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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the 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.

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL

I. **Did the lower Court correctly deny Appellants' Motion to Set Aside entry of Default when there was significant testimony and documentary evidence showing that the Appellants were served with copies of the Summons and Complaint?**

II. **Did the lower Court correctly deny Appellants' demand for a damages hearing and entering a default judgment against Appellants in favor of Respondent when the damages sought by Respondent were liquidated and supported by evidence presented to the lower Court?**

STATEMENT OF THE CASE

Respondent Smarthomeenterprise, LLC (hereinafter "Smarthome" or "Respondent"), initiated this action on February 20, 2024, by filing a Summons and Complaint (R. pp. 14-18) for breach of contract relating to an Independent Contractor Agreement (R. pp. 19-26) entered into on May 21, 2023. The Complaint sought damages arising from Appellants Logan Jacob Smith (hereinafter "Smith") and Lifetime Energy, LLC's (hereinafter "Lifetime") failure to perform obligations under the Agreement.

This appeal predominantly concerns whether Appellants were properly served with process on April 7, 2024. The record reflects substantial evidence that service was personally effectuated by a licensed process server on Appellant Smith, both individually and on behalf of Appellant Lifetime. Following Appellants' failure to respond to the Complaint, Respondent then moved for default judgment (R. pp. 51-54) and the Horry County Court of Common Pleas found Appellants in default. (R. pp. 1-2). Subsequently, the Court entered an Order Granting Default Judgment and Damages. (R. pp. 6-9). Appellants now appeal, seeking to overturn the Order Denying Appellants Motion to Set Aside the Entry of Default.

For clarity and the convenience of the Court, a procedural timeline of relevant events is helpful:

Feb. 20, 2024 – Respondent filed the Summons and Complaint with the Horry County Court of Common Pleas (R. pp. 14-18)

April 7, 2024 – Appellant Smith is served individually and on behalf of Appellant Lifetime Energy, LLC at 3507 Burris Street, North Myrtle Beach, SC (R. pp. 49-50)

April 9, 2024 – Edward Spicer signs the Affidavit of Service for both Appellant Smith individually and on behalf of Appellant Lifetime Energy, LLC (R. pp. 49-50)

May 20, 2024 – Respondent filed the sworn Affidavits of Service with the Horry County Court of Common Pleas (R. pp. 49-50)

May 23, 2024 – Respondent files an Affidavit of Default and Proposed Order for Entry of Default with the Horry County Court of Common Pleas (R. p. 1 and R. pp. 51-54)

May 23, 2024 – Horry County Clerk of Court enters an Order for Entry of Default (R. pp. 1-2)

Nov. 1, 2024 – Respondent files a Motion for Entry of Damages and Affidavit of Damages with the Horry County Court of Common Pleas (R. pp. 55-56 and R. p. 98)

Nov. 6, 2024 - Appellants file a Notice of Appearance and Motion to Set Aside the Entry of Default (R. pp. 57-59)

Dec. 18, 2024 - Appellants file a Memorandum in Support of their Motion to Set Aside the Entry of Default and an Affidavit of Appellant Smith (R. pp. 60-70)

Jan. 13, 2025 - Respondent files a Memorandum in Opposition of Appellants Motion to Set Aside the Entry of Default and an Affidavit of Edward Spicer testifying to the events of April 7, 2024, and a timestamped photograph of service being effectuated (R. pp. 91-97)

Mar. 18, 2025 – A hearing on Appellants Motion to Set Aside the Entry of Default was held in which Appellants' Counsel, Respondent's Counsel, and Edward Spicer were present. Live testimony of Edward Spicer was taken.

Mar. 27, 2025 - Respondent filed a Proposed Order for Entry of Damages with the Horry County Court of Common Pleas (R. pp. 6-8)

April 2, 2025 - Appellants filed a Supplemental Affidavit of Appellant Smith along with three (3) Witness Affidavits of Alan Ortiz, Jenson Rudd, and Mailik Horman (was emailed the day of the March 18, 2025 hearing) (R. pp. 85-90 and R. pp. 100-102)

April 9, 2025 - Judge George McFaddin, Jr. entered an Order Granting Default Judgment and Damages (R. pp. 6-9)

April 21, 2025 – Appellants filed a Motion to Reconsider the Order Granting Judgment and Damages along with an Affidavit of Service indicating notice provided to Respondent's counsel (R. pp. 103-110)

April 24, 2025 - Judge George McFaddin, Jr. entered a Form 4 Order declining to alter, amend, or vacate the ruling on his previously entered Order Granting Default Judgment and Damages (R. pp. 10-12)

May 27, 2025 - Appellants filed a Notice of Appeal to the Court of Appeals with the Horry County Court of Common Pleas

STATEMENT OF THE FACTS

Respondent Smarthome is a South Carolina limited liability company authorized to do business in the State of South Carolina. Appellant Smith is the owner and sole member of Appellant Lifetime. Appellant Lifetime is a Utah limited liability company authorized to do business in the State of South Carolina.

On May 21, 2023, Appellant and Respondent entered into a written Independent Contractor Agreement under which Respondent was retained to act as a sales subcontractor for Appellant's residential solar-energy products and services company. (R. pp. 19-26). Pursuant to the terms of the Agreement, Respondent's responsibilities included identifying qualified customers of Appellant's rooftop solar systems and securing executed sales contracts for installation by Appellants. (R. pp. 19-26).

Under the Agreement compensation schedule, Appellant was entitled to payment calculated at "$2.15 per watt of system capacity, based on the system's price, minus the cost of financing and any additional adders," applicable to a given project. (R. p. 26). After each sale procured by Respondent, Appellant was responsible for performing all remaining obligations to the customer, including installation of the system, maintenance, and any required post-installation servicing.

In accordance with the Agreement, Respondent procured numerous sales on behalf of Appellant. Respondent generated customer leads, prepared sales proposals, and obtained executed agreements for the installation of Appellant's rooftop solar systems. These sales were accepted and processed by Appellant, and Appellant proceeded to install the systems sold by Respondent.

Despite Respondent's full performance of its contractual obligations, Appellant failed to compensate Respondent for numerous completed and accepted sales. In several instances,

Appellant received the benefit of Appellant's work, including finalized sales and the associated revenue from installed systems, yet refused to remit the commissions owed under the express terms of the compensation schedule. Respondent made repeated inquiries and demands for payment, but Appellant did not issue the required compensation and did not provide a contractual basis for withholding payment.

As a result of Appellants' failure to pay commissions earned under the Agreement, Respondent suffered substantial financial losses. After Appellants continued to withhold payment on multiple sales, Respondent initiated the underlying action for breach of contract by filing the Summons and Complaint on February 20, 2024, seeking to recover all sums rightfully owed under the parties' Agreement, together with pre-judgment and post-judgment interest, costs, attorney's fees as provided in the Agreement, and any other relief deemed appropriate by the Court.

Edward Spicer (hereinafter "Spicer"), the process server, was responsible for personally effectuating service of process on Appellants. On April 7, 2024, Mr. Spicer personally served Appellant Smith, individually and on behalf of Appellant Lifetime, at 3507 Burris Street, North Myrtle Beach, SC 29582 (the "Residence"). On April 9, 2024, Mr. Spicer executed an Affidavit of Service attesting that service had been completed on Appellants, which was filed with the Court on May 20, 2024. (R. pp. 49-50). On May 23, 2024, Respondent filed an Affidavit of Default and a proposed Order for Entry of Default and the Horry County Clerk of Court entered an Order for Entry of Default that same day. (R. p. 1 and R. pp. 51-54). On November 1, 2024, Respondents filed a Motion for Entry of Damages and an Affidavit of Damages (R. pp. 55-56 and R. p. 98). On November 6, 2024, Appellants filed a Notice of Appearance and a Motion to Set Aside the Entry of Default. (R. pp. 57-58). On December 18, 2024, Appellants filed a Memorandum in Support of

their Motion to Set Aside the Entry of Default, along with an Affidavit of Appellant Smith. (R. pp. 60-70).

Appellant Smith's affidavit asserted that he was not served on April 7, 2024, as indicated on the Affidavit of Service executed by Edward Spicer. Appellant claimed that he was traveling out of state on the date in question, and therefore, could not have been present at the residence where Spicer reported effectuating personal service. (R. p. 68). Appellant stated that he departed on an outbound flight from Myrtle Beach, South Carolina, which included a layover in Atlanta, Georgia, before continuing to his final destination in Houston, Texas. (R. p. 68). In support of this claim, Appellant Smith attached receipts and booking confirmations relating to the flight he stated he took on April 7, 2024. (R. pp. 80-81).

Appellant Smith further averred that he remained in Houston, Texas until April 9, 2024, two days after the date on which Spicer attested he personally served Smith at Smith's Residence. (R. p. 68). Appellant stated that during this period, he stayed at an Airbnb, producing a reservation confirmation purporting to show that he booked accommodation in Houston, Texas, for the relevant dates. (R. p. 82). Additionally, Appellant submitted a credit card statement reflecting transactions dated April 7, 2024, which he claims further corroborated his assertion that he was not present at the Residence and therefore, could not have been personally served on April 7, 2024. (R. p. 83-84).

In support of Respondent's position of proper service, Respondent filed a Memorandum in Opposition to Appellants' Motion to Set Aside the Entry of Default along with the Affidavit of Edward Spicer and a timestamped photograph of service being completed on January 13, 2025. (R. pp. 91-97). Mr. Spicer's Affidavit argued that service was effectuated on Appellant Smith on April 7, 2024. (R. p. 95). In his Affidavit, Spicer testified that he had been employed as a

professional process server for approximately twenty-four (24) years and that he was responsible for effectuating personal service of process of Appellant Smith in the underlying action. (R. p. 94). Spicer stated that, prior to attempting service, he was provided with a photograph of Appellant's truck, which he used to confirm he had arrived at the correct residence at 3507 Burris Street, North Myrtle Beach, South Carolina 29582. (R. p. 94).

Upon arrival, Spicer observed a truck in the driveway that matched the photograph of Appellant Smith's vehicle he had been given for identification purposes. (R. p. 94). Spicer attested that he made several attempts at knocking on the front door before Appellant Smith answered. (R. p. 95). Spicer then took a photograph of Appellant Smith standing at the doorway of the Residence, which was automatically timestamped April 7, 2024, using an application on his iPhone known as "Timestamp". (R. p. 95). Spicer clarifies that the "Timestamp" application relies on the phone's internal data, including the time, date, and geolocation, to generate an automatically imprinted digital timestamp on each image. (R. p. 95).

Spicer further testified in his Affidavit that he signed the Affidavit of Service on April 9, 2024, two days after the encounter on April 7, 2024, documented in the timestamped photograph. (R. p. 95). Spicer affirmed that his longstanding practice is to take a timestamped photograph every time he personally serves an individual, and that he adheres strictly to that procedure. (R. p. 95). Spicer also maintained unequivocally that he would not have signed an Affidavit of Service had he not personally effected service upon Appellants. (R. p. 95).

Appellants' Motion to Set Aside Default was heard on March 18, 2025. At the hearing, both parties appeared through counsel, and Respondent called Edward Spicer to testify in person regarding the circumstances of service. During his direct examination, Spicer offered testimony consistent with the statements contained in his Affidavit. Spicer explained that he was the

individual assigned to carry out personal service on the Appellants. (R. p. 39, lines 19-22). Spicer recounted that he drove to 3507 Burris Street, North Myrtle Beach, SC 29582, and upon arriving, he observed a truck parked in the driveway that matched the photograph of Appellant's vehicle he had been provided. (R. p. 40, lines 13-19). Spicer testified he knocked on the door multiple times before Appellant eventually came to the entryway. (R. p. 40, line 22 - p. 41, line 5). According to Spicer, he then used an iPhone application called "Timestamp" to capture a photograph of Appellant as he stood in the doorway, and that image reflected the date April 7, 2024. (R. p. 39, line 23 – p. 40, line 12). Spicer explained that the Timestamp application automatically embeds the date, time, and location data derived from his phone into each photograph. (R. p. 39, line 23 – p. 40, line 12). Spicer testified that he unmistakably served process upon Appellants. (R. p. 41, lines 6-13). The Court then took the matter under advisement.

Appellants filed a Supplemental Affidavit of Appellant Smith in addition to the Affidavits of Alan Ortiz, Jenson Rudd, and Mailik Horman, who were allegedly present at the residence on the date that service was effectuated on April 7, 2024. (R. pp. 85-90 and R. pp. 100-102). In his supplemental affidavit, Appellant Smith again asserted that service did not occur on April 7, 2024. (R. p. 100). Instead, Smith changed his testimony after seeing the Affidavit of Mr. Spicer, stating that on April 6, 2024, while consuming alcohol and playing video games with friends, he heard a knock at the door. (R. p. 100-101). According to Appellant Smith, when he opened the door, he observed a man, later identified as Edward Spicer, standing outside. (R. p. 101). Appellant Smith claimed that, frustrated at being interrupted from his game, he promptly turned around and closed the door. (R. p. 101). Appellant Smith testified that he was never handed any paperwork, nor was any documentation left with him. (R. p. 101). The three (3) witness affidavits submitted alongside Appellant Smith's Supplemental Affidavit attempt to corroborate this account, each asserting that

Appellant Smith did not return inside the Residence with any documents or paperwork following the interaction at the door. (R. pp. 85-90).

Despite the Supplemental Affidavit of Appellant Smith and the Affidavits of Alan Ortiz, Jenson Rudd, and Mailik Horman, the Court ruled in favor of Respondent and, on April 9, 2025, entered an Order Granting Default Judgment and Damages. (R. pp. 6-9). In light of the substantial, objective, and contemporaneous evidence presented by Respondent, the Court found the testimony of Mr. Spicer credible and entered judgment accordingly.

Following the entry of the Order Granting Default Judgment and Damages, Appellants filed a Motion to Reconsider that Order on April 21, 2025. (R. pp. 103-110). On April 24, 2025, the Court entered a Form 4 Order declining to alter, amend, or vacate its prior ruling after reviewing the filings and the Court's notes. (R. pp. 10-12). Appellants thereafter filed a Notice of Appeal to the South Carolina Court of Appeals on May 27, 2025.

STANDARD OF REVIEW

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.,* 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co. v. Gaffney,* 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997).

ARGUMENT

I. The lower court correctly denied Appellants' Motion to Set Aside the Entry of Default as there is substantial objective and detailed proof that service was effectuated on April 7, 2024.

The Circuit Court properly refused to set aside the default because the record amply supports each prerequisite for denying relief. First, substantial evidence produced by Respondent establishes that the Appellants were personally served with process of April 7, 2024. Second, Appellant did not demonstrate good cause to set aside the entry of default as required by Rule 55(c), SCRCP, offering only conclusory assertions rather than a credible explanation for the failure to plead or otherwise defend this action.

A. Service of Process

Under Rule 4(d)(1), SCRCP, service shall be made as follows:

> Upon an individual other than a minor under the age of 14 years or an incompetent person, by delivering a copy of the summons and complaint to him personally or by leaving copies thereof at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or by delivering a copy to an agent authorized by appointment or by law to receive service of process. Rule 4(d)(1), SCRCP.

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. *Roche v. Young Bros.*, 318 S.C. 207, 209, 456 S.E.2d 897, 899 (1995). "We have never required exacting compliance with the rules to effect service of process." *Id.* at 209-210, 456 S.E.2d at 899. "Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings." *Id.* at 210, 456 S.E.2d at 899. A presumption of proper service exists when the rules governing service are followed. *Id.* at 211, 456 S.E.2d at 900.

An affidavit of service is prima facie evidence of service. *Richardson Constr. Co., v. Meek Eng'g and Constr., Inc.*, 274 S.C. 307, 311, 262 S.E.2d 913, 915 (1980). An officer's return of process creates the legal presumption of proper service that cannot be impeached by the mere denial of service by the defendant. *Id.* at 311, 262 S.E.2d at 916. Proof of service by an affidavit of service only is insufficient when confronted with other facts and circumstances attending it. *Id.* at 311, 262 S.E.2d at 915. When 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. v. Lord,* 289 S.C. 458, 461, 346 S.E.2d 724, 726 (1986).

Here, the principal issue on appeal is whether Appellant Smith was personally served with the Summons and Complaint on April 7, 2024. The record shows that Respondents presented vast and substantial evidence demonstrating that the rules governing service of process were fully satisfied. Edward Spicer, the process server responsible for personally serving Appellants, submitted a sworn Affidavit of Service, attesting that he personally served Appellants on April 7, 2024. (R. pp. 49-50). He corroborated this affidavit with a timestamped photograph taken on the same date, which contained embedded metadata reflecting the precise time, date, and geolocation of service. (R. p. 93). Mr. Spicer also executed a detailed sworn affidavit recounting the events of April 7, 2024, again affirming that service was effectuated and emphasizing that he would not have signed an affidavit of service had service not occurred. (R. pp. 94-95). In addition, Mr. Spicer provided live testimony at the hearing on Appellants' Motion to Set Aside the Default Judgment, during which he unequivocally maintained that he personally served Appellants with the Summons and Complaint. Taken together, this body of evidence overwhelmingly establishes that proper service was accomplished.

The testimony of Spicer during the March 18, 2025, hearing on Appellants Motion to Set Aside the Entry of Default was as follows:

> Mr. Henderson: Mr. Spicer, you've just listened to, you know, my – my opening here, and Mr. opposing counsel, Jarrett. Do you recall serving Mr. Logan Smith on April 7th?
>
> Mr. Spicer: Yes, I do.
>
> Mr. Henderson: Okay. Do you – can you explain how your app works or what that's called that time-stamps it?
>
> Mr. Spicer. Sure. The – I use an app so that, when I go to take a picture, all I do is open that app, and it automatically takes the picture and puts the date/time stamp on it as opposed to your normal camera app that is on your Android or your iPhone. So there's no altering of the date and time.
>
> You set it up how you want it, whether you want the date, the time, the address; you want just the date and time, what have you. It automatically uses the GPS from your phone and the date and time from your phone and puts it in the bottom right-hand corner of the photo.
>
> Mr. Henderson: Okay. Mr. Spicer, I'm going to ask you a very direct question: Did you manipulate that date and change it?
>
> Mr. Spicer: Absolutely not. It's impossible.
>
> R. p. 39, line 19 – p. 40, line 12.

The line of questioning continued:

> Mr. Henderson: Okay. I don't want to belabor this, but will you just explain to me about how you effected service? And then that'll be all the questions I got, your Honor.
>
> Mr. Spicer: Sure. I knocked on – I knocked on the door. I could hear some sort of noise inside, so I continued to knock on the door. Finally, he [Smith] answered the door. I asked for him [Smith]. He [Smith] identified himself. He [Smith] -- I – I believe I said something to him like, "Geez, I really had to knock hard."
>
> He [Smith] goes, "Yeah, I was playing a TV – game on TV." He [Smith] had the headphones around his neck.

> I handed it to him [Smith]. For my own safety, I don't stand right at the doorjamb anyways; I always stand 6 or 8 feet back. And I handed it to him [Smith], and that was the end of it. I left.
>
> Mr. Henderson: And so, to clarify, you handed the papers to Mr. Logan Smith?
>
> Mr. Spicer: Yes, I did not drop them in the doorjamb or leave them on his truck. He [Smith] was handed them to him.
>
> R. p. 40, line 20 – p. 41, line 13.

Appellants' evidence does not overcome the substantial and detailed evidence provided by Respondent. Appellant Smith's self-serving affidavit asserts that he was in Houston, Texas, on the date of service, but such an assertion cannot outweigh the sworn Affidavit of Service, the corroborating metadata-verified photograph, detailed narrative affidavit of Mr. Spicer, and live testimony provided by Mr. Spicer establishing that service occurred on April 7, 2024. As stated above, an officer's return of process creates the legal presumption of proper service that cannot be impeached by the mere denial of service by the defendant. *Richardson Constr. Co.*, 274 S.C. at 311, 262 S.E.2d at 916.

Likewise, Appellants' three attesting witnesses, who claim they were present in the home at the time service was effectuated and that Appellants never returned with any documentation, offer statements that are inconsistent with the objective, contemporaneous evidence submitted by Respondent. Nor do Appellants' additional documents, including the plane ticket, lodging confirmation, and credit card charge in Texas, demonstrate that service could not have been effectuated. These materials show only that transactions and or potential travel activity occurred around that time. These documents do not conclusively establish Appellant Smith's precise whereabouts at the specific time Mr. Spicer testified he personally served Appellant Smith, nor do they foreclose the possibility of Appellant Smith's presence or access to the Residence.

Accordingly, Appellants' submissions fail to create any credible dispute regarding the validity of service.

BB&T v. Taylor provides some additional insight on a few issues dealt with presently. *BB&T v.* Taylor, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006). In *BB&T*, the Court dealt with the dispositive issue of what constitutes delivery of a copy of the summons and complaint to the individual personally and where during the attempt at issue the process server believed an individual was inside the residence but never saw or communicated with the individual. *Id.* at 552, 633 S.E.2d at 503. On his final visit, after announcing his intention to leave the papers, the process server posted the summons and complaint on Taylor's front door. *Id.* at 553, 633 S.E.2d at 503. Taylor never responded, and the court entered a default judgment against Taylor. Taylor subsequently moved to have the default judgment set aside. *Id.* at 550, 633 S.E.2d at 502.

In the *BB&T* Court's analysis of the facts and applicable law, the Court discusses *Patel v. Southern Brokers, Ltd.*, as they found *Patel* instructive. *Patel v. S. Brokers, Ltd.*, 277 S.C. 490, 289 S.E.2d 642 (1982). Noting "technical objections to service of process" had been overruled "where the defendant had not been denied due process," the Court found a defendant could not avoid process by refusing to accept registered mail known to contain a summons and complaint. *Id.* at 494, 289 S.E.2d at 645. Once the documents were made available to the defendant, "the mailman was not required to ram them down the Defendant's throat." *Id.* at 495, 289 S.E.2d at 645. The Court concluded the defendant had been served with process and the lower court had jurisdiction over the defendant.

The *BB&T* Court concluded by opining that the process server is not required to ram the documents down a defendant's throat and personal service of process "should not become a game of wiles and tricks." 62B Am. Jur. 2d *Process* § 190 (2005). "However, there must be something

more than a mere suspicion of a defendant's refusal to accept the summons and complaint before we are willing to find a defendant was sufficiently served with process by a means other than strict compliance with Rule 4(d)(1), SCRCP." *BB&T*, 369 S.C. at 554-55, 633 S.E.2d at 504-05. The Court found that the lower court abused its discretion in denying Taylor's motion to set aside the judgment and reversed the Court of Appeals' decision largely because of the process server's mere speculation that an individual of suitable age and discretion was inside Taylor's residence and was refusing to communicate with him during his attempts to serve process.

Presently, our case is readily distinguishable from *BB&T*. Unlike in *BB&T*, where the record showed that the process server speculated that an individual of suitable age and discretion was in the home, announced that he was serving process, and left it posted to the front door, there is credible evidence to show that Appellants answered the door and were served. The record contains substantial evidence corroborating valid service. Mr. Spicer testified, both in his sworn Affidavits of Service (R. pp. 49-50), in a subsequent affidavit detailing the events of April 7, 2024 (R. pp. 94-95), as well as during live testimony, that he personally went to the residence, approached the front door, knocked, announced that the Appellant was being served, and actually served Appellant. This account is further supported by the timestamped photograph documenting the encounter. (R. p. 93). Looking beyond the face of the Affidavit of Service, there is evidence to show that service was effectuated.

Alternatively, even accepting Appellants' version of events, which Respondent expressly denies, the record nevertheless supports a finding that service of process was effectuated. Appellants concede, both in their Appellate Brief and in Appellant Smith's supplemental affidavit, that Appellant Smith answered the door to an individual at the residence on April 7, 2024, whom the record identifies as Edward Spicer. (R. p. 101). At the March 18, 2025, hearing on Appellants'

Motion to Set Aside the Entry of Default, Spicer testified without contradiction that he knocked on the door and announced that Appellant Smith was being served with legal process. (R. p. 40, line 20 – p. 41, line 13). Once Spicer contacted Appellant at the Residence and clearly announced the purpose of his presence, Rule 4(d)(1), SCRCP, did not require him to physically force the summons and complaint into Appellant's hands. Under these circumstances, and even if Appellant claims that he turned around when Mr. Spicer announced himself without being handed the summons and complaint, Respondent substantially complied with the service requirements of Rule 4(d)(1), SCRCP, and the Court should conclude that service of process occurred. Appellants cannot defeat service by avoiding or refusing to accept service of process once service is attempted and the documents are made available.

Furthermore, "credibility determinations regarding testimony are a matter for the finder of fact, who has the opportunity to observe the witnesses, and those determinations are entitled to great deference on appeal." *Ex parte Trustgard Ins.*, 442 S.C. 485, 506-07, 900 S.E.2d 448, 459 (Ct. App. 2023). "Because the appellate court lacks the opportunity for direct observation of the witnesses, it should accord great deference to circuit court findings where matters of credibility are involved. *Id.* at 506, 900 S.E.2d at 459. In *RRR v. Toggas*, the court determined "the circuit court did not abuse its discretion in finding one witness's testimony more credible than another's in denying a motion to set aside a judgment." *RRR v. Toggas*, 378 S.C. 174, 182, 662 S.E.2d 438, 442 (Ct. App. 2008). The South Carolina Supreme Court has noted, "without explicit findings of fact by the circuit court, an appellate court's decision can only be based on the implicit credibility determination of the circuit court." *USAA Prop. & Cas. Ins. v. Clegg*, 377 S.C. 643, 652, 661 S.E.2d 791, 796 (2008).

The Horry County Circuit Court was able to assess the credibility of Mr. Spicer during live testimony on March 18, 2025. Given the Circuit Court's Order denying Appellant's Motion to Set Aside, the Circuit Court clearly determined that the testimony of Mr. Spicer was more credible than the Affidavits of Appellant Smith and the three (3) witness affidavits submitted by Appellants. Given that the Circuit Court did not explicitly make any findings of fact, the Appellate Court's decision should be based on the credibility determination of Mr. Spicer's testimony and great deference should be given to the testimony of Mr. Spicer on appeal.

B. Failure to Show Good Cause

Rule 55(a) of the South Carolina Rules of Civil Procedure provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. Rule 55(a), SCRCP. 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.*, 298 S.C. 462, 465, 381 S.E. 2d 499, 501-02 (Ct. App. 1989). The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support of the record for the finding of the lack of good cause. *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995). A motion under Rule 55(c) is addressed to the sound discretion of the trial court. *Williams v. Stalnaker,* 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994).

Under Rule 55(c), SCRCP, a trial judge is not required to make specific findings of fact as to each *Wham* factor, such as the timing of the motion for relief, the existence of a meritorious defense, or the degree of prejudice to the plaintiff, so long as the record contains sufficient evidentiary support for the Court's determination that good cause was lacking for the failure to answer the complaint. Here, the evidence supporting Respondent's position that Appellants were served with process on April 7, 2024, is clear and well documented on the record. Once Appellants were served, they were under a legal obligation to respond, yet they failed to appear or otherwise answer the complaint until November 6, 2024, approximately seven (7) months after service was completed.

Even when the *Wham* factors are considered, they weigh heavily against relief. Appellants delay was substantial and unexplained besides Appellants assertions that they didn't receive the summons and complaint, which the evidence on the record contradicts. Appellants failed to establish a meritorious defense, relying instead on mere conclusory assertions unsupported by any competent evidence. Notably, Appellants submitted no evidence whatsoever to substantiate the allegations in Appellant Smith's Affidavit that Respondent's conduct was fraudulent in nature. Such unsupported allegations are insufficient as a matter of law to demonstrate a meritorious defense. Additionally, Appellant's argument that Appellant Smith is not a party to the Agreement and therefore, should not have been named as a defendant, is a merits-based defense that should have been raised had the case proceeded in the ordinary course. By allowing default to be entered and maintained, Appellants waived the opportunity to litigate such defenses on the merits, and they cannot now rely on them to establish good cause for relief from default.

Finally, Respondent would suffer significant prejudice if default were set aside. Respondent entered into the contract in 2023, incurred substantial financial losses due to

Appellants' failure to pay commissions rightfully owed under the Agreement, properly initiated the action, effectuated service, and proceeded in accordance with the South Carolina Rules of Civil Procedure by seeking default. Appellants' prolonged inaction for nearly seven (7) months, followed by their appearance only after Respondent sought entry of damages, their subsequent appeal, and repeated requests for extensions, have substantially delayed resolution of this matter and further postponed Respondent's ability to recover the commissions owed. Under these circumstances, the trial court acted well within its discretion in finding a lack of good cause and declining to set aside the default.

"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, it was his duty to answer the complaint. . . Therefore, he must suffer the consequence of his failure to answer." *Hill v. Dotts*, 345 S.C. 304, 310, 547 S.E.2d 894, 897 (Ct. App. 2001).

Accordingly, the Court of Appeals should not disturb the Circuit Court's ruling and should affirm the Order denying Appellants Motion to Set Aside Default Judgment.

II. The lower court correctly denied Appellants' demand for a damages hearing as Respondent's damages constituted liquidated damages and were susceptible to being made certain by mathematical calculation of known factors.

The damages awarded by the trial court were properly entered because they constitute liquidated damages that were capable of being made certain by simple mathematical calculation based on the clear and unambiguous terms of the parties' agreement. In its April 9, 2025, Order, the Court entered damages using the agreed-upon contractual formula, requiring no fact-finding beyond application of the known terms of the Agreement. Accordingly, a separate evidentiary damages hearing was unnecessary. In addition, the Court awarded attorney's fees after considering

the reasonableness factors after the hearing on March 18, 2025. The resulting award was within the Court's discretion and supported by the record.

A. Actual Damages

Under Rule 55(b) of the South Carolina Rules of Civil Procedure, when a plaintiff makes a claim for liquidated damages, a sum certain, or a sum which can by computation be made certain, he may prove the amount of damages simply by filing an affidavit of the amount due. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90-91, 757 S.E.2d 557, 560 (Ct. App. 2014). *See* Rule 55(b)(1), SCRCP ("When the claim of a party seeking judgment by default is for a liquidated amount, a sum certain or a sum which can by computation be made certain, the judge, upon motion or application of the party seek default, and *upon affidavit of the amount due*, shall enter judgment for that amount.").

In *Lewis v. Congress of Racial Equality*, the South Carolina Supreme Court declared, "in liquidated-damages cases, the amount is usually a sum certain, or at least the amount is capable of ascertainment by computation. *Lewis v. Congress of Racial Equality*, 275 S.C. 556, 560, 274 S.E.2d 287, 289 (1981). *Beckmann* uses the Black's Law Dictionary definition of liquidated damages, stating liquidated damages are "an amount contractually stipulated" in contrast to unliquidated damages which are "damages that . . . cannot be determined by a fixed formula, so they are left to the discretion of the judge or jury." *Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co.* 360 S.C. 127, 130, 600 S.E.2d 76, 78 (Ct. App. 2004) (citing *Liquidated Damages, Black's Law Dictionary* (7th ed. 1999)). Liquidated damages "are damages the amount of which has been made certain and fixed either by the act and agreement of the parties or by operation of law to a sum which cannot be changed by the proof." 22 Am. Jur. 2d *Damages* § 489 (2003). "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.*

Appellants' assertion that the damages were unliquidated and incapable of calculation mischaracterizes both the contract and the evidentiary record. The Agreement clearly outlines the equation for calculating damages and establishes a precise, objective formula for determining the Respondent's compensation. Respondent's compensation is calculated by taking the proceeds of sale above $2.15 per watt base price minus the cost of financing or additional adders, if any. (R. p. 26).

Once those undisputed figures are inserted into the contract's pricing structure, the amount owed is derived by straightforward arithmetic, not estimation or judicial discretion. The known factors involved in the calculation are clearly evidenced in the Agreement. (R. p. 26). Notably, the damages amount did not evolve or fluctuate during the proceedings. The same damages figure was pled in the Complaint and carried through unchanged in the Motion for Damages. (R. p. 3 and R. p. 98). Because the damages were capable of ascertainment by simple computation from the contract terms and the evidence presented, they were liquidated as a matter of law, and the Circuit Court properly awarded damages. Accordingly, there is no basis to disturb the Order on appeal.

B. Attorney's Fees

Lastly, as to the award of attorney's fees and costs in the Court's Order, "the review of attorney fees awarded pursuant to a contract is governed by an abuse of discretion standard." *S.C. Elec. & Gas Co. v. Hartough*, 375 S.C. 541, 550, 654 S.E.2d 87, 91 (Ct. App. 2007). An appellate court will not reverse an award unless it is based on an error of law or is without any evidentiary support. *Laser Supply & Servs., Inc. v. Orchard Park Assocs.*, 382 S.C. 326, 340, 676 S.E.2d 139, 147 (Ct. App. 2009). 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).

A request for attorney's fees was made by the Plaintiff in the Complaint and in the Plaintiffs Motion for Entry of Default Against Defendants and For Damages Hearing. (R. p. 17 and R. pp. 55-56). Ultimately, upon the hearing for Appellants Motion to Set Aside the Entry of Default, the Court entered an Order of Damages granting Respondents attorney's fees. (R. pp. 6-9). The relevant factors in *Jackson* were addressed in connection with the Court's ruling after the March 18, 2025, hearing and were not arbitrary or summary in nature. The award of attorney's fees was further memorialized in the written order entered by Judge McFaddin on April 9, 2025, which set forth findings of fact supporting the reasonableness of the fees awarded. (R. pp. 6-9). Because the lower court evaluated the proper factors and incorporated its findings into a written order, the award of attorney's fees was well within the court's discretion and should not be disturbed on appeal.

CONCLUSION

In closing, the record unmistakably establishes that Appellants were served with process on April 7, 2024 and there is ample evidentiary support for the Circuit Court's finding that Appellants failed to demonstrate good cause for their failure to answer. Under Rule 55(c), SCRCP, the Circuit Court was not required to make specific findings of fact as to each of the *Wham* factors, and the absence of such findings does not constitute error where, as here, the record supports the court's determination. Moreover, even if the *Wham* factors are considered, Appellants failed to satisfy them.

The damages awarded were expressly contemplated by the parties' Agreement and were readily ascertainable by simple mathematical calculation using the known contractual terms, obviating the need for a separate damages hearing. The Circuit Court likewise entered an award of attorney's fees at Respondent's request after considering the *Jackson* factors, and that determination was memorialized in a written order.

Therefore, the Court should affirm the Order of the lower court dated April 9, 2025, deny the Appellants' Motion to Set Aside Entry of Default, and deny Appellants' request for a damages hearing.

Respectfully submitted,

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