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**Dec 15 2025**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Kristi F. Curtis, Circuit Court Judge

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Appellate Case Number 2025-000403

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Lauren Chambers Tracy,..... Respondent,

v.

Elijah Osama Mustafa,..... Appellant.

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**INITIAL REPLY BRIEF OF APPELLANT**

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December 15, 2025

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## STATEMENT OF THE CASE

Appellant Elijah Osama Mustafa (“Mustafa” or “Appellant”) respectfully submits this Initial Reply Brief pursuant to Rule 208(a)(3), (b)(3), and (b)(5), SCACR.

Respondent’s attempt to avoid entry of satisfaction misreads the unambiguous 2018 Agreement, which must be enforced as written. Paragraph 6—the only provision addressing obligations upon a judgment—requires Respondent to promptly satisfy the judgment and file a certification, both as to the \$175,000 paid and any excess, and the trial court erred by disregarding that command in favor of provisions that merely preserve efforts to pursue and/or attempt to collect excess or UIM benefits. Because the Agreement is unambiguous, extrinsic materials, including statements by a nonparty excess carrier, are inadmissible and cannot alter the contracting parties’ obligations. Equity likewise affords Respondent no relief from her contractual obligations. Enforcing the parties’ bargain is not a windfall, but the precise risk allocation they accepted, through legal counsel. The Court, through its *de novo* review, should reverse and remand with instructions to grant Appellant’s Motion for Entry of Satisfaction.<sup>1</sup>

Additionally, Appellant’s appeal is taken from the February 2, 2025, Form 4 Order denying Rule 60 relief—not from the August 9, 2023, Judgment—and it is both timely and properly preserved. Respondent attempts to divert attention from the merits of the Rule 60 arguments, on which Appellant is entitled to relief on multiple independent grounds. Because Rule 60 relief is warranted, this Court should reverse the trial court’s order denying that relief.

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<sup>1</sup> Respondent’s Initial Brief does not dispute that *de novo* review governs the trial court’s denial of Appellant’s Motion for Entry of Satisfaction of Judgment.

## ARGUMENT

### I. THE AGREEMENT UNAMBIGUOUSLY REQUIRES PROMPT SATISFACTION, AND RESPONDENT'S INTERPRETATION AND THE TRIAL COURT'S RULING TO THE CONTRARY ARE IN ERROR.

#### A. The 2018 Agreement is clear and mandates prompt entry of satisfaction.

Respondent does not dispute in her Initial Brief (hereinafter "Respondent's Brief") that a valid Agreement exists between Respondent and Appellant. Therefore, the Court's analysis turns on whether this valid Agreement supports Appellant's request for entry of satisfaction.

*See Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004) ("If [a contract's] language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect.").

At the outset, Respondent's Brief mischaracterizes Appellant's argument regarding the 2018 Agreement's prompt satisfaction requirement. Respondent asserts that Appellant focuses solely on Paragraph 6, to the exclusion of seven other provisions in the 2018 Agreement. Invoking *McGill v. Moore*, 381 S.C. 179, 672 S.E.2d 575 (2009), Respondent contends that Appellant is attempting to manufacture ambiguity by isolating a single provision from the rest of the Agreement.

*McGill*, however, merely posits that "[a] contract is read as a whole document so that one may not create an ambiguity by pointing out a single sentence or clause." *Id.* at 185, 672 S.E.2d at 574. That principle does not advance Respondent's position here. Appellant does not contend that the 2018 Agreement, whether in its entirety or as to Paragraph 6 specifically, is ambiguous. To the contrary, Appellant's Motion for Entry of Satisfaction is based upon the clear and unambiguous language of the 2018 Agreement requiring prompt satisfaction. *See S.C. Dep't of*

*Transp. v. M & T Enters. of Mt. Pleasant, LLC*, 379 S.C. 645, 655, 667 S.E.2d 7, 13 (Ct. App. 2008) (“A court must enforce an unambiguous contract according to its terms regardless of its wisdom or folly, apparent unreasonableness, or the parties’ failure to guard their rights carefully.”).

“Contracts are not ambiguous merely because the parties disagree as to the meaning of the language employed by them in their agreement.” *Dyncorp v. Carnicero*, 996 F.2d 55, 59 n.2 (4th Cir. 1993) (internal quotations and citations omitted). “An ambiguous contract is a contract capable of being understood in more than one way or a contract unclear in meaning because it expresses its purpose in an indefinite manner.” *HK New Plan Exch. Prop. Owner I, LLC v. Coker*, 375 S.C. 18, 24, 649 S.E.2d 181, 184 (Ct. App. 2007). *See also S. Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 81, 562 S.E.2d 482, 484 (Ct. App. 2002), *aff’d as modified*, 356 S.C. 444, 590 S.E.2d 27 (2003) (“A contract is ambiguous when its terms are reasonably susceptible of more than one interpretation.”). That is not true of the 2018 Agreement, which is capable of being interpreted in only *one* reasonable way—to require prompt satisfaction of any judgment against Appellant.

This is evident from reading the plain language of the contract itself. Paragraph 6 provides that, in the event a judgment is entered against Appellant, “Plaintiff [Respondent] agrees to ***promptly*** satisfy the judgment with respect to the amount of the consideration being paid . . . and will file a certification of such satisfaction with the Clerk of Court in whose office the judgment is enrolled to be entered on the face of the judgment.” (2018 Agreement pp. 3-4, ¶ 6) (emphasis added). Respondent’s Brief concedes that this provision refers to the \$175,000.00 consideration tendered by Travelers, on behalf of Appellant, under the 2018 Agreement. (RIB pg. 28). However, Respondent offers no explanation for her failure to promptly satisfy the

judgment and file the required certification of satisfaction as to this undisputed amount, at minimum. Instead, violating the fundamental rule of contract construction that effect must be given to the entire agreement, Respondent's Brief focuses solely on portions of the 2018 Agreement conferring benefits on Respondent, ignoring the countervailing contractual benefits to which Appellant is entitled under the 2018 Agreement.

In addition to requiring satisfaction of the consideration tendered under the 2018 Agreement, Paragraph 6 provides that, if a judgment against Appellant "is in excess of the amount paid under the agreement"—as is true of the underlying judgment—Respondent will "promptly satisfy the judgment with respect to such excess and will file a certification of such satisfaction ...." (2018 Agreement, pp. 3–4, ¶ 6) (emphasis added). The provision contains no qualification limiting "excess" to the Travelers policy limits, as Respondent contends (RIB pp. 28–29). That reading contradicts the provision's plain language and undermines the covenant's protective purpose for Appellant. If "such excess" were capped at the Travelers limits, Appellant would remain exposed to a personal judgment well beyond those limits—the very exposure the Agreement is intended to prevent. Indeed, the Agreement expressly states that "Travelers by and on behalf of its Insureds, desires to make payment of One Hundred Seventy-Five Thousand Dollars and 00/100 (\$175,000.00) and thereby end all obligations to pay any further sums and protect the Insureds from any excess judgment which may be rendered." (2018 Agreement, p. 2) (emphasis added). Moreover, if Respondent genuinely believed the proposed interpretation, she would already have promptly satisfied the judgment up to those limits. The fact that Respondent has not done so is most telling.

Respondent further argues that Appellant's failure to quote in full the provisions relied upon by the trial court in its Form 4 Order denying Appellant's Motion for Entry of Satisfaction

somehow constitutes an admission that those provisions are inconsistent with Paragraph 6. The argument is unavailing.

First, Appellant specifically cited the entirety of the language from the Form 4 Order denying his Motion for Entry of Satisfaction of Judgment, in which the trial court referenced Paragraphs 4, 5, and 9, and numbered Paragraphs 3, 5, 11, and 12 of the 2018 Agreement to support its denial. Appellant discussed these provisions, which concern the pursuit and recovery of excess liability coverage, in his Initial Brief (AIB pp. 11–12). Appellant also included the 2018 Agreement in his Designation of Matter to Include in the Record on Appeal. Any suggestion that Appellant omitted reference to other relevant provisions from the 2018 Agreement is incorrect.

Second, Appellant’s emphasis on Paragraph 6 in his Initial Brief was appropriate because the trial court wholly failed to address the provision in its Form 4 Order. Paragraph 6 is the only provision of the 2018 Agreement that specifically delineates the parties’ obligations when a judgment is entered against Appellant. *See Buice v. WMA Sec., Inc.*, 380 S.C. 149, 157, 668 S.E.2d 430, 434 (Ct. App. 2008) (“Further, in determining the intent of the contracting parties, the court should construe the contract as a whole, and read together different provisions *dealing with the same subject matter.*”) (emphasis added). While Paragraphs 3 and 5 acknowledge Respondent’s right to proceed against Appellant “solely for the purpose of collecting excess liability insurance coverage and/or underinsured motorist coverage,” preservation of a right to proceed against excess and/or UIM carriers is distinct from the parties’ duties of satisfaction once a judgment is entered. Respondent’s right to proceed and attempt to collect has not been impaired. To the contrary, the only impairment has been to the protections from judgment to which Respondent is entitled under Paragraph 6.

Moreover, Paragraph 11, which Respondent labels the “catchall provision,” expressly states that Respondent does not “waive or release in any way any excess liability insurance coverage and/or underinsured motorist carrier because of the terms and conditions as stated herein.” (2018 Agreement, p. 5, ¶ 12). This language accords with Paragraph 6: Entry of satisfaction as to Appellant (the insured) does not waive or release Respondent’s rights against any excess liability carrier or UIM carrier. Nor does entry of satisfaction waive or release the Appellant himself; that consequence would arise only if Paragraph 12 was triggered by an agreement between Respondent and the excess liability or UIM carrier. Nothing prevents Respondent from pursuing such an agreement while simultaneously complying with her obligation to promptly satisfy the judgment as to the insured.

Respondent’s reliance on *Koon v. Fares*, 379 S.C. 150, 666 S.E.2d 233 (2008), does not change the result. In *Koon*, which interpreted a landlord/tenant agreement, the court recognized that purpose of “the rules of contract construction is to ascertain the intention of the parties as gathered from the contents of the entire document and not from any particular provision within the contract.” *Id.* at 155, 666 S.E.2d at 233. In rejecting a tenant’s proposed interpretation that would effectively trump the landlord’s fee simple interest and produce an “absurd result,” the Court explained: “Where one interpretation of a contract makes it unusual or extraordinary and another interpretation, equally consistent with the language employed, would make it reasonable, fair, and just, the latter construction prevails.” *Id.*

While the contract principles in *Koon* are sound, their application here does not support Respondent’s conclusion. Respondent posits that requiring prompt satisfaction of the judgment would limit her right to proceed against and collect from excess and/or UIM carriers, thereby rendering “unusual or extraordinary” the plain-language reading of the prompt satisfaction

required of Paragraph 6. From that mistaken premise, Respondent argues that Paragraph 6 should be read to dispense with prompt satisfaction, in light of Respondent's rights to proceed and collect, and that this reading is the "reasonable, fair, and just" interpretation.

This argument overlooks a critical qualifier in *Koon*. Selecting the reasonable, fair, and just interpretation is appropriate only where competing readings are "equally consistent with the language employed." *Id.* Here, disregarding Paragraph 6's prompt-satisfaction requirement to reach Respondent's preferred reading is inconsistent with the Agreement as a whole. Because Respondent's interpretation disregards the express requirement of prompt satisfaction as to Appellant, it is not "equally consistent with the language employed" in the 2018 Agreement, and it is certainly not reasonable, fair, nor just. Instead, it is simply contrary to the Agreement's plain language as to satisfaction.

The Agreement can and should be read to effectuate both Paragraph 6's prompt-satisfaction obligation and any preserved rights to pursue excess and/or UIM benefits, without rewriting the parties' bargain. Accordingly, *Koon* offers additional support for enforcing the Agreement's text, not excising it.

B. Post-Agreement Conduct Cannot Alter the Agreement's Unambiguous Terms.

To further support her unreasonable interpretation disregarding the 2018 Agreement's prompt-satisfaction requirement, Respondent relies on language from a January 26, 2023 Motion to Intervene filed in the underlying action by United States Liability Insurance Group ("USLI"), an excess insurance carrier. But this Court cannot consider the motion, even on *de novo* review, because it constitutes extrinsic evidence. Extrinsic evidence is irrelevant because, as Respondent tacitly concedes, the 2018 Agreement is unambiguous. *Charles v. B & B Theatres, Inc.*, 234 S.C. 15, 18, 106 S.E.2d 455, 456 (1959) ("It is elementary that when parties have reduced their

contract to writing, the court can only look to the terms in which the parties have expressed their intentions in such writing”); *HK New Plan Exch. Prop.*, 375 S.C. at 23-24, 649 S.E.2d at 184 (holding that only “if a contract is ambiguous, [is] parol evidence ... admissible to ascertain the true meaning and intent of the parties.”) (quoting *Koontz v. Thomas*, 333 S.C. 702, 709, 511 S.E.2d 407, 411 (Ct. App. 1999)).

In any event, USLI’s statements are not attributable to Appellant—a contracting party and an individual who is not a USLI employee or representative. Respondent offers no legal basis on which USLI’s statements could possibly be imputed to Appellant. As such, USLI’s statements—even if this Court could consider them—cannot modify the Agreement’s plain language. A contrary conclusion would improperly permit a stranger to the Agreement to rewrite its terms, contrary to the contracting parties’ intent. For these reasons, a non-party’s statements, as embodied in extrinsic evidence, have no bearing on the meaning of any contract provision.

C. Enforcing the prompt-satisfaction provision’s plain language is equitable and does not confer a windfall.

Respondent’s final argument—that it would be unfair if \$175,000 is deemed to satisfy a \$4.2 million judgment—is an appeal to equity. (RIB, p. 29.) The notion that the plain and unambiguous prompt-satisfaction provision creates an unfair “windfall” is unavailing. A windfall is, by its nature, unexpected. Here, Appellant’s request for prompt satisfaction was expressly contemplated and authorized, as Paragraph 6 unequivocally provides for prompt and unqualified satisfaction of any judgment. Enforcing those terms precisely as written, therefore, does not confer a windfall on Respondent. Instead, doing so merely holds the contracting parties to the terms of their bargained-for deal—one that was reached with the advice of the parties’ respective counsel. It is inconsequential that Respondent now has buyer’s remorse, belatedly reconsidering the wisdom of the deal she voluntarily struck. *See C.A.N. Enters., Inc. v. S.C. Health & Hum.*

*Servs. Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) (recognizing that courts must apply the plain language of a contract and may not “strain well established principles of contract law” to avoid a perceived windfall); *see also Maybank v. BB&T Corp.*, 416 S.C. 541, 574, 787 S.E.2d 498, 515 (2016) (“[A] court’s ultimate duty is confined to interpreting the contractual provisions agreed to by the parties—regardless of their wisdom or folly, apparent unreasonableness, or any failure of the parties to guard their interests carefully.”).

Respondent fares no better with the assertion that Appellant’s counsel was “forced to admit” that the Agreement preserved Respondent’s right to recover excess liability and/or UIM coverage. (RIB, p. 30). Respondent’s cited argument from the January 25, 2025, motions hearing before the Honorable Judge Curtis reflects only a general acknowledgment by Appellant’s counsel that a Covenant Not to Execute *generally* reserves a right to pursue additional coverage. Immediately thereafter, however, Appellant’s counsel emphasized that the Agreement’s plain language governs, irrespective of this reservation:

THE COURT: [...] Ms. Stetson, isn’t the whole purpose of the Covenant Not to Execute, as opposed to a release, so that we can have this exact situation where the injured party can pursue additional coverage without, you know, giving up their rights?

MS. STETSON: Your Honor, the concept of the Covenant Not to Execute in general, I would agree with that. I think the purposes of pursuing additional coverage is stated in the agreement. But I think where the difference here is that just because it’s a Covenant Not to Execute would not mean that its actual language doesn’t have to [be] follow[ed] .... And to the extent that this covenant is drafted, paragraph 6 is the only area that addresses an actual judgment when it’s entered. And the language that we have with respect to the judgment, again with the purpose of protecting the insurer, which is a purpose of the covenant, requires prompt satisfaction of not just the amount paid on the 175 but any excess judgment, again, without any limitations or qualifications.

And we know from paragraph 12 that counsel could have put those in because paragraph 12 reserves the right for any kind of release from Plaintiff as to the insured or Travelers until excess carrier payment is received. Paragraph 6 is silent on any kind of contingency, Your Honor. And so the Court is bound by the plain

language.

(Hearing Transcript, January 25, 2025, p. 15:5-14, 17-25, p.16:1-5).

Viewed in context, Respondent has clearly mischaracterized this colloquy. Appellant's position has remained consistent. The 2018 Agreement, by its plain terms, requires prompt satisfaction of the judgment in full as to Appellant, and Respondent has rejected that obligation by failing to satisfy the judgment as required. Therefore, the Court should reverse the trial court's denial of Appellant's Motion for Entry of Satisfaction of Judgment.

## **II. RESPONDENT MISCHARACTERIZES THE APPEAL AND TIMELINESS; RULE 60 RELIEF IS WARRANTED AND DENIAL SHOULD BE REVERSED.**

### **A. The appeal is timely filed.**

In a misguided effort to dodge the merits of Appellant's requested relief from judgment, Respondent concocts a supposed procedural bar to the appeal. Specifically, Respondent asserts that Appellant's failure to directly appeal the August 9, 2023 Judgment within thirty days of its entry bars the requested relief. (RIB pp. 11-13).

At the outset, Respondent did not file a motion to dismiss the appeal on the basis of timeliness, or any other ground. This argument mischaracterizes the basis of the appeal. Appellant is not seeking tardy review of the August 9, 2023 Judgment. Instead, Appellant appeals the February 2, 2025 Form 4 Order denying his Motion for Relief from Judgment.

The underlying Motion for Relief from Judgment challenged: (1) the purported June 2, 2023 oral ruling refusing to vacate the order striking Appellant's Answer; (2) the August 9, 2023 written order reflecting the same; and (3) the August 9, 2023 Judgment in the amount of \$4,198,672.14. (August 9, 2023 Written Order; Form 4 Order of Judgment.) However, in its Form 4 Order denying Appellant's request for relief from judgment, the trial court only partially resolved Appellant's post-trial motions, denying solely that portion directed at the June 2, 2023

purported oral ruling:

Defendant has failed to meet his burden of showing grounds under Rules 60(a) or 60(b), SCRCPP, sufficient to vacate the order denying Defendant's Motion to Vacate Judge Culberson's Order striking Defendant's Answer. The Order contains no clerical mistakes or ambiguities which would give rise to relief under Rule 60(a). Furthermore, Plaintiff has failed to show sufficient grounds for relief under Rule 60(b).

(Form 4 Order Denying Appellant's Motion for Relief, p.1).

Appellant then sought a ruling on the remaining issues pursuant to Rule 59(e), SCRCPP, and the trial court summarily denied that motion. (Appellant's Motion to Reconsider, p. 3) (Form 4 Order Denying Motion to Reconsider Appellant's Motion for Relief from Judgment). Thus, Appellant properly preserved his challenge to both the June 2, 2023 ruling and the August 9, 2023 Judgment. *Gibbons v. Aerotek, Inc.*, 441 S.C. 180, 185, 893 S.E.2d 326, 329 (Ct. App. 2023) ("Rule 59(e) motions "serve a vital purpose for proper issue preservation") (internal quotations and citations omitted).

Moreover, Appellant timely appealed from the February 2, 2025 Form 4 Order denying his Motion for Relief from Judgment—within thirty days of entry of the Form 4 Order and the Order denying Appellant's Motion to Reconsider, consistent with the requirements of Rule 203(b)(1), SCACR. Appellant's Motion pursuant to Rule 60(a) was subject to no deadline. SCRCPP 60(a) (stating that motions seeking relief under this rule may be brought "at any time"). Appellant's Motion pursuant to Rule 60(b)(1), Rule 60(b)(2), and Rule 60(b)(3) was filed within one year of the entry of the August 9, 2023 Order denying his Motion to Vacate the Order Striking his Answer, which is the order serving as the basis for this appeal. *Coleman v. Dunlap*, 306 S.C. 491, 495, 413 S.E.2d 15, 17 (1992) ("[A] motion under 60(b)(1)–(3) must be made within a reasonable time no later than one year from the original judgment.").

Appellant's Motion pursuant to Rule 60(b)(4) and 60(b)(5) was filed within the same

timeframe, and Respondent presents no argument that the timeframe for filing here was not reasonable. *See Smith Companies of Greenville, Inc. v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993) (“Under Rule 60(b)(4) and (5), the court may grant a party relief from judgment if the party makes a motion seeking relief within a reasonable time.”).

For these reasons, the Motion for Relief from Judgment itself was timely, as is the instant appeal of the denial of said Motion.

B. Appellant’s Motion for Relief is appropriate and not a substitute for appeal.

Respondent contends that Appellant’s Rule 60 motion is essentially an untimely appeal, disguised as a motion for relief from judgment. It is not. The Rule 60 motion seeks relief expressly afforded under Rule 60, rather than a general appeal of the underlying Judgment.

For example, Appellant sought relief under Rule 60(b)(4) on the ground that the August 9, 2023 Judgment is void because Appellant was deprived of due process. This is precisely the type of relief appropriately sought via a Rule 60 motion. *See Sanders v. Smith*, 431 S.C. 605, 616, 848 S.E.2d 604, 609 (Ct. App. 2020) (“[T]he definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction.”). Appellant also sought relief under Rule 60(b)(5) based on satisfaction of the judgment, which Rule 60 expressly authorizes. *See* SCRCP 60(b)(5) (providing relief where “the judgment has been satisfied, released, or discharged ...”). These requests are not substitutes for an appeal, but instead are the proper vehicles to declare a judgment a nullity, due to fundamental procedural defects and/or due process violations.

Moreover, Respondent’s attempt to characterize Appellant’s Motion for Relief as “successive” is ineffective. The Motion for Relief that is the subject of the instant appeal is

independent of any prior Rule 60 motion in the underlying action. The Motion challenges not the June 2022 Order Striking the Answer, but the August 9, 2023 order denying relief related to that sanction. In issuing the latter ruling, Judge Price failed to address any of the factors governing the imposition of discovery sanctions—particularly a sanction as harsh as striking a party’s pleadings. That omission is the basis of the current Rule 60 motion, not the June 2022 ruling.

Respondent invokes Federal Rule of Civil Procedure 60 and the Fifth Circuit’s decision in *Latham v. Wells Fargo Bank, N.A.*, 987 F.2d 1199 (5th Cir. 1993), to argue that Appellant’s filing is an impermissible “successive” Rule 60 motion. *Latham* is not binding on this Court and, in any event, is inapposite. In *Latham*, the Rule 60(b) motion merely repackaged the same grounds previously raised and denied; it functioned as an attack on the denial of a prior post-judgment motion on “virtually identical” grounds. *Id.* at 1203. Here, by contrast, Appellant advances several grounds not raised in any prior Rule 60 filing—including relief under Rule 60(a) and 60(b) based on due process violations, voidness, and satisfaction. The successive motion concerns noted in *Latham* are thus inapplicable here.

C. The trial court erred in denying Appellant’s request for relief under Rule 60(a).

Under SCRCF 60(a), a court may correct clerical errors in a judgment, order, or any other part of the record at any time to ensure the written ruling conforms to the court’s original intent. A correctable “mistake” exists where the text of the order or judgment diverges from the court’s intent at the time of entry, including where an unintended ambiguity obscures that intent. *See Landry v. Landry*, 430 S.C. 153, 161, 843 S.E.2d 491, 495 (2020) (citing *Sartin v. McNair Law Firm*, 756 F.3d 259, 265 (4th Cir. 2014)).

Respondent's assertion that the judgment is clear, complete, and free of clerical error is incompatible with the record, including the Order of Judgment and the Form 4 Order. (RIB pp. 16-17). This position ignores the undisputed omissions and errors identified by Appellant in both documents, most notably the trial court's failure to issue the written order contemplated by the Form 4 Order of Judgment. No order is attached to the Form 4 Order of Judgment, and the court did not file a subsequent order following that Form 4 entry.<sup>2</sup> The Form 4 Order of Judgment also fails to acknowledge Travelers' undisputed \$175,000 prior payment, which creates an ambiguity in the text of the Orders that obscures the court's original intent and, at minimum, constitutes a correctable mistake under Rule 60(a).

These identified deficiencies do not impact the scope of the judgment. Rather, they are clerical errors and/or unintended ambiguities that must be corrected in order to ensure the judgment's intent is clear. *See Sartin*, 756 F.3d at 265–66 (“Rule 60(a) is not confined just to fixing typographical and other clerical errors. The Rule’s text also authorizes a court to correct ‘a mistake arising from oversight or omission.’ ... Such a mistake occurs when there is an inconsistency between the text of an order or judgment and the district court’s intent when it entered the order or judgment.”). Accordingly, the trial court erred in denying Appellant’s requested relief under Rule 60(a).

D. The trial erred in denying Appellant’s request for relief under Rule 60(b).

As to Appellant’s position that the judgment is void based on the trial court’s denial of his due process rights, Respondent argues that this contention “rests on a fundamental confusion between entry of default and default judgment.” (RIB p. 21). Appellant acknowledges that “[t]here is a difference between a defendant being declared in default and subsequently having

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<sup>2</sup> The “Order of Judgment” was filed *before* the Form 4 Order of Judgment and therefore cannot be the forthcoming order referenced in the Form 4 Order of Judgment.

judgment entered against him for damages.” *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241–42, 246 S.E.2d 880, 882 (1978). But it is simply not the case that striking an answer amounts to an automatic entry of default. The plain language of the governing rules refutes that notion.

Under South Carolina Rule of Civil Procedure 37(b)(2)(C), the court may impose sanctions for discovery violations, including “striking out pleadings or parts thereof, dismissing the action or proceeding or any part thereof, or rendering a judgment by default against the disobedient party.” SCRCP 37(b)(C). The rule’s disjunctive structure confirms that striking a pleading is distinct from rendering a default judgment. This Court has recognized the same. *See Griffin Grading & Clearing, Inc. v. Tire Serv. Equip. Mfg. Co.*, 334 S.C. 193, 198, 511 S.E.2d 716, 718 (Ct. App. 1999) (“If a party fails to obey an order to provide or permit discovery, the trial court may impose sanctions such as striking pleadings, dismissing the action, or rendering a default judgment.”) (emphasis added). Under South Carolina Rule of Civil Procedure 55(a), “[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter his default upon the calendar (file book).”

Here, the mandatory entry of default under Rule 55(a) never occurred. And the striking of the Answer did not amount to an entry of default. Respondent’s own Motion to Strike Answer in the underlying action confirms as much. In that motion, Respondent requested not only an order striking the Answer, but *also* an order of default against Appellant and the scheduling of a damages hearing. Had the striking of the answer itself constituted an entry of default, as Respondent now imagines, there would have been no need to seek that additional relief.

Because the Court failed to follow proper procedural mechanisms and enter default, Appellant was deprived of his due process rights. Thus, the August 9, 2023 Judgment void. *See*

*Dymon, Inc. v. Hyman*, 305 S.C. 170, 172, 406 S.E.2d 388, 389 (Ct. App. 1991) (“[A] default judgment rendered without the required notice constitutes a deprivation of due process of law and is void”)(internal quotations and citations omitted).

As to Appellant’s contention that the judgment rests on “mistake, inadvertence, surprise, or excusable neglect,” Respondent asserts that willful discovery violations do not qualify as excusable neglect. Yet Respondent devotes far more attention to these alleged discovery violations—and to the pertinent legal standards—than the Court did, either in its purported June 2, 2023 oral denial of the initial Rule 60 motion or in its August 9, 2023 order, and certainly more than appears in the Court’s February 2, 2025 Form 4 order denying Appellant’s requested relief.

To determine whether relief is warranted under Rule 60(b)(1), a court must evaluate: (1) the promptness with which relief is sought; (2) the reasons for the failure to act promptly; (3) the existence of a meritorious defense; and (4) prejudice to the other party. *See Nelson v. Nelson*, 428 S.C. 152, 174, 833 S.E.2d 432, 443 (Ct. App. 2019). Here, striking Appellant’s answer was an unduly harsh sanction relative to the conduct at issue, particularly where Appellant reasonably—albeit mistakenly—believed his appearance was unnecessary because the matter had settled. (Affidavit of Mustafa).<sup>3</sup> To wit, Respondent does not dispute the contents of Mustafa’s Affidavit, nor does Respondent dispute the admissibility of the same.

In sum, the Court erred in denying Appellant’s motion for relief on the basis of Rule 60(b).

## **CONCLUSION**

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<sup>3</sup> Respondent does not challenge the contents of Mustafa’s Affidavit in her Initial Brief, nor does Respondent dispute the admissibility of the same.

For the reasons stated above and in Appellant's Initial Brief, Appellant respectfully requests that this Court grant the relief requested in his Initial Brief.

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