THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
The Honorable George M. McFaddin Jr.
Presiding Judge, Fifteenth Judicial Circuit

Case No.: 2024-CP-26-01211
Appellate Case No. 2025-001035

Smarthomeenterprise LLC,.....Respondent,

v.

Lifetime Energy LLC and Logan Jacob Smith..... Appellants.

APPELLANTS' INITIAL BRIEF

BURR & FORMAN LLP

s/T. Jarrett Bouchette
T. Jarrett Bouchette, SC Bar #101122
2411 N. Oak Street, Suite 206 (29577)
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: 843.444.1107
Fax: 843.443.9137
Email: jbouchette@burr.com

Counsel for the Appellants

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STATEMENT OF ISSUES ON APPEAL

I. Did the lower Court err in denying Appellants' Motion to Set Aside entry of Default when there was significant witness testimony and documentary evidence showing that the Appellants were not served with copies of the Summons and Complaint?

II. Did the lower Court err in denying Appellants' demand for a damages hearing and entering a default judgment against Appellants in favor of Respondent when the damages sought by Respondent were unliquidated and not supported by any evidence presented to the lower Court.

STATEMENT OF THE CASE

This is an appeal from the lower Court's order entering default judgment against the Appellants. The action, which seeks damages for breach of contract, was commenced with the filing of a summons and complaint on February 20, 2024 (Compl.) and on May 23, 2024, the Clerk of Court for Horry County issued an order finding Appellant in default (Order, May 23, 2024). Respondent then moved for default judgment (Pls.' Mot. for Entry of Default against Defs. & Damages Hr'g) but prior to the hearing on the motion, Appellants appeared, through counsel, and sought relief from its default status (Def's Mot. to Set Aside Entry of Default).

At the time of the hearing there was significant and overwhelming evidence disputing the claim that service had been completed. Though Respondent's process server, Edward Spicer, testified that he completed personal service upon Appellant Logan Smith ("Smith") individually and as member of Appellant Lifetime energy LLC on April 7, 2024 (Trial Tr. 13-15), Appellant submitted his own affidavit as well as those of three (3) sworn witnesses who stated that Appellant Logan Smith ("Smith") had traveled to Texas on April 7th (Rudd Aff., Ortiz Aff., Homan Aff.). Smith further provided flight, hotels, and credit card receipts which corroborated these claims (Smith Aff., Ex. 1-6).

In challenging the evidence submitted by Appellants, Respondent submitted a photograph taken by Mr. Spicer that purported to show conclusive evidence that he completed service on Smith on the date he claims. The photograph shows Smith standing in the doorway threshold of a residence with headphones on and clutching a video game controller. Mr. Spicer would later estimate the distance to be between six to eight feet (Trial Tr., p. 15 ¶ 6-7). It does not show Smith in possession of the complaint. The photograph also contains a supposed time stamp from a mobile phone application used by Spicer (Trial Tr. p. 13 ¶ ¶ 23-25 and p. 14 ¶ ¶ 1-9). Mr. Spicer

acknowledged that he was not an expert in how the application worked, only that he believed it was reliable (Trial Tr., p. 16 ¶ ¶ 8-25).

Smith, as well as the three attesting witnesses, acknowledge that there was an interaction with Mr. Spicer (Rudd Aff., Ortiz Aff., Homan Aff.). However, they all attest to the fact that service of the Complaint did not occur. First, they all state that the interaction with Mr. Spicer occurred on April 6, 2024, the day before Smith left on his flight to Texas, April 7th. Smith stated that, while playing video games with the other attesting witnesses, he heard a loud knocking on his door. He stepped outside and saw a man standing several feet back from the door awkwardly holding a cell phone and not saying anything. Believing that the person must have the wrong house, and being frustrated by the distraction, Smith immediately closed the door and went back inside, having never communicated with Mr. Spicer nor received the summons and complaint. This testimony, though somewhat unusual was corroborated by the attesting witnesses. Such testimony is in direct contradiction to the testimony of Spicer who claims he handed the complaint to Smith, despite not capturing that act on camera.

Separate from the motion to set aside the entry of default, Appellants objected to the issuance of a default judgment without conducting a damages hearing. The Complaint only stated that Respondent was "owed $131,461.00 under the contract". The Complaint nor the Independent Contractor Agreement, which was included as an exhibit provided an initial agreed upon amount nor any basis upon which to calculate the amount allegedly owed. Instead, the agreement provided for a commission structure based upon a complicated and unclear formula. No additional testimony or documentation was ever submitted to the lower Court pertaining to the calculation of damages. Additionally, Respondent sought an award of $5,000 in attorney fees. No affidavit of attorney fees was submitted to the Court by Counsel for Respondent and no inquiry was made by the lower

Court into the reasonableness of the fees. Despite that fact, the lower Court issued an order granting Respondent a judgment against Appellants in the amount requested including the attorney fees. After Appellants' motion for reconsideration was denied, Appellants brought this appeal.

STATEMENT OF FACTS

Appellant Lifetime Energy LLC ("Lifetime") is a Utah limited liability company authorized to do business in South Carolina. Appellant Logan Jacob Smith ("Smith") is the owner and sole member of Lifetime. Lifetime installs, maintains, and services rooftop solar panels for residential dwellings. In May 2023, Smith met Cody Binion ("Binion"), who is affiliated with the Respondent Smarthomeenterprises LLC ("Smarthome"). That meeting resulted in an agreement in which Smarthome would act as a sales subcontractor for Lifetime products. Lifetime would handle the installation and the servicing of the panels that were sold by Smarthome. The Parties memorialized their agreement in an Independent Contractor Agreement (the "Agreement") dated May 21, 2023. (Smith Aff. ¶¶ 1-3; Ex. 1).

The compensation to be provided to Respondent was contained in an exhibit to the Agreement (Compl., Ex. A[1]. final page). The Agreement did not contain a fixed amount but instead outlined a fairly complex formula whereby the Respondent would receive commissions based upon a number of different variables. There was a calculation based upon "*$2.15 per watt base price minus the cost of financing and or additional adders*". An additional compensation structure followed, which was tied to the *adders*, as well as for "*ground mounts*". The Agreement also provided that "*due to the variables and commercial pricing, each commercial project will be*

[1] A copy of the Agreement was also filed with the initial Affidavit of Logan Smith. However, the relevant portion of the Agreement appears to have been filed out of order with the rest of the Agreement. For clarity sake, Appellant will refer to the copy filed with the Summons and Complaint.

evaluated on an individual basis". Appellant Smith is not identified nor referenced in any way in the Agreement between Lifetime and Smarthome.

Respondent initiated the action with the filings of a Summons and Complaint on February 20, 2024 (Compl.). The Complaint was not verified and did not contain any accompanying affidavit providing for a calculation of the damages allegedly owed under the Contract. On May 20, 2024, Respondent filed Affidavits of Service indicating that Smith was served individually, and in his capacity as registered agent of Lifetime on April 7, 2024. (Aff. of Service on Logan Jacob Smith, and Aff. of Service on Lifetime Energy LLC). Based upon that alleged service, an Affidavit of Default was filed on May 23, 2024, and a subsequent Order for Entry of Default was filed on May 23, 2024, holding Appellants Lifetime and Smith in default. (Order, May 23, 2024). Respondent filed a Motion for Entry of Default against Appellants and Damages hearing on November 1, 2024. (Pl.'s Mot. for Entry of Default against Defs. and Damages Hr'g). Appellant filed his Motion to Set Aside Entry of Default on November 6, 2024. (Def's Mot. to Set Aside Entry of Default). Thereafter, Appellant filed a Memorandum in Support of the Motion (Def's Mem. in Support of its Mot. to Set Aside Entry of Default), which contained an accompanying Affidavit of Logan Smith (Smith Aff., Ex. 1-6)

Smith maintains that he did not learn of this action until October 23, 2024. On that date, he received a text message from Mr. Binion boasting that "*Well Logan, we won the lawsuit against your company and you*". (Smith Aff. ¶ 12, Ex. 2) Upon receiving this information, Appellant called the Horry County Clerk of Court's office where he learned that an action had been filed and that he should seek counsel. (Smith Aff. ¶ 13) Within a couple weeks, Smith had retained counsel and filed a Motion to Set Aside Entry of Default on November 6, 2024. (Def's Mot. to set Aside Entry of Default).

In his Affidavit, Smith maintained that he was not served on April 7, 2024. (Smith Aff. ¶ 14) He supported his claim by showing that he had an outbound flight from Myrtle Beach, South Carolina, at 11:10 a.m. before stopping over in Atlanta, Georgia, on his way to Houston, Texas, where his flight landed at 2:51 p.m. He provided receipts for the flight along with his Affidavit. (Smith Aff., Ex. 3) He further stated that he stayed in Houston, Texas, until April 9, 2024, when he checked out of his rented Airbnb. A copy of the confirmation report for the Airbnb was included with Mr. Smith's Affidavit. (Smith Aff., Ex. 4) Mr. Smith further provided the credit card statement which indicated purchases in Myrtle Beach, South Carolina, on April 7, 2024, and a purchase in Houston, Texas, at a restaurant on the same day. (Smith Aff., Ex. 5)

In advance of the hearing on the Motion to Set Aside Entry of Default, Respondent submitted a Memorandum in Opposition. (Pls.' Mem. in Opp'n to Def's Mot. to Set Aside Entry of Default) Included with the Memorandum was an Affidavit of Edward Spicer, the process server who filed the original Affidavits of Service with the Court on April 9, 2024. (Mem. in Opp'n to Mot. to Set Aside Entry of Default, Ex. C)

In support of the Motion, Mr. Spicer enclosed a photograph which Respondent contends establishes conclusively the completion of service. The photograph shows Smith standing in the threshold of an apartment building with headphones and a somewhat disheveled look. The process server is standing approximately 6-8 feet away and is extending his arms with documents that appear to contain Respondent's counsel's logo. Also, the photograph contains a timestamp of April 7, 2024. The photograph does not show documents being handed to Smith, but Mr. Spicer maintains that it did occur. (Mem. in Opp'n to Mot. to Set Aside Entry of Default, Ex. A)

Respondent's Memorandum also contained "Plaintiff's Affidavit of Damages". (Mem. in Opp'n to Mot. to Set Aside Entry of Default, Ex. E) The Affidavit stated that he was owed

$131,461.00 for services he completed under the Contract and that he had incurred $5,000.00 in attorney's fees. No support was provided as to how the damages were calculated, despite the rather involved formula outlined in the contract. No affidavit of attorney's fees was filed by Respondent's counsel. This document was the only document submitted at the trial level pertaining to Respondent's alleged damages and/or attorney's fees.

Following the filing of Mr. Spicer's Affidavit, Smith submitted a supplemental affidavit (Smith Suppl. Aff.). In his Supplemental Affidavit, Smith maintained that he had not actually been served by Mr. Spicer on April 7, 2024. Mr. Smith stated that having received the Affidavit of Spicer, it refreshed his recollection as to an interaction he had on April 6, 2024, which did not result in service being completed. He stated that on April 6, 2024, he and others were at his house. They were consuming alcohol and playing video games. Smith stated he heard a loud pounding at his door. He then opened the door to see an individual with the phone up, standing several feet away from the door. Mr. Smith, in a somewhat inebriated state, thought that the individual must have had the wrong door. Mr. Smith, upon seeing this and being frustrated that he was distracted from his game, promptly turned around and closed the door in frustration. Smith maintains that he did not receive any documents from Mr. Spicer nor were any left with him. This version of events was corroborated by the affidavits of three individuals: Alan Ortiz (Ortiz Aff.), Jensen Rudd (Rudd Aff.), and Malik Homan (Homan Aff.). All three corroborate the essential facts attested to by Smith: The interaction with Mr. Spicer occurred on April 6, 2024, not April 7, 2024, and Mr. Smith did not come back into the apartment with any documents, nor do they recall seeing any in the threshold at the doorway on their way out. They also maintain that Smith left for Houston, Texas, on April 7, 2024.

A hearing was held on the Motion on March 17, 2025. Present at the call with the case was counsel for Respondent and Appellants as well as Mr. Spicer. During the hearing, counsel for Appellants objected to proceeding with the entry of damages without an evidentiary hearing even if the Court was inclined to deny the Motion to Set Aside Entry of Default. (Trial Tr., p. 9, ¶¶ 17-25, and p. 10, ¶¶ 1-5) The Court stated from the bench that if it did deny the Appellants' Motion, it would continue the issue of damages for a later hearing. (Trial Tr., p. 19, ¶¶ 22-25 and p. 20, ¶¶ 1-10). However, the Court did take testimony from Mr. Spicer.

On direct examination, Mr. Spicer maintained the same pertinent facts as he outlined in his two affidavits. He testified that as to the timestamp, he used an application on his phone that generated the date and time that he used in asserting that service occurred on April 7, 2024. (Trial Tr., pp. 13-15) On cross examination, Mr. Spicer acknowledged that he was not in any position to testify as to the reliability of the app, nor of how the app kept or maintained its system. (Trial Tr., p. 17). Mr. Spicer provided no additional corroborating evidence to support his contention that the documents were given to the Appellants as he stated, or that it occurred on April 7, 2024.

At the close of the hearing, the Court took the matter under advisement. Immediately thereafter, the Court filed a Form 4 Order on March 19, 2025, in which the Court noted that the Motion to Set Aside Entry of Default was under advisement, and that Respondent's Motion for Damages was continued. (Order, March 19, 2025) That Order was consistent with the Court's ruling from the bench. Thereafter on April 9, 2025, the Court entered an Order granting default judgment and damages. (Order, April 9, 2025) In its Order, the Court awarded Respondent the $131,461.00 damages requested in Respondent's Affidavit of Damages as well as the $5,000.00 in attorney's fees. In addition, the Court ordered $5,078.85 in pre-judgment interest.

Thereafter, on April 19, 2025, Appellants filed a Motion for Reconsideration pursuant to Rule 59, SCRCP. (Defs.' Mot. to Recons.) In its Motion, Appellants objected to the Court's entry of a default judgment in the amount requested by Respondent without conducting an evidentiary hearing in which Appellants would be able to contest the damages awarded, as well as the award of attorney's fees. Appellants also objected to the Court's denial of the Motion to Set Aside Entry of Default based upon the overwhelming evidence running contrary to the testimony of Mr. Spicer. The Court denied that Motion via a Form 4 Order without oral argument on April 24, 2025. (Order, April 29, 2025) This appeal follows.

STANDARD OF REVIEW

The power to set aside a default is exercised within the sound discretion of the trial court whose decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Frank Ulmer Lumber Co. v. Patterson*, 272 S.C. 208, 250 S.E.2d 121 (1978); *Estate of Weeks*, 329 S.C. 251, 495 S.E.2d 454 (Ct.App.1997). "An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Estate of Weeks*, 329 S.C. at 259, 495 S.E.2d at 459.

ARGUMENT

I. THE LOWER COURT ERRED IN DENYING APPELLANTS' MOTION TO SET ASIDE THE ENTRY OF DEFAULT WHEN THE TOTALITY OF THE FACTS AND CIRCUMSTANCES PRESENTED RAN CONTRARY TO THE AFFIDAVIT OF SERVICE STATING THAT THE APPELLANT WAS PERSONALLY SERVED.

Public Policy in South Carolina favors resolution of cases on the merits. *Caldwell v. Wiquist*, 402 S.C. 565, 575, 741 S.E.2d 583, 588 (Ct. App. 2013). Setting aside a default judgment under Rule 55, SCRCP, should be "liberally construed to promote justice and resolve the cases on

the merits". *Melton v. Olenik*, 379 S.C. 45, 54, 664 S.E.2d 487, 492 (Ct. App. 2008) (quoting *Bage v. Southeastern Roofing Co. of Spartanburg, Inc.*, 373 S.C. 457, 471, 646 S.E.2d 153, 160 (Ct. App. 2007), *cert. granted* (Mar. 20, 2008)).

Rule 55(a) provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c) permits a party to move to set aside the entry of default. The standard for granting relief from an entry of default under Rule 55(c) is mere "good cause." Rule 55(c), SCRCP. This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. 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. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501–02 (Ct. App. 1989).

Failure to effect proper service constitutes good cause to set aside an entry of default. *Richardson Construction Co. v. Meek Engineering*, 274 S.C. 307, 312, 262 S.E.2d 913, 916 (1980); *Roberson v. Southern Finance of South Carolina*, 365 SC 6, 12, 615 S.E.2d 112, 115 (2005). Without proper service, the Court lacks personal jurisdiction over the Appellants. *BB & T v. Taylor*, 369 S.C. 548, 551-52, 633 S.E.2d 501, 503 (2006) quoting *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995) ("Rule 4, SCRCP, serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action"), and *State v. Sanders*, 118 S.C. 498, 502, 110 S.E. 808, 810 (1920) ("The purpose of the summons is to acquire jurisdiction of the person of the defendant...").

This case involves, as its threshold issue, whether or not Smith was personally served with the Summons and Complaint on April 7, 2024, as attested to by the process server, Edward Spicer. As the lower Court noted: "To get to the damages part, I've got to determine whether or not there was proper service or not. Quite a dispute in the facts here". (Trial Tr., p. 18, ¶¶ 22-25).

Despite the disputed facts, the lower Court erroneously took the affidavit and testimony of Mr. Spicer as conclusive without giving any weight to the overwhelming evidence suggesting that his testimony was inaccurate. Though an affidavit of service carries with it a *presumption* of valid service, such a presumption can be rebutted through extrinsic evidence and if the cumulative effect of other facts and circumstances run contrary to the assertions in the affidavit, then Appellants are entitled to relief from default. *Richardson Const. Co.*, 262 S.E.2d at 916. Moreover, where the issue of service is raised directly, then it is incumbent upon the court to look beyond the face of the affidavit of service to determine whether the applicable statute has been complied with. *Collins Music Co., Inc. v. Lord*, 289 S.C. 458, 461, 346 S.E.2d 724, 726 (1986), citing *MCC Financial Services, Inc. v. Duffel*, 265 S.C. 519, 220 S.E.2d 127 (1975), and *Dill-Ball Company v. Bailey*, 103 S.C. 233, 87 S.E. 1010 (1916).

The record provides sufficient evidence to establish, at a minimum, that Mr. Spicer was mistaken as to the date of the interaction. In addition to three (3) sworn witness statements, Smith provided airline receipts showing that he had flight booked to Houston, Texas, on April 7, 2024. He provided a receipt showing that he had reserved lodging. Finally, foreclosing any contention that Smith could have decided to not travel to Houston on April 7, 2024 despite his clear plans, Smith submitted credit card statements showing that he had purchased dinner at the "Ploy Thai Cuisine" restaurant in Shenandoah, Texas, on April 7, 2024. In short, Smith was clearly in the State of Texas when Mr. Spicer claimed to have served him.

This obvious discrepancy should cast sufficient doubt upon the credibility of Mr. Spicer as to whether he completed service on April 6, 2024, which was the actual date of the brief interaction. He testified as to the photograph that was submitted with Respondent's memorandum in opposition and stated that the timestamp contained on the photograph of Smith was accurate. Though he conceded that he was not an expert in the workings of the time-stamping application, he testified that he had an independent recollection of the date in question, which was almost a year later. It is telling that, though he took a photograph with the presumed intent of being able to prove service if it was ever contested, and he testified that he did in fact handed the Complaint to Smith, Spicer chose not to photograph that part of the interaction which would have confirmed his testimony. Instead, he chose to take a photograph before he handed anything to Smith and was, by his own admission, standing 6-8 feet away from the doorway. Thus, he chose to take his photograph ***before*** service was set to occur and chose to not take one after the service was ***allegedly*** completed.

Smith's testimony concerning what happened after he opened the door, though perhaps a little unusual, is explained thoroughly in his Affidavit. Even if the Court would have an initial inclination to find Smith's version of events not credible or unreliable, the Affidavits of Alan Ortiz, Jenson Rudd, and Mailik Horman provide overwhelming and independent corroboration. Additionally, Smith's actions upon learning that an action had been filed show a clear intention to respond to the lawsuit. On October 23, 2024, Respondent, in a taunting tone, texted Smith stating, "*Well Logan, we won the lawsuit against your company and you*" and by November 6, 2024, approximately two (2) weeks later, he had hired counsel and filed the motion for relief from default. Such actions are inconsistent with Appellant seeking to ignore his obligations.

Though the lack of completed service provided a sufficient basis upon which to grant the motion for relief from entry of default, Appellants also show sufficient grounds under the *Wham*

factors. First, Appellants filed for relief almost immediately upon learning from Respondent that "we won our case against you". The motion was filed approximately six (6) months after the entry of default, although no action had been taken by Respondent during this period. Second, the Appellants have a meritorious defense. As outlined in his Affidavit, Appellant contends that Respondent failed to comply with his obligation(s) to properly install the solar systems that it was contracted to do. He states that "Over fifty percent (50%) of the customers that signed up cancelled after we incurred serious costs in engineering and permitting that we were unable to recoup". If fact, based on the allegations contained in Smith's Affidavit, Respondent's conduct was fraudulent in nature:

> *Through some investigating, I learned that Plaintiff was manipulating the numbers in such a way to the homeowners that the homeowners believed they were getting much more solar than they actually were. Essentially, what the Plaintiff was doing was selling the homeowner enough solar to cover twenty-five percent (25%) of their total power usage, and then promising the homeowner that it would cover one hundred percent (100%) of their power usage. Then the Plaintiff would charge the homeowner as if they had enough solar to cover one hundred percent (100%) of their power usage, when in fact, they were only receiving enough solar to cover maybe twenty-five percent (25%) of their power consumption. This had very significant negative repercussions for Lifetime Energy; including several very negative reviews, and many upset customers who had been promised that they would not receive a power bill from the utility company and would only have a loan payment. These customers are now stuck paying the majority of their utility bill plus a solar loan for twenty-five (25) years. All contracts where Plaintiff acted as representatives of Lifetime Energy, Lifetime Energy has now been left to deal with the aftermath.*

Moreover, Smith has an additional defense based upon the fact that he is not a party to the Contract. The Complaint alleges that "Defendants entered into an independent contractor Agreement (the "Contract") attached as Exhibit A (Compl. ¶ 7, Ex. A). However, the Agreement is clearly between Respondent and Lifetime Energy LLC. No reference is made in the contract in any way whatsoever to Smith, and no other basis for liability against Smith is pled in the Complaint. As a result, if the lower Court's Decision is upheld, Respondent will be permitted to

benefit from improperly naming Smith individually and Smith will be subject to a personal judgment notwithstanding the fact that the Contract is clearly between Respondent and Appellant Lifetime only.

II. THE LOWER COURT ERRED IN DENYING APPELLANTS' DEMAND FOR A DAMAGES HEARING WHEN RESPONDENT'S DAMAGES CONSTITUTED UNLIQUIDATED DAMAGES

It is well settled law in South Carolina that a defendant in default concedes liability but not the damages. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90 757 S.E.2d 557, 558 (Ct. App. 2014). Though Rule 55(b)(1), SCRCP, permits a plaintiff to prove the amount of his damages simply by filing an affidavit of the amount due when the amount in dispute involves a claim for "*liquidated damages, a sum certain, or a sum which can be by computation be made certain*", in all other cases a damages hearing is required. *Wells Fargo*, 757 S.E.2d at 560 (citing 46 Am. Jur.2d Judgments § 298 (2006) ("In the context of a default judgment, unliquidated damages normally are not awarded without an evidentiary hearing. Where damages claimed are not readily ascertainable from the pleadings and record, a hearing is appropriate to determine the amount of damages."); *Dundee Cement Co. v. Howard Pipe & Concrete Prods., Inc.*, 722 F.2d 1319, 1323 (7th Cir.1983) ("holding a judgment by default may not be entered without a hearing on damages unless the complaint indicates the amount claimed is liquidated or capable of ascertainment from definite figures contained in the documentary evidence or in detailed affidavits")).

The damages requested by the Respondent and ultimately granted by the lower Court are the type which this Court has ruled to be unliquidated and thus requiring a damages' hearing prior to entry of judgment. In *Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co.*, 360 S.C. 127, 600 S.E.2d 76 (Ct. App. 2004), this Court undertook review of a case involving a party in default under a breach of contract cause of action. The affidavit submitted by Respondent in

furtherance of its request for default judgement cited Eighty Thousand Nine-Hundred Thirty-Eight and 25/100 ($80,938.25) Dollars as the amount allegedly owed because of the breach. This was also the amount listed in the Complaint. However, just as in the current case, no additional formulation or calculation was provided as basis to show that the amount requested was a sum certain or an amount that could be readily calculated. Despite that fact, the lower court entered default judgment in the amount requested by Plaintiff without a damages hearing.

The Court in *Beckmann*, in deciding to overturn the lower court order, made clear that simply because damages arise out of a contractual claim, the Plaintiff is not entitled to a damages award in whatever amount is requested. In doing so, the Court adopted the North Carolina rule outlined in *Hecht Realty, Inc. v. Hastings*, 45 N.C. App. 307, 309-10, 262 S.E.2d 858, 859-60 (1980). In that case, the North Carolina Court of Appeals stated:

> "*The mere demand for judgment of a specified dollar amount does not suffice to make plaintiff's claim one for "a sum certain" as contemplated by Rule 55(b). Such a demand is normally included in the prayer for relief in every complaint in which monetary damages are sought, including complaints alleging claims for damages for bodily injuries caused by a defendant's negligence. The complaint in the present case alleged a breach of contract by the defendant, but nothing in the allegations of the complaint makes it possible to compute the amount of damages to which plaintiff is entitled by reason of the breach*".

Though the Court ruled that the Plaintiff also failed to comply with the service requirements under Rule 55, SCRCP, it also made clear that the lack of any "*supporting documents in any form or fashion*" were an independent basis for the reversal of the lower court.

Moreover, the Court in *Beckman* noted that it was not just the lack of documentation that entitled Defendant to a hearing on damages but it identified a crucial distinction between liquidated and unliquidated damages. "In liquidated-damages cases, the amount is usually a sum certain, or at least the amount is capable of ascertainment by computation", quoting, *Lewis v. Congress of Racial Equality*, 275 S.C. 556, 274 S.E.2d 287 (1981). By contrast, unliquidated damages are

"[d]amages that ... cannot be determined by a fixed formula, so they are left to the discretion of the judge or jury." *Beckman*, 600 S.E.2d at 78 (quoting, Black's Law Dictionary 395–97 (7th ed.1999)). "They are also defined as damages the amount of which has been ascertained by judgment or by the specific agreement of the parties or which are susceptible of being made certain by mathematical calculation from known factors." *Id.* at 79, quoting 22 Am. Jur.2d damages § 489 (2003). "In general, damages are unliquidated where they are an uncertain quantity, depending on no fixed standard, referred to the wise discretion of a jury, and can never be made certain except by accord or verdict." *Id.*

In this case, just as in *Beckmann*, the lower Court entered judgment in the amount requested by Respondent without any factual basis for the award other than the Respondent's demand for it. The Complaint in this case stated only that the Respondent was owed $131,461.00 and included the original Independent Contractor Agreement as an Exhibit. The Agreement was not for a fixed, or stated, amount. Instead, it identified a complicated commission structure based upon a variety of variables. Nowhere in the Complaint was that formula applied in any manner that would allow the Court to calculate damages. Neither was any such information provided in the Affidavit of Damages submitted to the Court in advance of the hearing, nor was it contained in the Court's Order granting entry of default damages. In short, the lower Court simply accepted the Respondent's alleged damages as being conclusive without providing the Appellants an opportunity to challenge it. In so doing, the Court ran contrary to the ruling in *Beckmann*.

During the oral argument, and even thereafter, the Court (and opposing counsel) seemed to acknowledge that a damages' hearing was appropriate.

> THE COURT: What I understand, then, is you are in agreement to let me take the set-aside motion under advisement and issue a ruling from that.

> Then the damages hearing - obviously, if it depends on what I do with that; that will be a separate motion made later. And that would be only to grant the hearing, not to determine damages, obviously
>
> Mr. Bouchette: Yes, sir.
>
> THE COURT: And if I need any other information, I will, as I say bilaterally send you an email requesting that.
>
> Mr. Henderson: Okay sounds good.
>
> Mr. Bouchette: Yes, Sir Your Honor
>
> Mr. Henderson: So we'll – we'll just push back the damages hearing pending your consideration of this initial –
>
> THE COURT – Yes Sir. That's right.
>
> (p. 19-20)

That understanding was then memorialized in the Form 4 Order filed by the Court on March 19, 2025, in which it ruled that the Appellants' Motion to Set Aside Entry of Default was under advisement, and that Respondent's Motion for Damages was continued. Inexplicably the Court issued its Order granting default judgment and damages in contravention of what it had ruled during the hearing and what had been agreed to by Respondent's counsel.

Finally, the Court's Order contained an award for attorney's fees and costs which lacked any foundation or basis in the record. The Independent Contractor Agreement provided that "In any action or suit to enforce any right or remedy under this agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its reasonable attorney's fees, costs, and other expenses". (Compl., Ex. A ¶ 6.1) In South Carolina, where a contractual obligation provides only that a party is to pay "reasonable attorney's fees," the amount is unliquidated and, therefore, requires a finding on the reasonableness of the award. *NationsBank v. Scott Farm*, 320 S.C. 299, 305, 465 S.E.2d 98, 101 (Ct. App. 1995).

When an award of attorney's fees is authorized by contract or statute, the lower Court is still obligated to make specific findings on the record to justify the reasonableness of the award. *Blumberg v. Nealco, Inc.*, 310 S.C. 492, 494, 427 S.E.2d 659, 661 (1993). Generally, if on appeal there is inadequate evidentiary support for each of the factors, the appellate court should reverse and remand so the lower Court may make specific findings of fact. *Id*. In determining the amount of attorney's fees to award, the court should consider the nature, extent, and difficulty of the services rendered; the time necessarily devoted to the case; the professional standing of counsel; the contingency of compensation; the beneficial results obtained; and the customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). Here, the record only contains a statement by the Respondent that he incurred Five Thousand and 00/100 ($5,000.00) Dollars in attorney's fees without any reference to any of the necessary factors.

Additionally, the lower Court's Decision ran contrary to Rule 55 (b)(3), which specifically requires an affidavit of attorney's fee:

> If a party seeks to recover attorneys fees in connection with a default judgment, a hearing pursuant to subdivision (b)(2) of this rule **shall** (emphasis added) be required unless: (i) the party seeking attorneys fees specifies in the motion for default judgment that such motion includes a request that the court award attorneys fees and also files an affidavit of attorneys fees; (ii) notice of such motion and affidavit is provided to the defaulted party by first class mail to the last known address of such party; and (iii) no objection is filed by the opposing party within 10 days of service of such motion and affidavit.

Though a request for attorney fees was contained in the Complaint and in the "Motion for Entry of Default Against Defendants and for Damages Hearing" no affidavit of attorney's fees was ever submitted to the lower Court. As a result, the award of attorney fees was improper not only due to the failure of the lower Court to conduct a reasonableness review, but also for failure to comply with the applicable Civil Procedure Rule.

CONCLUSION

Therefore, the Court should reverse the lower court and order that the Appellants' Motion to Set Aside Entry of Default be granted. Alternatively, should the Court elect to Deny Appellants' request, the Court should remand the case back to the lower Court and order that a damages hearing be scheduled.

Respectfully submitted,

BURR & FORMAN LLP

s/T. Jarrett Bouchette
T. Jarrett Bouchette, SC Bar #101122
2411 N. Oak Street, Suite 206 (29577
Post Office Box 336
Myrtle Beach, SC 29578-0336
Ph: 843.444.1107
Fax: 843.443.9137
Email: jbouchette@burr.com

Counsel for the Appellants

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