCP, motion. They cannot now make new arguments that trial counsel failed to make. The Court should deny the motion and order Appellants to proceed with briefing the appeal.

I. The Order of Reference is the Law of the Case and cannot be challenged.

The Order of Reference was entered on June 26, 2023. (Exh. H). The Order of Reference was immediately appealable. *See Edwards v. Timmons*, 297 S.C. 314, 316, 377 S.E.2d 97, 97 (1988) ("Seller did not appeal the order of reference which is therefore the law of the case."); *Creed v. Stokes*, 285 S.C. 542, 543, 331 S.E.2d 351, 352 (1985) ("The order [of reference] was not interlocutory, and should have been appealed immediately because it affected the mode of trial, a substantial right."). Appellants did not appeal it within 30 days. Rule 203(b)(1), SCACR. When Appellants filed this appeal, they did not include the Order of Reference in the Notice of Appeal. *See* Rule 203(d)(1)(B)(ii) (stating an appellant "shall" file with the notice of appeal a "copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing"). The Order of Reference is a final, unappealable order that is the law of the case. *Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("An unappealed ruling is the law of the case and requires affirmance."). Appellants cannot challenge an unappealed, final order by way of a motion for a limited remand. The Court should deny the motion to certify because the Order of Reference is the law of the case.

II. Appellants' argument about the Order of Reference is unpreserved.

Appellants cannot use a remand to avoid the law of issue preservation. There are two separate bases for finding Appellants' argument unpreserved. First, "[a]n issue conceded in a lower court may not be argued on appeal." *Austin v. Stokes-Craven Holding Corp.*, 387 S.C. 22, 46, 691 S.E.2d 135, 147 (2010) (internal quotation marks omitted). Appellants conceded that the Special Referee could properly hear their motion under the Order of Reference. (Email, Exh. F). Therefore, that issue cannot be argued on appeal, and a motion to remand cannot bring it to life.

Second, Appellants are trying to raise this issue for the first time on appeal. "It is axiomatic that an issue cannot be raised for the first time on appeal." *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (internal quotation marks omitted).

Further, it is Appellants' burden to show this Court that an argument is preserved. Not only do they present no evidence of preservation, they also do not explain to the Court how their belated argument is procedurally proper or attach to their motion any documents to show preservation. *See Zaman v. S.C. State Bd. of Med. Exam'rs*, 305 S.C. 281, 285, 408 S.E.2d 213, 215 (1991) (stating "the record provides no factual basis for raising this issue on appeal"); *McCall v. IKON*, 380 S.C. 649, 663, 670 S.E.2d 695, 703 (Ct. App. 2008) (stating "the appellant [] bears the burden of providing this court with a record sufficient to allow appellate review"); Rule 240(c)(3), SCACR.

The Court should deny the motion based on any one of these preservation grounds.

III. Appellants conceded the validity of the Order of Reference and cannot take a contrary position on appeal.

In February 2025, Appellants considered the validity of the Order of Reference and "agree[d]" that the Special Referee "need[ed]" to hear their motion to set aside the judgment. (Email, Exh. F). "[T]he acts of an attorney are directly attributable to and binding on the client." *Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 200, 511 S.E.2d 716, 719 (Ct. App. 1999). Appellants cannot concede this point below and then take a contrary position on appeal. *See Vaughan v. Kalyvas*, 288 S.C. 358, 362, 342 S.E.2d 617, 619 (Ct. App. 1986) (declining to allow appellants to assert a position on appeal that was contrary to their concession at trial); *King v. Daniel Int'l Corp.*, 278 S.C. 350, 354, 296 S.E.2d 335, 337 (1982) (finding an argument raised on appeal that was inconsistent with appellant's statement at trial was without merit). The Court should deny the motion on this basis.

IV. Appellants waived an argument about the Order of Reference by consenting to the Special Referee's authority.

Appellants waived an argument that the Order of Reference was improperly entered. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 496, 685 S.E.2d 600, 607 (2009). Appellants' counsel initially objected to the Special Referee hearing the motion to set aside the judgment but then, after he reviewed the Order of Reference, he consented to the Special Referee's authority. (Exh. F). This is a voluntary and intentional abandonment of any objection to the Order of Reference. Appellants have not explained to this Court how they can raise this challenge for the first time on appeal after consenting to the Special Referee hearing their motion.

Appellants argue that an Order of Reference must be by agreement of the parties and by a judge. (Mot. to Remand p. 3). They do not challenge that their argument is waivable. *See Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) (listing the third prong of jurisdiction as "(3) the court's power to render the particular judgment requested." (internal quotation marks omitted)). Appellants argue their **consent** to the Order of Reference was required. If it is something they could consent to, then it is something they can waive. *See Williams v. Jeffcoat*, 444 S.C. 224 (2024) (holding a challenge relating to statutes that confer power or authority to act, but not subject matter jurisdiction, could not be argued at any time); *compare Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121, 463 S.E.2d 600, 605 (1995) ("[S]ubject matter jurisdiction cannot be waived or conferred by consent.") *with White Oak Manor, Inc. v. Lexington Ins. Co.*, 407 S.C. 1, 9, 753 S.E.2d 537, 541 (2014) ("[D]efendant may waive personal service by consent . . . ." (internal quotation and alteration marks omitted)).

Having established that the challenge is waivable, there is no doubt the Appellants waived it. They did not appeal the Order of Reference. Their counsel actually reviewed the Order of Reference for the purpose of deciding whether it empowered the Special Referee to hear their motion to set aside the default judgment. His conclusion was to "agree that [the Special Referee] will need to hear this Motion." (Email, Exh. F). Further, Appellants appeared at the motion hearing and argued their motion without contesting the Special Referee's authority. After he denied their motion, they did not move to reconsider. They filed a Notice of Appeal that did not include the Order of Reference. This is undoubtedly waiver. The Court should deny the motion to remand on this basis because Appellants cannot avoid their own waiver with a motion to remand.

V. A Second Rule 60(b), SCRCP, is untimely.

Appellants already made a Rule 60(b), SCRCP, motion on December 19, 2024. That motion did not include a challenge to the Order of Reference. (Mot., Exh. J). On the contrary, it asked the Special Referee to exercise authority.

Appellants now ask for leave to make a *second* Rule 60(b) motion to assert an argument they omitted the first time. Remand is not intended for a re-do. Rule 60(b) specifies that the motion "shall be made within a reasonable time." It is unreasonable to make one motion and then, after filing an appeal, seek relief to file a second, successive motion to make an argument that a party forgot to make the first time. It is too late to raise the argument now.

VI. On the merits, there is no statutory conflict and no basis to overturn *Roche v. Young Bros.*

Appellants do not cite to any law that allows an appellant to remand a case for the purpose of raising an unpreserved issue that they conceded and failed to include in a notice of appeal. Instead, they discuss the merits of the unpreserved issue they want to argue.

Even if the Court can resolve all of the procedural hurdles discussed above, the merits of the unpreserved issue are still not a basis to grant the motion.

Appellants argue that the Special Referee's appointment under Rule 53, SCRCP, conflicts with S.C. Code Ann. § 14-11-60. (Mot. to Remand p. 3). In *Roche v. Young Brothers*, 332 S.C. 75, 504 S.E.2d 311 (1998), the Supreme Court already addressed that argument and held that the rule and statute do **not** conflict. There is no basis to overturn that decision.

"In an action where the parties consent, **in a default case**, **or** an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge **or the clerk of court**." Rule 53(b), SCRCP (emphasis added). The rule does not require a defaulting party's consent for referral by a clerk of court. On the contrary, there is "authority of the clerk of court to issue orders of reference in default cases and where all the parties consent." Rule 53, SCRCP (notes to 1994 Amendment) (emphasis added).

Appellants also argue that only the presiding circuit court judge—not a clerk of court—is authorized to appoint a special referee, and cite to S.C. Code § 14-11-60. (Mot. to Remand p. 3). That is incorrect.[2] Section 14-11-60 states:

> In case of a vacancy in the office of master-in-equity or in case of the disqualification or disability of the master-in-equity from interest or any other reason for which cause can be shown the presiding circuit court judge, upon agreement of the parties, may appoint a special referee in any case who as to the case has all the powers of a master-in-equity.

S.C. Code Ann. § 14-11-60. The statute does not apply to this case. It applies to appointment of a special referee to have "all the powers of a **master-in-equity**." *Id.* (emphasis added). The

[2] Shelest submitted a proposed order of reference that had a signature line for J. Mark Hayes, II, as Chief Administrative Judge. (Exh. B). The Clerk's office rescinded the filing because it contained a signature line for a judge instead of the Clerk of Court. (Exhs. C &D). The Court's rejection notice stated: "Reason(s) rejected: Please update your signature line to reflect the Clerk of Court and resubmit." (Exh. D). The Judicial Department's own internal filing system refused to accept a proposed order of reference for signature by a judge.

Order of Reference at issue in this case states "the special referee shall have and exercise all power and authority which a **circuit judge** sitting without a jury would have in a similar matter for the claims." (Order of Reference, Exh. H) (emphasis added). Therefore, the statute does not apply.

Based on its limited application, § 14-11-60 does not conflict with Rule 53(b). Further, the Judiciary Committee knew of § 14-11-60 (last amended 1989) when it reviewed and did not disapprove the language of Rule 53(b) in 1999 (after *Roche* was decided) that says a clerk may refer a case in default without consent. S.C. Const. Ann. Art. V, § 4A; *Williams v. Gov't Emples. Ins. Co.*, 409 S.C. 586, 602, 762 S.E.2d 705, 714 (2014) ("The General Assembly is presumed to know the law . . . .").

Finally, Appellants argue that they did not have an opportunity to challenge the Special Referee's appointment. (Mot. to Remand p. 3). That argument is disingenuous and, regardless, it is no excuse to consent to an issue and then try to belatedly raise it after an appeal is filed.

The point is not whether Appellants got notice of the Order of Reference—because they were not entitled to notice[3]—but, instead, whether they knew about it before filing their first Rule 60(b), SCRCP, motion and before filing the Notice of Appeal. Is it undisputed that Appellants knew about the Order of Reference with ample time to challenge the Special Referee's authority below. They could have challenged his appointment after they received notice of the damages hearing[4] (Not., Exh. I), in their Rule 60(b), SCRCP, motion, or at that motion hearing. Appellants had numerous opportunities to challenge the Order of Reference but did not do so.

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[3] *See* Rule 5(a), SCRCP (stating "[n]o service need be made on parties in default for failure to appear," except for pleading that add new claims).

[4] Appellants did not contest receipt of the notice of the damages hearing.

If a party may fail to raise an issue and then simply file a motion to remand on appeal to avoid the issue preservation rules, then the rules are meaningless. This Court should uphold longstanding issue preservation law and deny the motion.

Appellants request a remand to "the presiding circuit court judge" rather than the Special Referee. (Mot. to Remand p. 4). Any remand is properly made to the Special Referee for a Rule 60(b), SCRCP, motion because he is the Judge that entered the underlying Order of Judgment. *See Shirley's Iron Works, Inc. v. City of Union*, 403 S.C. 560, 573, 743 S.E.2d 778, 785 (2013) ("This State has a long-standing rule that one judge of the same court cannot overrule another.")

CONCLUSION

For any one of these independent reasons, the Court should deny the Motion for Limited Remand and order the Case to proceed as presented in the Court of Appeals.

Respectfully submitted,

November 19, 2025

s/Kathleen C. Barnes
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Attorneys for Respondent

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	SEVENTH JUDICIAL CIRCUIT
	)	
Angelica Shelest	)	CA. No. 2022-CP-11-00021
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	AMENDED COMPLAINT
Martin Maina Gitau and Mark One Freight & Logistics, LLC	)	(Jury Trial Demanded)
	)	
Defendants.	)	
_____	)	

The Plaintiff would respectfully show the Court that:

1. The accident at issue in this wreck occurred in Gaffney in Cherokee County, State of South Carolina and the court has subject matter and personal jurisdiction under The SCRCP and the proper venue is in Cherokee, South Carolina.

2. Upon information and belief, Mark One Freight & Logistics, LLC (hereinafter Defendant Trucking) employed Martin Maina Gitau in the furtherance of its business on the day of the collision (hereinafter Defendant Gitau). Defendant Trucking furnished and gave permission for Defendant Gitau to drive its 2003 Freight Tractor Trailer (hereinafter called Defendant's Tractor Trailer).

3. Upon information and belief, Angelica Shelest (hereinafter Plaintiff Angelica) was traveling north in the 2020 Nissan (hereinafter Plaintiff's motor vehicle) along SC 150 Hwy approaching the intersection of Linson Drive and Rochester Road in Gaffney, S.C. on July 24, 2020 at approximately 1:28 p.m. At the same time, Defendant Gitau was traveling north in Defendant's tractor trailer on S 150 and turned right into Plaintiff Angelica's lane colliding with Plaintiff's motor vehicle.

4. At the time of the impact, Defendant Gitau owed Plaintiff Angelica the following duties:

a. No person shall turn or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal. SC Code of Laws 56-5-2150

5. Defendant Trucking owed a duty to Plaintiff Angelica to be responsible for torts of employee and / or independent contractors while in furtherance of the business.

FOR A FIRST CAUSE OF ACTION BY PLAINTIFF SHELEST VERSUS DEFENDANT GITAU

6. That the allegations of paragraphs above are incorporated by reference as if set forth herein verbatim.

7. That Defendant Gitau, at the time and place in question, was operating Defendant's tractor trailer in furtherance of Defendant Trucking's business.

8. As a result of the collision, Plaintiff Angelica sustained the following injuries and damages:

a. pain, mental anguish and discomfort;
b. disability for a period of time;
c. money spent and debt incurred for healthcare and treatment;
d. inability to carry on normal activities;
e. loss of enjoyment of life; and
f. anxiety and worry
g. concussion with headaches
h. vertigo
i. neck pain

9. That, as a result of Defendant Gitau's negligent, gross negligent, reckless, willful, and wanton actions, Plaintiff Angelica suffered personal injury, pain and suffering, loss of enjoyment

of life, lost wages, permanent physical injuries, future medical expenses and treatment, and other losses including but not limited to anxiety and post-traumatic stress.

10. The injuries and damages incurred by Plaintiff Angelica were directly and proximately caused by the careless, negligent, grossly negligent, willful, wanton, reckless and unlawful acts of Defendant Gitau in one or more of the following particulars:

a. Defendant Gitau made an improper turn under SC Code 56-5-2150.

11. The careless, negligent, grossly negligent, willful, wanton, reckless and unlawful acts of Defendant Gitau were the direct and proximate cause of the collision and resulting injuries and damage.

12. Plaintiff Angelica is informed and believes that she is entitled to judgment against the Defendant Gitau for actual and punitive damages in an appropriate amount.

FOR A FIRST CAUSE OF ACTION AGAINST DEFENDANT TRUCKING

(Negligent entrustment, vicarious liability, respondent superior, bailer/bailee; Lessor/lessee, employer/employee, master/servant, principal/agent, including ostensibleor apparent agency, contractual relationships, corporate relationships, family and/or other relationships)

13. Plaintiff reaffirms and reiterates all allegations above as if fully repeated and are incorporated herein verbatim.

14. Upon information and belief, Defendant Trucking owned Defendant's tractor trailer driven by Defendant Gitau and should be liable through the family purpose doctrine, through an entrustment, or through the respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent, including any ostensible or apparent agency relationships.

15. As a result of the collision, Plaintiff Angelica sustained the following injuries and damages:

a. pain, mental anguish and discomfort;
b. disability for a period of time;
c. money spent and debt incurred for healthcare and treatment;
d. inability to carry on normal activities;
e. loss of enjoyment of life; and
f. anxiety and worry
g. Concussion with headaches
h. Vertigo
i. Neck pain

16. That Defendant Trucking provided Defendant Gitau with Defendant's tractor trailer with authorization and permission to drive said vehicle.

17. That Defendant Gitau, at the time and place in question, was operating Defendant's tractor trailer in furtherance of Defendant Trucking's business.

18. That Defendant Trucking, pursuant to the above stated theories of liability set forth, is jointly and severally liable for the actions of its employee, Defendant Gitau.

19. The injuries and damages incurred by Plaintiff Angelica were directly and proximately caused by the careless, negligent, grossly negligent, willful, wanton, reckless and unlawful acts of Defendant Gitau in one or more of the following particulars:

a. Defendant Gitau made an improper turn under SC Code 56-5-2150.

20. That as a result of Defendant Trucking's negligent, gross negligent, reckless, willful, and wanton actions, Plaintiff Angelica suffered personal injury, pain and suffering, loss of enjoyment of life, lost wages, permanent physical injuries, future medical expenses and treatment, and other losses including, but not limited to, anxiety and post-traumatic stress.

21. Plaintiff Angelica is informed and believes that she is entitled to judgment against the Defendant Trucking for actual and punitive damages in an appropriate amount.

WHEREFORE, the Plaintiff prays for judgment against the Defendants for actual and punitive damages in an appropriate amount, the costs of this action, and for further relief as the Court may deem just and proper.

A. That the Plaintiff have and recover of Defendants individually a monetary sum for actual and punitive damages and personal injuries incurred or to be incurred in an amount to be determined by the jury in an amount in excess of ten thousand dollars ($10,000.00) each.

B. That the costs of this action be taxed against Defendants including a reasonable fee for the Plaintiff's attorney;

C. For interest on any compensatory judgment from date of the institution of this caption;

D. For such other, further and different relief as the Plaintiff may be entitled in the action, and be awarded by the Court in this action;

E. That this matter should be tried by a jury.

Respectfully submitted:

s/Brian T. Smith
Brian T. Smith Law
714 Pettigru Street
Greenville, SC 29601
Telephone: 864-239-2007
Fax: 864-230-2039
Attorney for Plaintiff

This 16th day of May 2022
Greenville, SC

Jury Trial Demanded

EXHIBIT B

William Barnes

From: efiledonotreply@sccourts.org
Sent: Monday, June 26, 2023 10:06 AM
To: William Barnes
Cc: Megan Davis
Subject: Retraction: Courtesy NEF RE: 2022CP1100021

The Notice below is RESCINDED
The filing was not filed.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2022CP1100021

Official File Stamp: 06-26-2023 09:58:07 AM
Court: CIRCUIT COURT
Common Pleas
Cherokee
Case Caption: Angelica Shelest VS Martin Maina Gitau , defendant, et al
Event(s):
Order/Order Cover Sheet $25.00

Document(s) Submitted: Proposed Order/Referred to Master or Special Referee
Filed by or on behalf of: William Franklin Barnes, III

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:
William U. Gunn
Brian T. Smith for Angelica Shelest
William Franklin Barnes, III for Angelica Shelest

The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:
John Doe Trucking for John Doe Trucking
John Doe Trucking for John Doe Trucking
Martin Maina Gitau for Martin Maina Gitau
John Doe Trucking for John Doe Trucking

John Doe Trucking for John Doe Trucking

Martin Maina Gitau for Martin Maina Gitau

EXHIBIT C

William Barnes

From: efiledonotreply@sccourts.org
Sent: Monday, June 26, 2023 10:06 AM
To: William Barnes
Cc: Megan Davis
Subject: Retraction: Courtesy NEF RE: 2022CP1100021

The Notice below is RESCINDED
The filing was not filed.

****** IMPORTANT NOTICE - READ THIS INFORMATION *****
NOTICE OF ELECTRONIC FILING [NEF]

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Official File Stamp: 06-26-2023 09:58:07 AM
Court: CIRCUIT COURT
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Cherokee
Case Caption: Angelica Shelest VS Martin Maina Gitau , defendant, et al
Event(s):
Order/Order Cover Sheet $25.00

Document(s) Submitted: Proposed Order/Referred to Master or Special Referee
Filed by or on behalf of: William Franklin Barnes, III

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John Doe Trucking for John Doe Trucking
Martin Maina Gitau for Martin Maina Gitau
John Doe Trucking for John Doe Trucking

John Doe Trucking for John Doe Trucking

Martin Maina Gitau for Martin Maina Gitau

EXHIBIT D

William Barnes

From: efiledonotreply@sccourts.org
Sent: Monday, June 26, 2023 10:06 AM
To: William Barnes
Cc: Megan Davis
Subject: Rejection Notice: Your filing, Re: Shelest, Angelica #3767339 - (320) Motor Vehicle Accident - Proposed Order/Referred to Master or Special Referee, was rejected

To:	William Franklin Barnes, III	wbarnes@barneslawfirmsc.com
From:	efiledonotreply@sccourts.org	
Date:	2023-06-26 09:58:07.003	
Subject:	Your electronic filing, Re: Shelest, Angelica #3767339 - (320) Motor Vehicle Accident - Proposed Order/Referred to Master or Special Referee, was rejected by CIRCUIT COURT.	

Case Number:	2022CP1100021
Case Type:	(320) Motor Vehicle Accident
Document Type:	Proposed Order/Referred to Master or Special Referee
Document Type:	Order/Order Cover Sheet $25.00
Reason(s) rejected:	Please update your signature line to reflect the Clerk of Court and resubmit. Thank you.

EXHIBIT E

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	CIVIL ACTION NO.: 2022-CP-11-00021
	)	
ANGELICA SHELEST, Plaintiff,	)	
	)	
v.	)	**ORDER OF JUDGMENT**
	)	
MARTIN MAINA GITAU AND MARK ONE FREIGHT & LOGISTICS, LLC, Defendants.	)	

This matter came before me for hearing on October 3, 2023, pursuant to the June 26, 2023 Order of Reference to a Special Referee. At the hearing, the Plaintiff, Angelica Shelest ("Shelest"), appeared with her counsel, William F. Barnes, III. The hearing began shortly after 11:00 a.m. at the Talley Law Firm in Spartanburg, SC. During the hearing, the Court heard testimony from Shelest, Kathy Klochko, Ereni Morkos, and Marshall White, MD. Defendants, Martin Maina Gitau ("Gitau") and Mark One Freight & Logistics, LLC ("Mark One") received notice of the hearing as required under Rule 55, SCRCP, but did not appear. After reviewing the exhibits presented and hearing testimony, I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

Shelest was born on *Month *Day[1], 1994. She is a graduate of Spartanburg High School and USC-Upstate, where she earned a bachelor's degree in criminal justice. Following college, she taught at Woodruff Elementary and, in 2019, she started working for the South Carolina Department of Social Service in Child Protective Services, where she is still currently employed.

I. COLLISION AND INJURIES

On July 24, 2020, around 2:00 pm, Shelest was traveling on SC Highway 150 and slowed to make a left turn on Linson Drive. (Amd. Compl.; Ex. 3; Shelest Testimony). Shelest had her

[1] The Month and Day have been redacted to comply with Rule 41.2, SCRCP.

left turn signal on as she was preparing to turn. A tractor-trailer driven by Gitau and owned by Mark One was traveling behind Shelest on SC Highway 150. The weather that day was sunny and clear. (Ex. 3). As Shelest was making her turn, Gitau was not paying proper attention and had to go into the left lane to avoid striking the rear of Shelest's vehicle. Gitau crossed a double yellow line to get into the left lane. (Ex. 8). The two vehicles collided as a result. At the time of the collision, Gitau was working in furtherance of Mark One's business. (Amd. Cmplt. ¶ 7).

Shelest testified it was a very hard impact. The State Trooper estimated that Gitau was traveling 45 mph and Shelest at 15 mph when the collision occurred. (Ex. 3). The collision caused significant property damage by tearing off the bumper of Shelest's vehicle, flattening the left front tire, and bending the left front wheel. (Exs. 4; 8). At the scene, Gitau did not come and check on Shelest as required by S.C. Code Ann. § 56-5-1230.

Shelest went to Spartanburg Medical Center that afternoon with complaints of headache, nausea, neck pain, and low back pain. While at the hospital, she was given Toradol, along with a prescription for anti-inflammatories, Lidoderm patches, and muscle relaxers. She was diagnosed with cervical strain and lumbar strain and told to follow-up with her primary care physician. Shelest received treatment from Carolina Spine and Health for her neck and back issues related to the wreck. The neck and back pain resolved but Shelest continues to experience ringing in her ears, headaches, dizziness, and nausea when she has vertigo symptoms. Shelest described that everything will start spinning when she has the vertigo symptoms.

Shelest testified that she loved working out prior to the collision. She was in the gym all the time. Due to the injuries she sustained, she is not able to exert herself without experiencing symptoms from the collision. She testified she tires more easily because of her injuries.

Shelest loved spending time with family and friends but now has to reschedule frequently when she does not feel well. She described the embarrassment of having to let down her family

and friends when she is not able to do things. She testified that outwardly she looks fine but folks cannot see her dizziness and vertigo symptoms.

Shelest also has sleep issues caused by the collision. She cannot sleep on her side anymore. But, if she sleeps on her back her head will hurt.

II. MARSHALL A. WHITE, MD

Marshall A. White, MD ("Dr. White") is a board-certified neurologist that provided medical treatment to Shelest. Dr. White testified to his qualifications, and the Court admitted him as an expert in neurology. Dr. White first treated Shelest on August 21, 2020, approximately one month after the collision. Dr. White testified to Shelest's medical treatment. She presented to the ER at Spartanburg Medical Center and was evaluated for neck pain. She had left-sided neck pain radiating into the trapezius, in addition to right-sided neck pain radiating into the trapezius. She also experienced headaches, vertigo, blurred vision, and ringing in her left ear, with nausea. She had difficulty concentrating and had brain fog-type symptoms. Many of those symptoms persisted a month after the collision. Following the collision, her headaches were severe and she experienced them daily. She has a band-like contraction headache that emanates from the neck, moves forward and concentrates in the left frontal area.

Shelest's symptoms were positive for numbness and tingling in her back, neck, and head. Some of these symptoms resolved following the wreck but, at her first visit, Shelest reported headaches and tightness in her neck, dizzy spells, blurred vision, and nausea occurring with the headache. Shelest had no prior history of migraine headaches and had never received treatment for migraines. At her initial visit, Dr. White diagnosed Shelest as suffering from a mild concussion that has residual symptoms.

From August 21, 2020 through the hearing, Shelest had seventeen (17) appointments with Dr. White. Dr. White described during his testimony the botulinum toxin injections Shelest

received and their efficacy for treating her symptoms. Since Shelest received a concussion in the collision, she sustained a permanent injury. Dr. White also testified that Shelest's headaches, neck tightness, dizzy spells, blurred vision, and nausea were caused from the collision. Dr. White also testified that the medical visits contained in Exhibit 5 were caused from the collision. Dr. White's opinions were given to a reasonable degree of medical certainty and a more likely than not standard.

Lastly, Dr. White set forth his opinions regarding future medical treatment in Exhibit 6. Dr. White testified the botulinum toxin treatments that Shelest would receive quarterly for post-concussive headaches and the semiannual office visits to monitor her treatment. The total projected costs for Shelest's future medical treatment equal $743,407.28. Dr. White testified that more likely than not Shelest would require the treatment contained in Exhibit 6.

III. ERENI MORKOS

Ereni Morkos ("Morkos") has worked with Shelest in DSS' child protective services for approximately 3-4 years. In this role, Morkos had plenty of time to interact with Shelest and spoke with her nearly every day. Morkos described in detail Shelest before this collision. Shelest enjoyed working out and would frequently go to a gym to exercise. Shelest was independent and would drive herself to make home visits, which are necessary for her job.

Morkos testified there is a "noticeable difference" with Shelest after the collision. Some days Shelest cannot see her clients because she is not feeling well. Morkos described it as Shelest gets headaches and also experiences dizziness. Even though Shelest does not love Morkos' driving, Morkos knows Shelest is not well when Shelest asks her to drive. Shelest is much more likely to get irritated now, while she was not that way before the collision. Even though they have worked together for a while, Morkos noted Shelest is less social when she's

experiencing a headache or dizziness. When feeling this way, Morkos testified she can see it in Shelest's facial expressions and Shelest will not even say good morning, as she typically does.

IV. KATHY KLOCHKO

Kathy Klochko ("Klochko") is twenty-eight-years-old and works in real estate. She's known Shelest since age ten (10) through their church. Through their lengthy friendship, Klochko sees Shelest almost every week and they text during the week.

Klochko testified this collision has taken a toll on Shelest's life. The injuries she sustained impact Shelest daily. Klochko described in great detail Shelest prior to the collision. Shelest and Klochko participated in an older youth group at their church that met every month. Shelest used to be involved in planning events for the group, which she is no longer able to do.

Klochko described Shelest's love of exercising. Unfortunately, due to the collision Shelest's workouts are less frequent and she is not able to do certain workouts as a result of the injuries sustained in the collision. They also used to go to amusement parks together, which they no longer do because of Shelest's injuries.

According to Klochko, Shelest is not the same person that she was prior to July 24, 2020. Klochko testified about plans where she and Shelest would plan to meet for coffee. Unfortunately, Shelest would get a headache and dizzy and have to cancel their plans. Klochko testified about a Thanksgiving Friendsgiving that they both attended. During the function, Shelest became debilitated and had to lie down because her dizziness and headache were so severe.

V. THIS ACTION AGAINST GITAU AND MARK ONE

Shelest filed this action on January 11, 2022, against Gitau and John Doe Trucking Company. (Compl.). The Summons and Complaint were delivered to Gitau's address at 6290 Love Street, Austell, GA 30168 by the South Carolina Department of Motor Vehicles. (DMV

LTR about Green Card filed March 25, 2022). Shelest filed an Amended Summons and Complaint on May 26, 2022, against Gitau and Mark One. (Amd. Compl.). The Amended Complaint alleges that Gitau was in furtherance of Mark One's business on July 24, 2020, and that Gitau moved improperly on the roadway in violation of South Carolina law in causing the collision. (Amd. Compl.). The Amended Complaint seeks damages for pain, mental anguish, and discomfort; disability for a period of time; money spent and debt incurred for healthcare and treatment; inability to carry on normal activities; loss of enjoyment of life; anxiety and worry; concussion with headaches; vertigo; and neck pain. (Amd. Compl. ¶ 8). Shelest also seeks punitive damages against Gitau and Mark One. (Amd. Compl. ¶ 21).

On November 8, 2022, the Amended Summons and Complaint were properly served on Gitau at 6290 Love Street, Unit A, Austell, GA 30168 through personal service. (Gitau Aff. of Serv.). Gitau was also personally served with the Amended Summons and Complaint as the Registered Agent for Mark One at the same time. (Mark One Aff. of Serv.). 6290 Love Street, Austell, GA 30168 is the business address listed for Mark One with Federal Motor Carrier Safety Administration. (Ex. 2). Gitau and Mark One failed to answer or appear and are in default. (Order of Default). Judge Hayes entered default against Gitau and Mark One on May 16, 2023. (Order of Default).

On June 26, 2023, this case was referred to the undersigned pursuant to Rule 53, SCRCP, "for all purposes, including but not limited to taking testimony and determining the amount of damages on all causes of action" against Gitau and Mark One. (Order of Reference).

On September 20, 2023, Shelest sent Gitau and Mark One notice of the damages hearing by first class mail in accordance with Rule 55(b), SCRCP. (Ex. 1). Gitau and Mark One received notice for the hearing for October 3, 2023, at 11:00 am and were informed the undersigned would take testimony and determine damages against them. (Ex. 1). Gitau and Mark One

received proper notice of hearing pursuant to Rule 55, SCRCP. At the hearing, Shelest presented numerous exhibits, and I heard testimony from Shelest, Kathy Klochko, Ereni Morkos, and Marshall White, MD. All witnesses were placed under oath.

CONCLUSIONS OF LAW

The collision of July 24, 2020, forever changed Shelest's life. She endured a tremendous collision, and I find Shelest sustained significant and permanent injuries as a result.

"It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." *Roche v. Young Bros.*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). Gitau and Mark One have admitted the truth of Shelest's allegations in the Amended Complaint and conceded liability. I find that Gitau was an employee, agent, or servant for Mark One at the time of the collision. Mark One is vicariously liable for the actions of Gitau as its employee. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015) ("Vicarious liability attaches to a parent company or employer as the result of negligence on behalf of its employees, such as through the doctrine of respondent superior."). With the wreck occurring in South Carolina involving a Georgia motor carrier, I find that the Defendants were operating in interstate commerce at the time of the collision.

I find that through personal service of the Amended Summons and Complaint, Gitau and Mark One were properly served in accordance with Rule 4 of the South Carolina Rules of Civil Procedure. Gitau and Mark One received proper notice of the damages hearing as required by Rules 5, 6, & 55, SCRCP, and did not appear at the hearing. (Ex. 1).

At the hearing, Exhibits 1-6 and 8 were admitted into evidence without objection.[2] Based on the pleadings, evidence, law, and testimony presented to me at the hearing, I find Defendants' conduct proximately caused Shelest's permanent injuries, including pain and suffering, mental anguish, medical care, and loss of enjoyment of life as discussed herein. *See Hurd v. Williamsburg Cnty*., 353 S.C. 596, 612, 579 S.E.2d 136, 144 (Ct. App. 2003) ("A negligent act or omission is a proximate cause of injury if, in a natural and continuous sequence of events, it produces the injury, and without it, the injury would not have occurred."). I find the accident caused Shelest to incur reasonable and necessary medical expenses and Shelest is entitled to an actual damage award totaling $46,270.54 for incurred medical expenses. (Ex. 5). I find the medical treatment in Exhibit 5 to be directly related to the collision.

I find based on the testimony and evidence presented that it is more likely than not Shelest will incur medical expenses in the future as a result of the collision. Shelest is entitled to an actual damage award for future medical expenses totaling $743,407.28. (Ex. 6).

Given the extensive medical treatment and numerous injuries Shelest suffered from the collision, I find she endured extensive pain and suffering incurred for the last three-and-a-half years. "An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself." *Boan v. Blackwell*, 343 S.C. 498, 501–02, 541 S.E.2d 242, 244 (2001). Based on the testimony at the hearing that is set forth above, I find Shelest is entitled to an award of $668,000.00 actual damages for past pain and suffering from the date of the collision to the present. This is approximately $190,857 per year for the three-and-a-half years since the collision.

[2] These were the exhibits: Exhibit 1 – Notice of Hearing to Gitau and Mark One; Exhibit 2 – Mark One Company Snapshot; Exhibit 3 – South Carolina TR-310; Exhibit 4 – Property Damage Photos of Shelest's Vehicle; Exhibit 5 – Medical Expense Summary & Bills; Exhibit 6 – Dr. White Projected Treatment and Cost; and Exhibit 8 – Scene Photographs. There was no Exhibit 7 admitted.

Shelest also suffered mental anguish. "Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence." *Id.* at 502, 541 S.E.2d at 244. Based on the evidence set forth above, Shelest testified in great detail how this wreck impacted her daily life and the embarrassment she experienced. Based on the testimony at the hearing that is set forth above, I find Shelest endured past mental anguish from the date of the collision to the present and is entitled to an actual damage award in the amount of $459,000.00. This is approximately $131,143.00 per year for the three-and-a-years since the collision.

Shelest and others credibly testified about Shelest's loss of enjoyment of life. The collision impacted her ability to exercise, go to amusement parks, drive on certain occasions, to enjoy spending time with family and friends, among others. Loss of enjoyment of life "compensate[s] for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, hobbies, or avocations." *Id.* Based on the testimony at the hearing that is set forth above, I find Shelest lost the enjoyment of life from the date of the collision to the present and is entitled to an actual damage award of $307,000.00. This is approximately $87,714.00 per year for the three-and-a-half years since the collision.

The evidence also supports an award for future damages for pain and suffering, mental anguish, and loss of enjoyment of life given the permanent injuries Shelest received. Shelest testified she was born on *Month *Day[3], 1994. Pursuant to S.C. Code Ann. § 19-1-150, she has a life expectancy of 51.56 years. The collision of July 24, 2020, and the injuries she sustained, greatly impact Shelest's life. Based on the evidence of the future damages Shelest will endure, I

[3] The Month and Day have been redacted to comply with Rule 41.2, SCRCP.

award $56,500 per year in actual damages for future pain and suffering, future mental anguish, and future loss of enjoyment of life for the duration of Shelest's 51.56-year life expectancy. The total actual damage award for this category of damages totals $2,913,140.00. This amount is only for future pain and suffering, future mental anguish, and future loss of enjoyment of life.

It can hardly be said that Gitau failing to pay attention and taking evasive action to attempt to pass Shelest on a double-yellow line is not reckless. Defendants' admissions amount to statutory violations of South Carolina's traffic laws. The "[c]ausative violation of an applicable statute constitutes actionable negligence and is evidence of recklessness, willfulness and wantonness." *Fairchild v. S.C. Dep't of Transp.*, 398 S.C. 90, 100, 727 S.E.2d 407, 412 (2012) (internal quotation marks omitted). Although the collision evidence may warrant a finding of recklessness, the Court declines to award punitive damages against Defendants.

I find Plaintiff is entitled to a total judgment against Defendants Gitau and Mark One in the amount of five million one hundred thirty-six thousand eight hundred seventeen dollars and 82/100 ($5,136,817.82) in actual damages.

AND IT IS SO ORDERED.

February 26, 2024
Spartanburg, South Carolina

/s/ Scott F. Talley
The Honorable Scott F. Talley
Special Referee

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2022-CP-11-00021

Angelica Shelest, PLAINTIFF(S)	Martin Maina Gitau and Mark One Freight & Logistics, LLC, DEFENDANT(S)

Submitted by: William F. Barnes, III	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Angelica Shelest	**Martin Maina Gitau and Mark One Freight & Logistics, LLC**	**$5,136,817.82**
		$
		$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge	**Judge Code**	**Date**

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20_____ to attorneys of record or to parties (when appearing pro se) as follows:

William F. Barnes, III	
PO Box 897	
Hampton, SC 29924	
ATTORNEY(S) FOR THE PLAINTIFF(S)	**ATTORNEY(S) FOR THE DEFENDANT(S)**

CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

****

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

EXHIBIT F

William Barnes

From: Lyric Oglesby <Lyric.Oglesby@cherokeecountysc.com>
Sent: Thursday, February 6, 2025 2:56 PM
To: Dalton Barfield; William Barnes
Cc: Megan Davis; Brian Smith; Trey Still; Team Still
Subject: RE: Motion "MSETAS-Motion/Set Aside Default" for Case "2022CP1100021-Angelica Shelest VS Martin Maina Gitau , defendant, et al" was added to a Motions Roster for 2/10/2025 at 9:00 AM

Mr. Barfield,

Thank you for the clarification. I will remove this case from Monday's roster and complete the motion, so it does not schedule in the future. I hope you all have a great day!

Lyric

Lyric Oglesby
Cherokee County Clerk of Court Office
Civil Clerk/Jury Coordinator
864-487-2571
P.O. Box 2289
Gaffney, SC 29340

From: Dalton Barfield <dbarfield@cslaw.com>
Sent: Thursday, February 06, 2025 1:21 PM
To: William Barnes <wbarnes@barneslawfirmsc.com>; Lyric Oglesby <Lyric.Oglesby@cherokeecountysc.com>
Cc: Megan Davis <mdavis@barneslawfirmsc.com>; Brian Smith <bsmith@btsmithlaw.com>; Trey Still <trey@cslaw.com>; Team Still <TeamStill@cslaw.com>
Subject: RE: Motion "MSETAS-Motion/Set Aside Default" for Case "2022CP1100021-Angelica Shelest VS Martin Maina Gitau , defendant, et al" was added to a Motions Roster for 2/10/2025 at 9:00 AM

[EXTERNAL EMAIL]
Good afternoon all,

I am following up on the below e-mail to let the Court know that, upon further review of the Order of Reference to Special Referee, I agree that Scott Talley will need to hear this Motion. I apologize for the misunderstanding on my part.

That said, the parties will now schedule the hearing with Mr. Talley's office and we will not need to appear in front of Judge Kelly on Monday.

Please let us know if you have any questions or need any further information from us.

Best,

Dalton

D. Dalton Barfield
Licensed in SC
864-331-8940

From: Dalton Barfield <dbarfield@cslaw.com>
Sent: February 5, 2025 10:57 AM
To: William Barnes <wbarnes@barneslawfirmsc.com>; Lyric Oglesby <Lyric.Oglesby@cherokeecountysc.com>
Cc: Megan Davis <mdavis@barneslawfirmsc.com>; Brian Smith <bsmith@btsmithlaw.com>; Trey Still <trey@cslaw.com>; Team Still <TeamStill@cslaw.com>
Subject: Re: Motion "MSETAS-Motion/Set Aside Default" for Case "2022CP1100021-Angelica Shelest VS Martin Maina Gitau , defendant, et al" was added to a Motions Roster for 2/10/2025 at 9:00 AM

Good morning all,

I do not mean to be difficult, but the Defendants do not consent to Scott Talley hearing our Motion. Our understanding is that Mr. Talley handled the damages hearing only. One of the grounds for our Motion is the damages award itself.

Please let us know if we need a conference call with the Chief Admin Judge.

Thanks!

Dalton

Get Outlook for iOS

From: William Barnes <wbarnes@barneslawfirmsc.com>
Sent: Wednesday, February 5, 2025 10:30:36 AM
To: Lyric Oglesby <Lyric.Oglesby@cherokeecountysc.com>
Cc: Megan Davis <mdavis@barneslawfirmsc.com>; Brian Smith <bsmith@btsmithlaw.com>; Dalton Barfield <dbarfield@cslaw.com>
Subject: FW: Motion "MSETAS-Motion/Set Aside Default" for Case "2022CP1100021-Angelica Shelest VS Martin Maina Gitau , defendant, et al" was added to a Motions Roster for 2/10/2025 at 9:00 AM

Lyric - Good morning! I hope you are doing well. This motion is currently on the roster for this coming Monday. This case was referred to Scott Talley for all purposes so he will need to hear this motion. We will coordinate with Scott's office. If there is anything else you need on this case, please let us know.

We appreciate your help.

William

William F. Barnes, III | Barnes Law Firm, LLC
Post Office Box 897 | 13 Mulberry Street East | Hampton, SC 29924
Phone: 803-943-4529 | Email: wbarnes@barneslawfirmsc.com

-----Original Message-----

From: Courtmail11_DoNotReply@sccourts.org <Courtmail11_DoNotReply@sccourts.org>
Sent: Tuesday, January 14, 2025 4:19 PM
To: William Barnes <wbarnes@barneslawfirmsc.com>
Subject: Motion "MSETAS-Motion/Set Aside Default" for Case "2022CP1100021-Angelica Shelest VS Martin Maina Gitau , defendant, et al" was added to a Motions Roster for 2/10/2025 at 9:00 AM

This case is on the Motions roster for Monday, February 10, 2025, at 9:00AM. This motion will be heard IN PERSON at the Cherokee County Courthouse at 125 E. Floyd Baker Blvd. Gaffney, SC 29340, Judge R. Keith Kelly Presiding.If your motion is resolved or needs to be continued, please contact Lyric Oglesby, Docket Coordinator at lyric.oglesby@cherokeecountysc.com or at 864-902-2353.

*Please copy all parties on any emails with status updates.
*Please check allotted time on the docket and confirm if time needs to be increased or decreased.

EXHIBIT G

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHEROKEE	)	CIVIL ACTION NO.: 2022-CP-11-00021
	)	
ANGELICA SHELEST, Plaintiff,	)	
	)	**ORDER DENYING DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT AND DEFAULT JUDGMENT**
v.	)	
	)	
MARTIN MAINA GITAU AND MARK ONE FREIGHT & LOGISTICS, LLC, Defendants.	)	

This matter came before me for hearing on April 1, 2025, for a hearing on Defendants' motion to set aside entry of default and default judgment. Present for Plaintiff Angelica Shelest was William F. Barnes, III, and Kathleen C Barnes. Present for Defendants Martin Maina Gitau ("Gitau") and Mark One Freight & Logistics, LLC, ("Mark One") was D. Dalton Barfield. Alexandria Jones was present for non-party Rift Valley Carriers. After carefully considering the parties' arguments and exhibits, and reviewing the applicable law and pleadings, the Court denies Defendants' motions.

This case arises out of a July 24, 2020 collision in which Defendant Mark Gitau, while driving a tractor-trailer owned by Defendant Mark One, hit a vehicle driven by Plaintiff Angelica Shelest. Shelest slowed down to make a left turn. Gitau was traveling behind her and failed to notice that she was turning. To avoid running into the back of Plaintiff's vehicle, Gitau swerved to the left and collided with Plaintiff as she was turning. A detailed account of Plaintiff's injuries is written in the Judgment and incorporated herein.

On January 11, 2022, Plaintiff filed a Complaint against Defendant Gitau and John Doe Trucking Company. (Cmplt.). The Summons and Complaint were delivered to Gitau's personal address by the South Carolina Department of Motor Vehicles. (DMV LTR about Green Card filed March 25, 2022). Gitau did not answer.

On May 26, 2022, Plaintiff filed an Amended Complaint against Gitau and replaced John Doe with Defendant Mark One. Mark One owned the tractor-trailer driven by Gitau on the day of the collision, and Gitau is the owner of Mark One. (Am. Cmplt.). On November 8, 2022, the Amended Summons and Complaint were properly served through personal service on Gitau individually and as the registered agent for Mark One. (Gitau & Mark One Affs. of Serv.). Defendants do not dispute that they received proper service.

Gitau and Mark One failed to answer or appear, and they are in default. (Order of Default). On June 26, 2023, this case was referred to the undersigned pursuant to Rule 53, SCRCP. (Order of Reference).

On September 20, 2023, Plaintiff sent Defendants notice of the damages hearing by first class mail in accordance with Rule 55(b), SCRCP. (Exh. to Judgment). The damages hearing occurred on October 3, 2023, and neither Defendant appeared. On February 26, 2024, the Court entered a judgment against Defendants in the amount of $5,136,817.82 in actual damages. (Judgment).

Ten months later, on December 19, 2024, Defendants filed a motion to set aside default under Rules 55(c) and 60(b), SCRCP. (Mot.). On March 28, 2025, Defendants filed a memorandum in support of the motion along with Defendant Gitau's affidavit and exhibits.

Defendants argued that, on the day of the accident, Gitau was driving for Rift Valley Carriers and not for Mark One. (Memo. pp. 2, 5). Defendants assert that, when Gitau received service of the Amended Complaint, Gitau called the owner of Rift Valley and notified him of the lawsuit. (Aff.). They state that Gitau is a "Kenyan immigrant" who is "unfamiliar with the United States legal system" and "believed that informing Rift Valley of the lawsuit was the extent of his responsive duty." (Memo. pp. 5, 9). Gitau's affidavit states he was driving for Rift Valley Carriers and not Mark One at the time of the accident. (Aff.). He attached pay stubs from

Rift Valley, but none shows payment for July 24, 2020—the date of the collision. (Exh. to Aff.). He attached a 2021 Form 1099 showing payments received from Rift Valley but the collision occurred in 2020. (Exh. to Aff.). Defendants submitted a crash report showing a crash for Rift Valley on July 24, 2020.

Plaintiff argued in opposition at the hearing and submitted exhibits to show that Gitau is familiar with and has used the U.S. legal system, argued the evidence shows Gitau was driving for Mark One at the time of the collision, and argued that Defendants misstate the evidence of actual damages to challenge the judgment amount.

ANALYSIS

"Whether to grant or deny a motion under Rule 60(b) lies within the sound discretion of the judge." *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502 (2006).[1] After reviewing the applicable law and considering the parties' respective exhibits and affidavit, and exercising my discretion, I deny the motion for the independent reasons stated below.

A "court may relieve a party or his legal representative from a final judgment, order, or proceeding for . . . mistake, inadvertence, surprise, or excusable neglect . . . ." Rule 60(b)(1), SCRCP. "In determining whether a default judgment should be set aside under Rule 60(b)(1), the promptness with which relief is sought, the reasons for the failure to act promptly, the existence of a meritorious defense, and the prejudice to the other parties are relevant." *Tobias v. Rice*, 379 S.C. 357, 366, 665 S.E.2d 216, 221 (Ct. App. 2008) (internal quotation and alteration marks omitted). When a party fails to put forth a satisfactory explanation for the default under

[1] Although Defendants cited to Rule 55(c), SCRCP, in their motion and opening argument, they acknowledged at the hearing that, because a judgment has been entered, Rule 60(b) and not Rule 55(c) applies to this case. (Tr. of hearing p. 25); *see Campbell v. City of N. Charleston*, 431 S.C. 454, 460, 848 S.E.2d 788, 792 (Ct. App. 2020) ("Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP."). Because Rule 55 does not apply, the Court analyzes the motion under only Rule 60(b).

Rule 60(b)(1), there is no need to address these factors. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013).

Defendants do not meet the threshold for a particularized showing of mistake, inadvertence, or excusable neglect under Rule 60(b)(1). Further, even if they could meet that standard, I find the other relevant factors do not support relief in these circumstances.

I. Defendants do not show mistake, inadvertence, or excusable neglect under Rule 60(b), SCRCP

"Rule 60(b) requires a more particularized showing of mistake" than the Rule 55(c) standard. *Sundown Operating Co. v. Intedge Indus.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009). "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.* at 608, 681 S.E.2d at 888-89.

Defendants ask the Court to grant relief under Rule 60(b)(1) because (1) Gitau is supposedly unfamiliar with the United States legal system, and (2) Rift Valley and not Mark One is the proper defendant. Neither of these is a basis for relief under Rule 60(b)(1).

A. Lack of familiarity with the legal system

Defendants argue that Gitau is unfamiliar with the United States legal system and believed that his sole obligation upon receipt of service of process was to make one phone call to Rift Valley. The Court rejects this argument on three independent bases—first, it is a legally unsound basis for relief; second, the facts show Gitau is familiar with the legal system; and, third, there is no excusable neglect for failing to answer under the circumstances of this case.

Legally, "failure to understand the legal process is not excusable neglect under Rule 60(b)." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001); *see also Hillman v. Pinion*, 347 S.C. 253, 257, 554 S.E.2d 427, 429 (Ct. App. 2001) ("[B]ecause this is a mistake

of law, not fact, we find this is not the type of mistake, surprise, inadvertence, and excusable neglect generally contemplated by Rule 60(b)(1)."). "It is always a matter of regret that a party should not have his day in court. However, . . . [where] the appellant was duly served with the summons and complaint, [i]t was his duty to answer the complaint. . . ." *Hill*, 345 S.C. at 310, 547 S.E.2d at 897 (internal quotation marks omitted). Alleged unfamiliarity with the legal system is not a valid basis for excusable neglect under Rule 60(b)(1).

Second, even if it could be legally sufficient, I find that Defendants failed to prove Gitau is unfamiliar with the legal system. Gitau's affidavit does not state that he is unfamiliar with the U.S. legal system. That argument is made by counsel, which is not evidence. *Bowers v. Bowers*, 304 S.C. 65, 68, 403 S.E.2d 127, 129 (Ct. App. 1991) ("Arguments of counsel are also not evidence."). The evidence shows that he was familiar with the legal system.

Plaintiff presented an exhibit of a court record from Georgia in which Gitau filed and served a family court action. (Tr. of Hearing p. 16). Gitau is the owner of Mark One—a federal interstate motor carrier. Plaintiff presented paperwork from the Georgia Secretary of State showing Gitau as the registered agent for Mark One. Gitau applied for and obtained for Mark One a US DOT number from the Federal Motor Carrier Safety Administration. The evidence shows, and I find, that Defendants are familiar with the legal system.

Third, even if Gitau was unfamiliar with the legal system, that is still not a sufficient excuse for failing to answer the lawsuit under the circumstances. In February 2022, Gitau first received notice of the Summons and Complaint filed against him and John Doe. He did nothing in response to that notice. After receiving personal service of the Amended Summons and Complaint naming Mark One, Gitau called Rift Valley. That is the entirety of Defendants' actions taken in response to service of a lawsuit that included discovery requests.

Gitau does not state that he sent a copy of the Complaint to Rift Valley. (Aff.). Gitau does not state the Rift Valley told him it would file an answer on behalf of Mark One or Gitau. (Aff.). Defendants had actual knowledge that Rift Valley did not file an answer for them when they received notice of the damages hearing. They still did nothing to respond or appear, and Gitau did not even contact Rift Valley again to ask whether it answered for Defendants. In short, Defendants never had any assurance that Rift Valley would file an answer for them.

At the hearing, after Plaintiff argued that lack of familiarity with the legal process was not legally sufficient or shown in this situation, Defendants argued in reply that their "notifying the correct entity [Rift Valley] of this lawsuit should be enough for excusable neglect." (Tr. pp. 25-26). The Court disagrees. First, that does not explain why Gitau, individually, is excused from answering. Second, the requirement to answer a complaint is the law. Rule 12(a), SCRCP ("A defendant shall serve his answer within 30 days after the service of the complaint upon him" (emphasis added)). The Amended Summons plainly states the Defendants are "required to answer the Complaint in this action" within 30 days and that "if you fail to answer the Complaint," the Plaintiff "will apply to the Court for the relief demanded in the Complaint and judgment by default will be rendered against you for the relief demanded in the Complaint." If Mark One believed it was incorrectly named, the proper remedy is to file an answer and assert that as a defense. Notifying the alleged "correct" party about the lawsuit is insufficient. "A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court." *McCall v. IKON*, 363 S.C. 646, 652, 611 S.E.2d 315, 318 (Ct. App. 2005) (internal quotation marks omitted).

The alleged lack of familiarity with the legal system is not a valid legal or factual basis for relief under Rule 60(b)(1).

B. Proper party defendant

Defendants argue that they are entitled to relief under Rule 60(b)(1) because Rift Valley—not Mark One—is the proper defendant. This is based on their argument that Gitau was driving for Rift Valley at the time of the collision. The evidence does not establish that Gitau was driving for Rift Valley to the exclusion of Mark One. Gitau's paystubs and Form 1099 do not show that he was driving for Rift Valley on July 24, 2020. There is a crash report showing Rift Valley was in a crash on July 24, 2020, in a location that may be the accident at issue in this case. However, it is not definitive proof that this accident is the same one in the crash report. Regardless, it does not establish that Mark One is an improper defendant.

Plaintiff argued, and the Court agrees, that the liability of Rift Valley and Mark One are not mutually exclusive. *See, e.g.*, *Stoneledge at Lake Keowee Owners' Ass'n v. IMK Dev. Co., LLC*, 425 S.C. 276, 294-95, 821 S.E.2d 509, 518 (Ct. App. 2018) ("The defendant's negligence does not have to be the sole proximate cause of the plaintiff's injury; instead, the plaintiff must prove the defendant's negligence was at least one of the proximate causes of the injury." (internal quotation marks omitted)). Defendants have not presented any legal authority to show that only either Mark One or Rift Valley can be a proper defendant. On the contrary, the tractor-trailer that hit Plaintiff was owned by Mark One. That Mark One may have agreed to pick up a load for Rift Valley would not absolve it of liability. Further, Plaintiff is the master of her complaint and may choose who to sue for her injuries. *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022) ("It is a fundamental principle of law that the plaintiff is the master of his own complaint and is the sole decider of whom to sue for his injuries.").

That Defendants allege Gitau was driving for Rift Valley is not mistake, inadvertence, or excusable neglect under Rule 60(b)(1).

"The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle her to relief." *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503

(2006). Defendants failed to meet their burden to prove a mistake, inadvertence, or excusable neglect under Rule 60(b)(1). This makes it unnecessary for the Court to address the remaining factors. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013); *see also ITC Commer. Funding, Ltd. Liab. Co. v. Crerar*, 393 S.C. 487, 496, 713 S.E.2d 335, 339-40 (Ct. App. 2011) ("Having concluded the trial court did not abuse its discretion in finding the Appellant was not entitled to relief on any of the grounds specified in Rule 60(b), SCRCP, we need not address whether the Appellant has a meritorious defense."). However, even if Defendants could make the threshold showing, the Court still denies the motion because they fail to satisfy the remaining factors.

II. Defendants did not promptly seek relief

The Judgment was entered on February 26, 2024, and Defendants filed the Rule 60(b) motion on December 19, 2024—ten months later. They argue this is timely because it was filed within one year of the Judgment and within a month of Mark One's insurer learning about the Judgment. (Memo. in Supp. p. 6).

A "party has a duty to monitor the progress of his case." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001). Defendants received service of and knew about the lawsuit and the damages hearing. Yet, they ignored the legal process even with knowledge that Rift Valley had not filed an answer on their behalf. The procedure rules that govern the time periods to respond to a lawsuit are intended "to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. They do not allow a party to ignore the legal process and then ask for relief when it does not like what happened in its intentional absence. I find that Defendants did not timely seek relief.

III. There is not a meritorious defense

Defendants assert three meritorious defenses—(1) Rift Valley is really the proper defendant, (2) Plaintiff "stopped suddenly in the roadway" and may be liable for the accident, and (3) the medical bills total "$46,270.54" and the judgment is "in excess of 100 times the Plaintiff's medical bills." (Memo. in Supp. p. 7). None of these weigh in favor of granting relief.

A meritorious defense "raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence." *Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 918 (Ct. App. 2009) (internal quotation marks omitted).

As to the proper defendant, that is addressed above. That Rift Valley may be a potential Defendant does not make Mark One an improper one. Regardless, Rift Valley's inclusion as a defendant has no effect on Gitau's liability. That Rift Valley is a potential defendant is not a meritorious defense. *Damico v. Lennar Carolinas, LLC*, 437 S.C. 596, 615, 879 S.E.2d 746, 757 (2022).

As to Plaintiff's liability, the sole evidence is Gitau's affidavit stating that "immediately prior to the collision, the Plaintiff stopped her vehicle in the roadway without warning." (Aff. of Gitau). At the hearing, Plaintiff presented photos from the accident scene that showed no skid marks from a sudden stop and the accident report in which the responding officer estimated Plaintiff's speed as 15 mph and Defendants' speed as 45 mph. Considering the evidence in my discretion, I find that Defendants' argument does not rise to the level of a real controversy of a meritorious defense.

As to the damages amount, Defendants argue that the $5,136,817.32 judgment amount is more than 100 times Plaintiff's medical bills of $46,270.54. (Memo. in Supp. p. 7). At the hearing, Plaintiff argued this is an incorrect comparison because Defendants did not include the amount Plaintiff's future medical expenses, which totaled $743,407.28. (Judgment pp. 4, 8). On

reply argument, Defendants did not address this discrepancy. Therefore, the Court believes this argument is conceded. Regardless, even if it is not conceded, the Court disagrees that the ratio of the actual medical damages (past and future) to the judgment is a meritorious defense and incorporates the damages findings from the Judgment into this order. Further, Defendants' opportunity to challenge the damages was at the hearing of which they received proper notice.

Defendants have not shown a meritorious defense to warrant relief in this case.

IV. Prejudice to Defendants

Defendants argue that setting aside the default judgment will not prejudice Plaintiff. Their argument is based on the premise that Rift Valley—and not Mark One—is a proper defendant in this case. (Tr. of Hearing p. 10; Memo. in Supp. p. 8). As explained above, the Court disagrees with this premise and with the use of a motion to set aside a default judgment as a means to argue that Mark One is incorrectly named as a defendant. Regardless, the argument would still have no effect on a judgment against Defendant Gitau.

As another, independent basis for finding this factor does not weigh in Defendants' favor, the Court finds that Plaintiff would suffer prejudice. This accident occurred on July 20, 2020. Plaintiff filed and served the amended complaint by November 8, 2022, well within the statute of limitations. In response, Defendants did nothing and first raised an argument that Rift Valley is a proper party on March 28, 2025 in Defendant Gitau's affidavit. Defendants waited until after the three-year statute of limitations passed to assert that Rift Valley should be named as a defendant. Assuming for the sake of this motion that Defendants are correct (which as explained above, the Court does not find), there is obvious prejudice to Plaintiff. It is unclear when Rift Valley had knowledge of the lawsuit.

Defendants' argue that they believed in November 2022 (upon service of the Amended Complaint) that the lawsuit should have been brought against Rift Valley. (Aff. of Gitau). The

proper procedure was to answer the lawsuit and assert that defense. It is prejudicial to Plaintiff for Defendants to ignore the legal process, wait over two years to notify Plaintiff of that defense—with actual knowledge and notice that Plaintiff continued to litigate against Defendants—and then expect relief.

While it is desirable to decide a controversy on the merits, I find that Plaintiff would suffer prejudice if the judgment is set aside.

For these numerous and independent reasons, Defendants' motion is **DENIED**.

AND IT IS SO ORDERED.

April
May 30, 2025
Spartanburg, South Carolina

The Honorable Scott F. Talley
Special Referee

EXHIBIT H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	CIVIL ACTION NO.: 2022-CP-11-00021
Angelica Shelest,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	**ORDER OF REFERENCE TO SPECIAL REFEREE**
	)	
Martin Maina Gitau and Mark One Freight & Logistics, LLC,	)	
	)	
	)	
Defendants.	)	
	)	

This Order of Reference to a Special Referee pursuant to Rule 53, SCRCP is based on the Order/Entry of Default against the Defendants, Martin Maina Gitau and Mark One Freight & Logistics, LLC, filed by the Court on May 16, 2023.

IT IS ORDERED that this matter is referred to Scott F. Talley, Esquire, pursuant to Rule 53, SCRCP, for all purposes including but not limited to taking testimony and determining the amount of damages on all causes of action contained in Plaintiff's Complaint against the Defendants, Martin Maina Gitau and Mark One Freight & Logistics, LLC. Pursuant to Rule 53(c), the special referee shall have and exercise all power and authority which a circuit judge sitting without a jury would have in a similar matter for the claims. Any appeal from any order or judgment issued by the special referee shall be to the South Carolina Supreme Court or South Carolina Court of Appeals as provided by the South Carolina Appellate Court Rules. Rule 53(e), SCRCP.

IT IS SO ORDERED.

_____
Brandy W. McBee
Clerk of Court
Cherokee County

June _____, 2023
Spartanburg, South Carolina

I SO CONSENT:

/s/Scott F. Talley

Scott F. Talley, Esquire
Talley Law Firm, P.A.
291 S. Pine Street
Spartanburg, SC 29302
Phone: (864) 595-2966
Fax: (864) 595-2969
scott@talleylawfirm.com

The e-filer hereby certifies that she has obtained the required consent from Counsel of Record to e-file this document.

Cherokee Common Pleas

Case Caption: Angelica Shelest VS Martin Maina Gitau , defendant, et al

Case Number: 2022CP1100021

Type: Order/Referred to Master or Special Referee

So Ordered

Brandy W. McBee, Clerk of Court for Cherokee County by Lyric Oglesby

EXHIBIT I

PLAINTIFF'S EXHIBIT 1

Kathleen C. Barnes
kbarnes@barneslawfirmsc.com

William F. Barnes III
wbarnes@barneslawfirmsc.com

September 20, 2023

Via First Class Mail
Martin Maina Gitau
6290 Love Street, Unit A
Austell, GA 30168-4714

Re: ***Angelica Shelest v. Martin Maina Gitau and Mark One Freight & Logistics, LLC***
Civil Action No.: 2022-CP-11-00021

Dear Mr. Gitau:

Please find enclosed a Notice of Hearing for service upon you regarding the above-referenced matter. The hearing is scheduled for Tuesday, October 3, 2023 at 11:00 a.m. at Talley Law Firm, PA located at 291 South Pine Street, Spartanburg, South Carolina 29302. Scott Talley will serve as the Special Referee in this matter and take testimony and determine damages.

With kind regards, I am

Sincerely,

William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: Brian T. Smith, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	CIVIL ACTION NO.: 2022-CP-11-00021
Angelica Shelest, Plaintiff,	)	
vs.	)	**NOTICE OF HEARING**
Martin Maina Gitau and Mark One Freight & Logistics, LLC, Defendants.	)	

PLEASE TAKE NOTICE the Plaintiff, Angelica Shelest, hereby provides notice that a hearing will be held before Scott Talley on Tuesday, October 3, 2023 at 11:00 a.m. The hearing will take place at the Talley Law Firm, PA located at 291 South Pine Street, Spartanburg, South Carolina 29302. Mr. Talley will serve as the Special Referee in this matter and take testimony and determine damages against you for the allegations set forth in the complaint. You have a right to attend and participate in the hearing.

Brian T. Smith, Esquire
Brian T. Smith Law
714 Pettigru St.
Greenville, SC 29601
Phone: (864) 239-2007
bsmith@btsmithlaw.com

-And-

BARNES LAW FIRM, LLC

William F. Barnes, III, SC Bar #78220
13 Mulberry Street East
P.O. Box 897
Hampton, SC 29924
Phone: (803) 943-4529
wbarnes@barneslawfirmsc.com
ATTORNEYS FOR THE PLAINTIFF

September 21, 2023
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	CIVIL ACTION NO.: 2022-CP-11-00021
Angelica Shelest, Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
Martin Maina Gitau and Mark One Freight & Logistics, LLC, Defendants.	)	

This is to certify that I, **Megan C. Davis,** with the Barnes Law Firm, LLC, counsel for the Plaintiff, have this date mailed via the U.S. Postal Service, a true and correct copy of the within ***Notice of Hearing*** with first class postage prepaid to the last known address of such parties below:

Martin Maina Gitau
6290 Love Street, Unit A
Austell, GA 30168

Martin Maina Gitau, Registered Agent
Mark One Freight & Logistics, LLC
6290 Love Street, Unit A
Austell, GA 30168

BARNES LAW FIRM, LLC

Megan C. Davis
Megan C. Davis

September 22, 2023
Hampton, South Carolina

Kathleen C. Barnes
kbarnes@barneslawfirmsc.com

William F. Barnes III
wbarnes@barneslawfirmsc.com

September 20, 2023

Via First Class Mail
Martin Maina Gitau, Registered Agent
Mark One Freight & Logistics, LLC
6290 Love Street, Unit A
Austell, GA 30168

Re: Angelica Shelest v. Martin Maina Gitau and Mark One Freight & Logistics, LLC
Civil Action No.: 2022-CP-11-00021

Dear Mr. Gitau:

Please find enclosed a Notice of Hearing for service upon you as the registered agent for Mark One Freight & Logistics, LLC regarding the above-referenced matter. The hearing is scheduled for Tuesday, October 3, 2023 at 11:00 a.m. at Talley Law Firm, PA located at 291 South Pine Street, Spartanburg, South Carolina 29302. Scott Talley will serve as the Special Referee in this matter and take testimony and determine damages.

With kind regards, I am

Sincerely,

William F. Barnes, III

WFB/mcd
Enclosures as stated

cc: Brian T. Smith, Esquire

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	CIVIL ACTION NO.: 2022-CP-11-00021
Angelica Shelest, Plaintiff,	)	
vs.	)	**NOTICE OF HEARING**
Martin Maina Gitau and Mark One Freight & Logistics, LLC, Defendants.	)	

PLEASE TAKE NOTICE the Plaintiff, Angelica Shelest, hereby provides notice that a hearing will be held before Scott Talley on Tuesday, October 3, 2023 at 11:00 a.m. The hearing will take place at the Talley Law Firm, PA located at 291 South Pine Street, Spartanburg, South Carolina 29302. Mr. Talley will serve as the Special Referee in this matter and take testimony and determine damages against you for the allegations set forth in the complaint. You have a right to attend and participate in the hearing.

Brian T. Smith, Esquire
Brian T. Smith Law
714 Pettigru St.
Greenville, SC 29601
Phone: (864) 239-2007
bsmith@btsmithlaw.com

-And-

BARNES LAW FIRM, LLC

William F. Barnes, III, SC Bar #78220
13 Mulberry Street East
P.O. Box 897
Hampton, SC 29924
Phone: (803) 943-4529
wbarnes@barneslawfirmsc.com
ATTORNEYS FOR THE PLAINTIFF

September 21, 2023
Hampton, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF CHEROKEE	)	
	)	CIVIL ACTION NO.: 2022-CP-11-00021
Angelica Shelest, Plaintiff,	)	
vs.	)	**CERTIFICATE OF SERVICE**
Martin Maina Gitau and Mark One Freight & Logistics, LLC, Defendants.	)	

This is to certify that I, **Megan C. Davis,** with the Barnes Law Firm, LLC, counsel for the Plaintiff, have this date mailed via the U.S. Postal Service, a true and correct copy of the within ***Notice of Hearing*** with first class postage prepaid to the last known address of such parties below:

Martin Maina Gitau
6290 Love Street, Unit A
Austell, GA 30168

Martin Maina Gitau, Registered Agent
Mark One Freight & Logistics, LLC
6290 Love Street, Unit A
Austell, GA 30168

BARNES LAW FIRM, LLC

Megan C. Davis

Megan C. Davis

September 22, 2023
Hampton, South Carolina

EXHIBIT J

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE Angelica Shelest, Plaintiff, vs. Martin Maina Gitau and Mark One Freight and Logistics, LLC., Defendants.	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-11-00021 **NOTICE OF MOTION AND MOTION TO SET ASIDE DEFAULT**

TO: The Plaintiff and her attorneys, William F. Barnes, III, Esq., and Brian T. Smith, Esq.

YOU WILL PLEASE TAKE NOTICE that the Defendants, Martin Maina Gitau and Mark One Freight and Logistics, LLC, through their undersigned attorneys will move before the Presiding Judge for the Seventh Judicial Circuit in the Cherokee County Courthouse, on the tenth (10th) day after service hereof or at such other time and place as is convenient to the Court and counsel, for an Order setting aside the Default Judgment entered against Martin Maina Gitau and Mark One Freight and Logistics, LLC, for failing to answer, move, or otherwise plead in response to the Amended Summons and Complaint.

The grounds for this Motion are that: (1) the default was improperly entered and, alternatively, (2) there exists good cause to set aside the default pursuant to S.C.R.C.P. Rule 55(c), as such default was occasioned by mistake, inadvertence, and excusable neglect, and should therefore be set aside pursuant to S.C.R.C.P. Rule 60(b).

This Motion shall be based upon the Affidavit and memorandum of law, which shall be served hereafter, upon S.C.R.C.P. Rule 55(c) and S.C.R.C.P. Rule 60(b), and

such additional law and argument as shall be appropriate.

CLAWSON and STAUBES, LLC

s/Dalton Barfield
D. Dalton Barfield
Bar No.: 104363
200 E Broad Street, Suite 450
Greenville, South Carolina 29601
Phone: (864) 331-8940
Fax: (864) 232-2921
Email: dbarfield@cslaw.com
Attorney for Defendants

Greenville, South Carolina
December 19, 2024

STATE OF SOUTH CAROLINA COUNTY OF CHEROKEE Angelica Shelest, Plaintiff, vs. Martin Maina Gitau and Mark One Freight & Logistics, LLC, Defendants.	IN THE COURT OF COMMON PLEAS FOR THE SEVENTH JUDICIAL CIRCUIT CASE NO.: 2022-CP-11-00021 **MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO SET ASIDE ENTRY OF DEFAULT AND DEFAULT JUDGMENT**

Defendants, Martin Maina Gitau and Mark One Freight & Logistics, LLC, submit this Memorandum in Support of their Motion to Set Entry of Default and Default Judgment.

FACTUAL AND PROCEDURAL HISTORY

This matter arises out of an Order of Default Judgment against a commercial motor carrier that was not involved in the motor vehicle collision that is the subject of the Order. The subject motor vehicle collision occurred on July 24, 2020, in Cherokee County. Defendant Martin Maina Gitau, operating a commercial tractor-trailer, collided with a vehicle operated by the Plaintiff near the intersection of Pacolet Highway and Linson Drive. The Plaintiff alleges that Defendant Gitau, travelling behind the Plaintiff on Pacolet Highway, collided with the Plaintiff's vehicle as the Plaintiff made a left turn because Defendant Gitau was not paying proper attention. (Order of Judgment, p. 1-2, attached as "Exhibit 1"). Defendant Gitau, on the other hand, alleges that the Plaintiff stopped suddenly in front of him in the roadway without warning. (Gitau Affidavit, ¶ 5, attached as "Exhibit 2"). Defendant Gitau also asserts that he observed the Plaintiff decline EMS treatment at the scene of the collision. (Gitau Affidavit, ¶ 6).

In addition to liability and damages, the parties dispute the identity of the commercial motor carrier for whom Defendant Gitau worked on the day of the collision. The Plaintiff alleges that Defendant Gitau was driving for Defendant Mark One Freight & Logistics, LLC. (Am. Compl. ¶ 2, attached as "Exhibit 3"). Defendant Gitau asserts that he was driving instead for Rift Valley Carriers, LLC. (Gitau Affidavit, ¶ 2). Defendant Gitau's Form 1099-NEC for 2020 shows that Defendant Gitau earned $161,591.28 for Rift Valley that year. (Gitau Affidavit, Ex. B). Defendant Gitau's pay stubs from Rift Valley in July 2020 include the trip that he was making for Rift Valley on the date of the accident. (Gitau Affidavit, Ex. A).

Two commercial vehicle safety websites list Rift Valley as being involved in a motor vehicle collision on July 24, 2020. (Rift Valley Carriers Llc Crash Report, https://www.quicktransportsolutions.com/crashreports/rift-valley-carriers-llc-usdot-2569977.php (last visited March 28, 2025), attached as "Exhibit 4"; US DOT 2569977 Crashes, Rift Valley Carriers Llc, https://dot.report/usdot/2569977/crashes (last visited March 28, 2025), attached as "Exhibit 5"). One of those websites states that the accident occurred on Pacolet Highway in Cherokee County. US DOT 2569977 Crashes, Rift Valley Carriers Llc, https://dot.report/usdot/2569977/crashes (last visited March 28, 2025). The accident report lists Occidental Fire & Casualty as the insurer for the vehicle that Defendant Gitau was driving during the collision. (Accident Report, attached as "Exhibit 6"). Upon information and belief, Occidental is the insurer of Rift Valley.

Turning to the litigation arising out of the July 24, 2020 collision, the Plaintiff filed suit against Defendant Gitau and John Doe Trucking Company on January 11, 2022. The Plaintiff filed an Amended Complaint on May 26, 2022, replacing John Doe Trucking

Company with Defendant Mark One. Upon being served with the Amended Summons and Complaint, Defendant Gitau notified the owner of Rift Valley, Samuel Muchunu, of the lawsuit by telephone. (Gitau Affidavit, ¶ 4). Defendants Gitau and Mark One did not provide any further response to the Amended Complaint. Upon information and belief, Rift Valley did not take any action once notified of the subject lawsuit. On May 16, 2023, the Court of Common Pleas for the Seventh Judicial Circuit entered default against Defendants Gitau and Mark One. On June 26, 2023, the Court referred this case in its entirety to Scott F. Talley, Esquire, as Special Referee.

On October 3, 2023, Mr. Talley conducted a damages hearing. On February 26, 2024, Mr. Talley entered an Order of Default Judgment against Defendants Gitau and Mark One. In the Order, Mr. Talley awarded $5,136,817.82 in actual damages against Defendants Gitau and Mark One. (Order of Judgment, p. 10). Mr. Talley found that the Plaintiff had incurred $46,270.54 in medical expenses as a result of the collision. (Order of Judgment, p. 8). The remainder of the award consisted of future medical expenses and non-economic damages. (Order of Judgment, p. 8-10). Mr. Talley did not award punitive damages against the Defendants. (Order of Judgment, p. 10).

Upon information and belief, Wesco Insurance Company, the insurer for Mark One, did not receive notice of the subject accident or lawsuit until October 29, 2024, when Plaintiff's counsel sent Wesco a letter containing a copy of the Order of Judgment. Wesco retained the undersigned law firm on November 12, 2024. On December 19, 2024, the undersigned firm filed a Motion to Set Aside Default Judgment.

STANDARD OF REVIEW

South Carolina's appellate courts have repeatedly recognized that "South

Carolina's policy favor[s] the disposition of issues *on their merits* rather than on technicalities." Mictronics, Inc. v. South Carolina Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001) (emphasis added) (further citation omitted). It is well established that default judgments are disfavored, and motions to set aside default should be construed liberally to promote justice, as it is always preferable to try and dispose of cases on the merits. Dixon v. Besco Eng'g, Inc., 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995).

Rule 55(c) of the South Carolina Rules of Civil Procedure states that "[f]or good cause shown, the court may set aside a default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." The good cause standard of Rule 55(c), SCRCP, simply requires a party to provide an explanation for the default and give reasons why setting aside the default entry would serve the interests of justice. Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). The Court of Appeals has held that "Rule 55(c) should be 'liberally construed to promote justice and dispose of cases on the merits." Bage, LLC v. Southeastern Roofing Co. of Spartanburg, Inc., 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct. App. 2007).

Rule 60(b)(1) provides that "[o]n motion and upon terms that are just," the Court may relieve a party from a final judgment for "mistake, inadvertence, surprise, or excusable neglect." Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." Id. at 607-08, 681 S.E.2d at 888 (citing Wham v. Shearson Lehman

Bros., Inc., 298 S.C. at 465, 381 S.E.2d at 501-02); see also, Top Value Homes v. Harden, 460 S.E.2d 427, 429 (Ct. App. 1995) (the degree of prejudice to the nonmoving party if the relief is granted must not be to the extreme or unreasonable).

ARGUMENT

The Entry of Default and Order of Default Judgment against Defendants Gitau and Mark One should be set aside because the wrong commercial motor vehicle carrier was named as a defendant, Defendants' failure to answer the Amended Complaint was the result of mistake, inadvertence, or excusable neglect, the Defendants filed their motion for relief within one year of the filing of the Order of Default Judgment, the Defendants have meritorious defenses regarding liability and damages, and the prejudice to the Plaintiff if relief is granted will not be extreme or unreasonable.

I. Good Cause Exists to Set Aside Entry of Default

Defendants failed to Answer the Amended Complaint because Defendant Gitau, a commercial truck driver and Kenyan immigrant, unfamiliar with the mechanics of the United States legal system, believed that informing Rift Valley of the lawsuit was the extent of his responsive duty. As demonstrated by Defendant Gitau's affidavit, 1099, and pay stubs; the public websites showing Rift Valley's involvement in the subject collision; and the listing of Rift Valley's insurer on the subject accident report, it is clear that Defendant Gitau was working for Rift Valley when the subject collision occurred. It is clear that Mark One was not involved in the collision. Therefore, Defendants have demonstrated good cause as to why they did not answer the Amended Complaint.

Additionally, setting aside the entry of default would serve the interests of justice by allowing the Plaintiff the opportunity to litigate the case against the proper defendant, Rift

Valley. The replacement of Mark One with Rift Valley would provide the Plaintiff with the ability to examine evidence and witnesses that only Rift Valley could make available. The replacement of Mark One with Rift Valley would prevent Mark One from being financially responsible for a $5,136,817.82 judgment arising out of an accident in which it was not a party. Setting aside the entry of default would therefore serve the interests of justice regarding both the Plaintiff and Defendants.

II. Defendants Responded Timely in Moving to Set Aside Default Judgment

Defendant's Motion to Set Aside Default Judgment is timely because the Defendants acted promptly upon learning of the default judgment. Rule 60(b) provides that motions made on the basis of mistake, inadvertence, surprise, or excusable neglect shall be made "not more than one year after the judgment, order or proceeding was entered or taken." In Melton v. Olenik, 379 S.C. at 56, 664 S.E.2d at 493 (Ct. App. 2008), the Court found that the motion for relief was timely because defendant filed the motion a little over a month after learning of the default. In this case, the Defendants filed their Motion to Set Aside Default Judgment within a year of the filing of the Order of Default Judgment and a little over a month after receiving notice of the Order of Default Judgment. The Defendants therefore responded timely upon learning of the default judgment.

III. Defendants Have a Meritorious Defense to the Lawsuit.

To establish a meritorious defense, the party does not have to show he would prevail on the merits. McClurg v. Deaton, 380 S.C. 563, 575, 671 S.E.2d 87, 93-94 (Ct. App. 2008). Rather, a meritorious defense "need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful

evidence." Id. at 575, 671 S.E.2d at 94 (quotations and citations omitted). Additionally, "an allegation that the amount of damages could be different from what was awarded under the default judgment is sufficient to satisfy the meritorious defense requirement." McClurg v. Deaton, 395 S.C. 85, 97 (2011) (Toll, J. dissenting) (citing numerous supporting cases from other jurisdictions).

Here, the Defendants have affirmative defenses to the allegations in the Plaintiff's Amended Complaint. In addition to Defendant Mark One's previously explained defense of being named as an improper party, which is grounds for a 12(b)(6) Motion, the Defendants have a liability defense. As stated in Defendant Gitau's Affidavit, Defendant Gitau asserts that the Plaintiff stopped suddenly in the roadway without warning, contrary to the Plaintiff's allegations that Defendant Gitau collided with the Plaintiff because Defendant Gitau was not paying attention. A jury could conclude that the Defendants are not entirely at-fault, and in the absence of pure liability, find Plaintiff was either comparatively or contributorily negligent. Therefore, the Defendants can and will present a meritorious defense as to the Plaintiff's claims regarding liability in this matter.

Additionally, the Defendants can and will present a meritorious defense as to Plaintiff's claims even if that defense is solely on a dispute as to the amount of damages. At the damages hearing, the Plaintiff presented medical bills totaling $46,270.54. Upon information and belief, the Plaintiff's damages are significantly less than the amount awarded in the default judgment, $5,136,817.82, an amount in excess of 100 times the Plaintiff's medical bills. According to Justice Toll's dissent in McClurg, a defendant's meritorious defense "need not be perfect nor one which can be guaranteed to prevail at trial." McClurg, 380 S.C. at 575. Because the Defendants can and will also present an

affirmative defense as to Plaintiff's assertion of damages, the Defendants have satisfied the meritorious defense requirement as identified by the Wham Court. Defendants' defense is thus worthy of further investigation and litigation in pursuit of the interests of justice.

IV. Plaintiff Will Not Be Extremely or Unreasonably Prejudiced if the Default is Lifted

Defendants' request to set aside the entry of default will not prejudice the Plaintiff in an extreme or unreasonable manner. There has been no showing of any physical evidence or potential witnesses lost during this time. The replacement of Mark One with Rift Valley would allow Plaintiff access to evidence or witnesses previously unavailable to the Plaintiff. While Defendants concede that nearly five years have elapsed since the subject accident occurred, the benefits of including the proper commercial motor carrier as a defendant in this case far outweigh the prejudice, if any, that arose from the delay in the Defendants' response to the subject lawsuit.

V. Mistake, Inadvertence, or Excusable Neglect Caused the Defendants' Failure to Answer the Amended Complaint

In addition to meeting the "good cause" and Wham factors necessary for setting aside an entry of default, the Defendants also surpass the requirements of Rule 60(b)(1) for setting aside a default judgment. As stated above, Rule 60(b)(1) allows a court to set aside a default judgment if the party against whom default judgment was entered can show "mistake, inadvertence, surprise, or excusable neglect." Defendants' failure to answer the Amended Complaint arose out of either mistake, inadvertence, or excusable neglect because Defendant Gitau believed that notifying Rift Valley, the company for whom he was driving at the time of the collision, was the extent of his duty to respond to

the lawsuit. Defendant Gitau, a commercial truck driver and immigrant, should be granted leniency for his good faith effort to alert the proper party – Rift Valley – to this lawsuit. Defendant Gitau's failure to follow up or respond in his individual capacity was clearly the result of a mistaken understanding of the U.S. legal system, inadvertence, or excusable neglect.

CONCLUSION

Given the Court's preference for trying cases on the merits and the clear inclusion of the wrong commercial motor carrier in this case, the Defendants respectfully request that this Court grant their Motion to Set Aside Entry of Default and Default Judgment.

s/Dalton Barfield
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Greenville, South Carolina
March 28, 2025

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Nov 19 2025
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHEROKEE COUNTY
Court of Common Pleas

Scott F. Talley, Special Referee

Court of Appeals Appellate Case No. 2025-001073

Angelica Shelest,…….....……..……Respondent,

v.

Martin Maina Gitau and Mark One Freight & Logistics, LLC,…..……..Appellants.

PROOF OF SERVICE

The undersigned certifies that a copy of the *Respondent's Return to Appellants' Motion for Limited Remand* with Exhibits A-J has been served upon counsel for Appellants via electronic mail at the email addresses stated in the Attorney Information System as set forth below on November 19, 2025.

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November 19, 2025

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November 19, 2025

Via Email

The Honorable Jenny Abbott Kitchings
Clerk of Court for the Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211
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Re: *Angelica Shelest v. Martin Maina Gitau and Mark One Freight & Logistics, LLC*
Court of Appeals Appellate Case No. 2025-001073
Respondent's Return to Appellants' Motion for Limited Remand

Dear Mrs. Kitchings:

Enclosed for electronic filing and service is the following:

1. Respondent's Return to Appellants' Motion for Limited Remand,
2. Exhibits A-J, and
3. Proof of Service.

By electronic copy of this letter, I am serving counsel of record as stated below.

Sincerely,

s/Kathleen C. Barnes

Enclosures

cc: C. Mitchell Brown (mitch.brown@nelsonmullins.com)
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