THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

Shirley Reed,

Respondent,

v.

OHM Florence, LLC,

Appellant,

FINAL BRIEF OF APPELLANT

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STATEMENT OF THE CASE AND FACTS

The Subject Complaint

In this action, Respondent Shirley Reed ("Respondent" or "Ms. Reed") brought claims against OHM Florence, LLC ("Appellant" or "OHM"), alleging OHM to be liable for injuries Ms. Reed sustained when she allegedly "stepped on loose rocks in the parking lot causing her to fall to the ground backwards" at a restaurant in Florence, South Carolina called the Thunderbird Country Buffet ("Thunderbird") on November 8, 2023. (Complaint at ¶¶ 1–2, 10, 12 (R. 38, 39)). Although Ms. Reed's Complaint alleged upon information and belief that OHM "was in possession and control of the premises" and doing business as Thunderbird Country Buffet (*see id.* at ¶¶ 2, 7 (R. 38, 39)), OHM later submitted evidence undisputed by the parties showing that Thunderbird was a separate entity which had leased the premises from OHM for the purpose of operating the restaurant (*see* Lease Agreement, Exhibit 1 to Renewed Mot. to Set Aside Entry of Default or, Alt., for Summary Judgment and Incorp. Mem. of Law in Support (R.p. 157)).

Ms. Reed alleged three causes of action against OHM, the only named defendant: (1) premises liability to Ms. Reed as a business invitee; (2) negligence in allegedly creating, failing to remedy, or neglecting to warn of the condition presented by the alleged loose gravel; and (3) vicarious liability for the actions of the Thunderbird restaurant's employees with respect to their duty to maintain a reasonably safe environment for customers. (*See* Compl. at ¶¶ 13–19, 20–23, 24–28 (R. 40–44)). Notably, as will be discussed in Section II of this Brief regarding OHM's meritorious defenses as to liability, none of these causes of action are ultimately viable where OHM merely leased the subject premises to Thunderbird, which owned, operated, and maintained the restaurant.

The Default

Ms. Reed filed her Summons and Complaint on March 5, 2024, approximately four months after the subject incident at the restaurant. (*See* Compl. at ¶ 10 (R.p. 39)). On April 25, 2024—long after the expiration of her ten-day window to do so under Rule 5(d), SCRCP—Ms. Reed filed a Certificate of Service purporting to show that on March 18, 2024, service had been effected upon Sagar Patel as registered agent for OHM at the registered address of 340 Plantation View Lane, Mount Pleasant, SC 29464. (*See* Certificate of Service (R.p. 45)). Sagar Patel, however, was not in the state of South Carolina at the time of this purported service. (*See* Amended Motion to Set Aside Default (R.p. 64–68)). Rather, as established by Mr. Patel's affidavit and by his rental car and flight receipts, he was traveling from Denver, Colorado to Atlanta, Georgia that day. (*See id*. at Exhibits 1–4 (R.p. 69–79)). It was Mr. Patel's accountant, Kevin Leichhardt, who resides at the registered address in Mount Pleasant with his wife, that is believed to have signed for receipt of the service of process. (*See* Transcript of March 31, 2025 Hearing at 8 (R.p. 191)).

The day after filing her certificate of purported service, April 26, 2024, Ms. Reed filed a Request for Default, citing the Certificate of Service and representing that OHM's registered agent had accepted service on March 18, 2025. (*See* Request for Entry of Default Judgment (R.p. 46-47)). The Court entered an Order of Default on May 2, 2024, finding that "proper and good service was made upon Defendant pursuant to Rule 4(d)(1), SCRCP." (*See* Order of Default at 1 (R.p. 1)). Ms. Reed then moved for a damages hearing. (*See* Plaintiff's Motion and Order for Reference (R.p. 60)). On May 9, 2024, the case was referred to Judge Haigh Porter as Master-in-Equity for a damages hearing. (*See* Order Appointing Master (R.p. 5-6)).

On June 21, 2024, approximately fifty days after the entry of default (three months after the purported service of the Complaint; eight months after the subject incident), OHM filed a

Motion to Set Aside Entry of Default. (*See* Motion to Set Aside Entry of Default (R.p. 61-63)). In its motion, OHM explained, among other arguments, that prior to the purported service of the Complaint, OHM had received a preservation letter from Ms. Reed which—likely due to Ms. Reed's misapprehension of OHM's relationship with the Thunderbird restaurant—requested material (surveillance footage) which OHM did not possess. (*See id*.). Reasoning that it could not provide what it did not possess, OHM did not forward the document to its insurer, and when it eventually received Ms. Reed's Complaint, OHM mistakenly concluded that responsive action was still unnecessary, and it did not forward that document to its insurer, either. (*See id*.). Upon subsequent realization of the nature and purpose of the Complaint, however, OHM's insurer was notified and, within just a few days, retained counsel who submitted the Motion to Set Aside Default. (*See id*.).

On August 1, 2024, OHM filed an Amended Motion to Set Aside Default, which provided the court with further argumentation and evidence in favor of relief from default. (*See* Amended Motion to Set Aside Default (R.p. 64-68)). In the amended motion, OHM reiterated its prior explanation of how the default occurred and again advanced arguments showing that the factors for setting aside default under Rule 55(c), SCRCP, weighed in OHM's favor because (1) it had promptly moved for relief, (2) it had multiple meritorious defenses to liability (such as that the elderly Ms. Reed's already-evident difficulties with walking may have predominated in causing her injuries), and (3) Ms. Reed would not be prejudiced by allowing OHM to litigate the case and defend itself on the merits. *See generally id*. (R.p. 66)). OHM also advanced the following two additional arguments regarding service.

First, OHM argued that it had not been properly served, because under S.C. Code § 15-9-210(a), the only authorized person for service of process on a domestic corporation like OHM is

the corporation's registered agent, but OHM's registered agent in this case, Sagar Patel, was not present in the state at the time the purported service was effected. (*See* Amended Motion to Set Aside Default at 2 (R.p. 65)). As evidence in support of this argument, OHM submitted the Affidavit of Sagar Patel along with car rental and plane flight receipts, showing that Mr. Patel was traveling out of state at the time of the purported service upon him. (*See* Exhibits 1–4 to Amended Motion to Set Aside Default (R.p. 70-79)). OHM further argued that the statute does not authorize a registered agent to deputize a sub-agent for service on a corporation, and that the Rule 4(d)(1) analysis of alternate service on persons "of suitable age and discretion then residing therein" does not apply to the requirements for service upon a registered agent. (*See* Amended Motion to Set Aside Default at 2 (R.p. 65)). Because Rule 4(d)(8), SCRCP, provides that "default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person," OHM argued, default should be aside in this case. (*See id*.)

Second, OHM argued that Ms. Reed was not entitled to the procedural remedy of a default judgment where she herself did not comply with the procedural rules for obtaining a default. Because allowing a plaintiff to prevail through default is an unfavored remedy that risks an inequitable outcome in favor of enforcing conformity with civil procedure, OHM argued that it should be relieved from default in this case, where Ms. Reed not only failed to fulfill service requirements, but also failed to file proof of service within ten days thereof as required by Rule 5(d), SCRCP—instead waiting thirty-eight days, almost four times the allotted period, to file her proof service. (*See* Amended Motion to Set Aside Default at 4–5 (R.p. 67-68)).

Ms. Reed filed a Memorandum in Response to OHM's amended motion to set aside the default on August 7, 2024, and a hearing was held on the motion before Judge Porter on August

12, 2024. (*See* Plaintiff's Mem. in Response to Defendant's Am. Motion to Set Aside Entry of Default (R.p. 80-87)). At the hearing before Judge Porter, OHM reiterated its arguments that service was not properly effected on the registered agent and that Ms. Reed had not properly followed procedural rules for obtaining a default. (*See, e.g.,* Transcript of August 12, 2024 Hearing at 5:1–7:10 (R.p. 92-94)). OHM further argued as it had in its motion that whether the default was validly entered or not, good cause existed to set it aside because OHM had timely moved for relief, OHM had meritorious defenses as to liability, and Ms. Reed would not be prejudiced by allowing the case to proceed to litigation on the merits due to the recent nature of the incident. (*See, e.g., id*. at 8:17–10:7; 12:7–16 (R.p. 95-97, 99)). Ms. Reed opposed these arguments, particularly as to whether she had properly effected service on the registered agent and whether OHM had presented evidence of meritorious defenses to liability. (*See, e.g., id*. at 13:6–20:21 (R.p. 100-07)).

Responding to the parties, Judge Porter limited his analysis to the issue of whether service had been validly effected on the registered agent, focusing on whether the defendant had received actual notice of the summons and complaint and denying OHM's motion on that basis—never engaging with the *Wham* factors for determining whether good cause exists to set aside default. (*See* Transcript of August 12, 2024 Hearing at 22:18–27:12 (R.p. 109-14)). On September 4, 2024, the court entered an Order Denying Defendant's Amended Motion to Set Aside Entry of Default, again basing its decision entirely on the issue of whether service had been validly effected upon the registered agent. (*See* Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. 7-9)).

On September 6, 2024, OHM filed a motion to reconsider this ruling, in which it requested reconsideration of the order and noted that the court had not ruled upon several issues, including the issue of whether good cause existed to set aside default under the three-factor test. (*See* Motion

to Alter or Amend a Judgment (Rule 59(e), SCRCP) (R.p. 118-19)). A hearing was held before Judge Porter on the motion to reconsider on October 9, 2024, at which OHM explained its need for a ruling on these issues, including whether the issue of whether good cause existed to set aside default under the *Wham* analysis. (*See* Transcript of October 9, 2024 Hearing at 4:9–18; 11:2–12:8 (R.p. 126, 133-34)).

Although the court's prior order had made no mention of good cause for setting aside default, instead merely concluding that "the Court found it had personal jurisdiction over Defendant, and Defendant was properly put on notice to the proceedings" (*see* Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. 8)), Ms. Reed contended at the hearing that this issue had been sufficiently addressed by the court already. (*See* Transcript of October 9, 2024 Hearing at 13:8–14 (R.p. 135) ("Your Honor, please, you referred to your Order. You found that—those factors in there. And you don't have to go and be specific and answer all this and go over all this again. Your Honor, your Order was sufficient. It's good enough to stand up on appeal.")). Judge Porter did not address the issues presented by OHM during the hearing, but indicated an intention to review the record and examine the *Wham* case before issuing an order. (*See id*. at 14:13–16:24 (R.p. 136-38) ("This doesn't answer your questions…. But, anyway, I will take this under advisement, and I'll go back and fine-tooth nail this—the record in this, as well as some of my materials on some of these cases that you folks—in particular, the Wham case.")). The court's subsequent October 30, 2024 Form 4 Order denying the Motion to Reconsider, however, did not address the issue of good cause. (R.p. 11-16).

On March 20, 2025, OHM filed a Renewed Motion to Set Aside Entry of Default or, Alternatively, for Summary Judgment and Incorporated Memorandum of Law in Support. (R.p. 148-54). With that motion, OHM produced new evidence to the court in the form of a copy of the

lease agreement between OHM and Thunderbird (*see* Lease Agreement, Ex. 1 to OHM's Renewed Motion (R.p. 155-75)). OHM explained that in 2018 the Lease Agreement turned over general control of the subject premises to its lessee, Thunderbird, including such general obligations as landscaping and sweeping, while retaining only certain structural obligations such as maintenance of the parking lot, roof, and exterior walls, as is typical of a commercial lease. (*See* Renewed Motion to Set Aside Entry of Default or, Alternatively, for Summary Judgment and Incorporated Memorandum of Law in Support at 4–5 (R.p. 151-52)). Citing cases showing that lessors are not typically liable to their lessee's invitees for conditions on the leased property under premises liability,[1] OHM argued that it thus had another strong meritorious defense counseling in favor of relief from the disfavored remedy of default judgment, further asserting that OHM should properly be entitled to summary judgment. (*See id*.).

The Damages Hearing

A hearing was held on both OHM's renewed motion for relief from default and on Plaintiff's claimed damages on March 31, 2025. (*See* Transcript of March 31, 2025 Hearing (R.p. 184-260)). At the hearing, the parties appeared again before Judge Porter, and OHM argued that

[1] Generally, the owner of land, who possesses "superior knowledge of conditions on the premises within his control," has a duty to warn others "of latent hazardous conditions on his land." *Byerly v. Connor*, 307 S.C. 441, 443, 415 S.E.2d 796, 798 (1992). But if the owner of the land leases his property to another, "the law of property regards the lease as equivalent to a sale of the premises for the term of the lease[;] [i]n the absence of an agreement to the contrary, the lessor surrenders possession and control of the land to the lessee." *Id.* Once the lessor surrenders the premises in good condition, he "typically is not responsible for hazardous conditions which thereafter develop or are created by the lessee." *Id.* Courts have thus routinely held that lessors are not liable for the injuries caused by purportedly hazardous conditions that developed after the lessor turned over the premises to its lessee. *See, e.g.*, *Byerly* at 443 (lake owner had no duty to discover and warn of a latent hazardous condition which it did not create and about which it had no knowledge); *Smith v. Oil Ship, Inc.*, Case No. 2:22-cv-3877-RMG, 2023 WL 122029, at *2 (D.S.C. Jan. 5, 2023) (no possibility lessor was liable to plaintiff for slip and fall claims which arose after the premises was delivered to the lessee in good condition).

the Lease Agreement it had submitted to the court constituted new evidence of OHM's meritorious defenses against liability, supporting good cause to set aside default. (*See id*. at 4:18–6:19; 10:24–11:4 (R.p. 187-89, 193-94)). Ms. Reed contended that sweeping the premises should be considered OHM's obligation under the lease as part of its obligation to maintain the parking lot, roof, and exterior walls of the premises. (*See id*. at 6:20–7:11 (R.p. 189-90)). Ms. Reed then raised the issue of service on the registered agent as previously argued by the parties (*see id*. at 7:12–10:2 (R.p. 190-93)), to which OHM responded (*see id*. at 9:5–9; 10:6–24 (R.p. 192, 193)). Judge Porter denied the motion on the record without comment. (*See id*. at 11:5 (R.p. 194)).

The court then invited Ms. Reed to present evidence of her damages. (*See id*. at 11:6 (R.p. 194)). Ms. Reed proceeded to enter a number of items into evidence against the objections of OHM on grounds of failure to authenticate the evidence. Specifically, Ms. Reed (1) entered medical records as evidence on the assumption they were related to the subject incident absent any authenticating testimony by Ms. Reed or any medical provider, despite OHM's objection that the elderly and ailing Ms. Reed had numerous serious health problems ongoing before the subject incident occurred and also afterward (*see, e.g., id*. at 11:6; 26:2–27:2; 37:19–54:13 (R.p. 194, 209-10, 220-37)); (2) entered purported medical bills into evidence without authenticating testimony from any party who was responsible for paying the alleged bills or seeking payment for the alleged bills—where a witness for Ms. Reed admitted no bills had yet been paid and where the purported bills contained language stating that they were not, in fact, bills (*see, e.g., id*. at 15:13–20; 22:1–22:18; 25:3–27:2 (R.p. 198, 205, 208-10)); and (3) entered power of attorney documents with no testimony from any witness who created, signed, or witnessed the documents (*see, e.g., id*. at 16:5–18:5; (R.p. 199-201)).

Ms. Reed then proceeded to offer expert testimony in the form of a medical cost projection report by her expert, Vanessa Teachey, despite OHM's objections as to the reliability and, by extension, admissibility, of the report. (*See id*. at 54:17–75:14 (R.p. 237-58)). In opining on alleged future medical costs in her report, Ms. Teachey relied heavily on the cost of residence at a skilled nursing facility, which she projected to be $9,939 per month. (*See id*. at 65:9–23 (R.p. 248)). But the medical records previously submitted by Ms. Reed showed that she was already residing at a skilled nursing facility at less than one-fifth this cost, $1,700 per month. (*Id*. at 63:21–65:1 (R.p. 246-48)). When cross-examined on this issue, Ms. Teachey admitted that she was not even aware that Ms. Reed was currently residing in a skilled nursing facility. (*Id*. at 63:12–14 (R.p. 246)). The court did not rule on OHM's objection to Ms. Teachey's testimony during the hearing, and it made no finding as to the reliability of Ms. Teachey's report. (*See id*. at 75:9–14 (R.p. 258)). Ultimately, Ms. Reed purported to show $1.14 million in medical bills and additional future medical costs. (*See id*. at 68:2–7 (R.p. 251)).

On April 14, 2025, Judge Porter entered an Order of Judgment with a corresponding Form 4 Order of the same date, in which he denied OHM's renewed motion for relief from default and awarded Ms. Reed a judgment against OHM of well over four million dollars ($4,161,541.00). (R.p. 17-18, 23-27). Neither order dealt individually with OHM's evidentiary objections or made any finding as to the reliability of Ms. Reed's expert's future cost report, on which the Order or Judgment relied. (*See* Order of Judgment at 5 (R.p. 27)).

OHM filed a Motion to Alter or Amend Pursuant to Rule 59(e) or, in the alternative, Motion for Relief from Judgment Pursuant to Rule 60(b) on April 24, 2025. (R.p. 503-07). In that motion, OHM asserted that the damages award was excessive and unsupported by the evidence, moved that the court reconsider its order, and requested definitive rulings on several issues that had not

been directly ruled upon, including whether the purported service satisfied S.C. Code § 15-9-210(a); whether good cause existed to set aside default; whether Ms. Reed's proffered medical records, purported medical bills, power of attorney documents were properly authenticated; and whether Ms. Reed's proffered expert medical cost projection was reliable and admissible. (*See id*. (R.p. 503-06)).

Ms. Reed filed a memorandum in opposition to OHM's motion on April 28, 2025. (*See* Plaintiff's Memorandum in Opposition to Defendant's Motion to Alter or Amend or in the Alternative Motion for Relief from Judgment (R.p. 508-13)). On May 15, 2025, Judge Porter entered a Form 4 Order denying OHM's motion to reconsider or for relief from judgment. (R.p. 30-31). This appeal follows.

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." *Delta Apparel, Inc. v. Farina*, 406 S.C. 257, 265, 750 S.E.2d 615, 619 (Ct. App. 2013) (quoting *Roberson v. S. Fin. of S.C., Inc.,* 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Roberson,* 365 S.C. at 9 (citing *Mitchell Supply Co., Inc. v. Gaffney,* 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct.App.1988)). "An abuse of discretion in setting aside a default judgment occurs when the trial court 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." *Roberson,* 365 S.C. at 9 (quoting *In re Estate of Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

"[T]he standard for granting relief under Rule 60(b) is more rigorous than under Rule 55(c), and that an entry of default may be set aside for reasons that would be insufficient to relieve a party from a default judgment." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). "The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause'…. [r]equir[ing] 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." *Id*. (citing Rule 55(c), SCRCP). "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id*. at 607–608 (citing *Wham v. Shearson Lehman Bros.*, 298 S.C. 462, 464, 381 S.E.2d 499, 501 (Ct. App. 1989)).

"The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the 'good cause' standard established in Rule 55(c)." *Sundown Operation Co.*, 383 S.C. 601 at 608 (citing *Ricks v. Weinrauch,* 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987)). "Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or 'other misconduct of an adverse party.'" *Id*. (quoting Rule 60(b), SCRCP).

ARGUMENT

I. Default Based on Purported Service on Registered Agent Was Not Proper Because Registered Agent Was Not Present for the Purported Service.

As described above, a default was entered against OHM in this case based upon a Certificate of Service representing that the Summons and Complaint had been personally served on OHM's registered agent, Sagar Patel, at the registered address. (*See supra* at 3–8). However, as also described above, Mr. Patel was not personally present at that address on the date of service, making the purported service invalid for purposes of default. (*See id*.).

Under Rule 4(d)(8), SCRCP, "default or judgment by default *shall* be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person." Rule 4(d)(8), SCRCP (emphasis added). S.C. Code Section 15-9-210 authorizes a domestic corporation's registered agent to receive service of process on behalf of the corporation. *See* S.C. Code § 15-9-210(a). The statute does not, by contrast, authorize any "sub-agent" or other persons to receive service of process on behalf of the registered agent or the corporation. *Id*. Similarly, Rule 5(d)(1), SCRCP provides that service may be affected "by delivering a copy to an agent authorized by appointment or by law to receive service of process." *See* Rule 4(d)(1), SCRCP. The other non-personal method of service authorized by this rule, "leaving copies thereof at [an individual's] dwelling house or usual place of abode with some person of suitable age and discretion then residing therein," by its terms does not apply to a corporation. *See id*.

Because OHM is a domestic business corporation, its "registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served." S.C. Code Ann. § 15-9-210(a). Where, as here, a domestic corporation has a registered agent, that registered agent is the *only* person authorized to accept service of process for the

corporation. OHM's registered agent is Sagar Patel, and the Secretary of State lists the registered agent's address as 340 Plantation View Lane, Mount Pleasant, South Carolina, 29464.[2] Although Ms. Reed served *someone* at 340 Plantation View Lane with the Summons and Complaint in this matter, she did not serve OHM's registered agent Sagar Patel. Because Ms. Reed did not serve the registered agent with process, the court was required to set aside the default upon OHM's showing that an unauthorized person has signed for the service of process. *See* Rule 4(d)(8), SCRCP. The trial court in this case therefore abused its discretion when it failed to set aside OHM's default.

II. Good Cause Existed to Set Aside the Default.

In the alternative, even if default had been properly entered against OHM in this case, good cause existed to set aside the default. "Under Rule 55(c) of the South Carolina Rules of Civil Procedure, a default may be set aside 'for good cause shown.'" *Melton*, 379 S.C. at 54. *See also* Rule 55(c), SCRCP ("For good cause shown the court may set aside an entry of default"). "Rule 55(c) should be liberally construed to promote justice and dispose of cases on the merits." *Id*. (quotation and citation omitted). But "[t]he decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge," and "[t]he trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Sundown Operating Co.*, 383 S.C. at 606–07 (citing *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.,* 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006); *Mitchell Supply Co., Inc. 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,

[2] *See* SOUTH CAROLINA SECRETARY OF STATE: BUSINESS ENTITIES ONLINE, "OHM FLORENCE LLC" (https://businessfilings.sc.gov/BusinessFiling/Entity/Profile/124cedf1-e6b5-4660-9643-de9 5ad6 32f5f) (last visited July 15, 2025).

based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Id*. (citing *In re Estate of Weeks,* 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997)).

"The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.'" *Regions Bank v. Owens*, 402 S.C. 642, 648, 741 S.E.2d 51, 54 (Ct. App. 2013). "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." *Id*. (citing *Sundown Operating Co.*, 383 S.C. at 607–608). "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." *Sundown Operating Co.*, 383 S.C. at 607–608 (citing *Wham*, 298 S.C. at 465).

Even assuming the default was valid in this case, the court below abused its discretion in denying OHM relief from default, as there was not "sufficient evidentiary support on the record for the finding of a lack of good cause" under the *Wham* factors. *See Dixon v. Besco Engineering, Inc.,* 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct.App.1995). In rendering its decisions in this case, the court below appears never to have engaged in any good-cause analysis at all, whether under *Sundown Operating Co*., *Wham*, or any other case precedent.

Instead of determining whether there was an explanation for why the default occurred, followed by an analysis of whether good cause existed to set it aside due to timing, meritorious defenses, or lack of prejudice to the plaintiff, the court below appears to have collapsed its entire decision-making process of whether to set aside default into its analysis of whether the purported service was sufficient to successfully trigger a default. In its first order denying relief from default, the Court noted only that:

> [T]he Court has "never required exacting compliance with the rules to effect service of process. 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." *Roche v. Florence Young Bros., Inc. of Florence*, 318 S.C. 207, 210, 456, S.E.2d 897, 899 (1995). After reviewing the legal memoranda and evidence submitted by the parties and hearing arguments from the moving party, this Court found it had personal jurisdiction over Defendant, and Defendant was properly put on notice to the proceedings.

(Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. 8)) (*See also* Transcript of August 12, 2024 Hearing at 22:18–27:12 (R.p. 109-14)). This is not a proper good cause analysis for the disfavored remedy of default judgment. Similarly, in its third order denying relief from default (the second was a Form 4 order), the Court analyzed only the issue of whether it deemed service to have been proper:

> As provided in *Roche v. Young Bros., Inc. of Florence*, the Court has "never required exacting compliance with the rules to effect service of process. 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." *Roche v. Florence Young Bros., Inc. of Florence*, 318 S.C. 207, 210, 456, S.E.2d 897, 899 (1995). In this case, Defendant was provided a copy of the summons and complaint within hours of its service on its registered agent's address. Under the Defendant's interpretation of S.C. Code Ann. § 15-9-210, a corporation could evade service by submitting an address in their articles of incorporation that their registered agent will never be present to sign for legal pleadings, defeating the purpose of registering an agent and address to accept legal proceedings. The Court finds effective service on the corporation and hereby denies Defendant's Renewed Motion to Set Aside.

(Order of Judgment at 3–4 (R.p. 25-26)). Again, this is not the proper analysis for the question of whether to set aside default under *Sundown Operating Co*. and *Wham*.

By ignoring the substantial evidence and argumentation presented by OHM to explain why the default occurred, and more importantly that good cause existed to set it aside based on the rapid timing of OHM's motion for relief, the significant meritorious defenses available to OHM, and the lack of prejudice to Ms. Reed in allowing the case to proceed to litigation on its merits (*see supra* at 3–9), the Court abused its discretion in refusing to set aside default. Indeed, a review of the

record shows that had the Court engaged in the proper analysis, the evidence in the record—liberally construed per *Melton*, 379 S.C. at 54—supports only the conclusion that good cause existed to set aside the default against OHM. (*See supra* at 3–8).

III. The Damages Award Was Excessive and Not Supported by the Evidence.

"It is well established that the relief granted in a default judgment is limited to that supported by the allegations in the Complaint and the proof submitted at the damages hearing." *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E.2d 566, 579 (2013) (citing *Jackson v. Midlands Human Res. Ctr.,* 296 S.C. 526, 529, 374 S.E.2d 505, 506 (Ct.App.1988)). "Moreover, trial judges and appellate courts conduct a review of the award to ensure the verdict is not excessive and is supported by the evidence." *Id*. (citing *Mitchell v. Fortis Ins. Co.,* 385 S.C. 570, 686 S.E.2d 176 (2009)).

> In a default case, the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence. Although the defendant is in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted. A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered.

Jackson, 296 S.C. at 529.

In the instant case, the lower court's damages award of $4,161,541.00 was excessive and unsupported by valid evidence in the record. Not only was this award excessive in relation to the $1.14 million in alleged medical expenses plus future medical costs projected by Ms. Reed, but also—and more problematically for Ms. Reed—the alleged medical expenses and future medical costs on which her award were based were not supported by admissible evidence, as described below.

a. Respondent failed to properly authenticate the documents on which she relied at the damages hearing.

"A party offering evidence must meet 'the requirement of authentication ... as a condition precedent to admissibility.'" *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015) (quoting Rule 901(a), SCRE). "The authentication requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims.'" *Id*. While "'[t]he burden to authenticate is not high'" it requires "that the proponent 'offer a satisfactory foundation from which the jury could reasonably find that the evidence is authentic.'" *Id*. (quoting *United States v. Hassan,* 742 F.3d 104, 133 (4th Cir.2014)).

"Under Rule 901(b)(1), SCRE, evidence may be authenticated by 'having someone with personal knowledge about the writing testify the matter is what it is claimed to be.'" *State v. Hall*, 437 S.C. 107, 118–19, 876 S.E.2d 328, 334 (Ct. App. 2022) (quoting *State v. Green*, 427 S.C. 223, 231, 830 S.E.2d 711, 715 (Ct. App. 2019), *aff'd as modified*, 432 S.C. 97, 851 S.E.2d 440 (2020)). "This method may be accomplished by testimony from a person who sent or received the writing", though "[o]ne who witnessed the creation or signing of the writing also has the personal knowledge Rule 901(b)(1), SCRE, demands." *Id.* "As long as a witness with *personal knowledge* testifies that an exhibit accurately portrays what it depicts, that should be sufficient to establish its authenticity." *Id*. (emphasis added) (citation omitted). "Alternatively, 'most writings meet the authenticity test through Rule 901(b)(4), SCRE, which enables authentication to be proven by: 'appearance, contents, substance, internal patterns, or other distinctive characteristics, taken in conjunction with circumstances.'" *Id*. (quoting *Green*, 427 S.C. at 232, 830 S.E.2d at 715 (quoting Rule 901(b)(4), SCRE)). "Rule 901(b)(4), SCRE, meshes with prior South Carolina law, which has long endorsed authentication by circumstantial proof." *Id.* at 119.

At the damages hearing in this case, Ms. Reed relied heavily on numerous items of evidence that she did not properly authenticate as evidence, as she did not produce witnesses who had sufficient personal knowledge of the items presented. Indeed, Ms. Reed herself was not present at the hearing. As described above (*see supra* at 9–10), Ms. Reed (1) entered medical records as evidence on the assumption they were related to the subject incident absent any authenticating testimony by Ms. Reed or any medical provider, despite the elderly and ailing Ms. Reed having numerous serious health problems ongoing before the subject incident occurred and also afterward; (2) entered purported medical bills into evidence without authenticating testimony from any party who was responsible for paying the alleged bills or seeking payment for the alleged bills—where a witness for Ms. Reed admitted no bills had yet been paid and where the purported bills contained language stating that they were not, in fact, bills; and (3) entered power of attorney documents with no testimony from any witness who created, signed, or witnessed the documents.

Because Respondent failed to authenticate these items by a witness with personal knowledge and because the circumstances called into question both Respondent's identification of the medical records as resulting from the subject incident and Respondent's assertion that the purported medical bills were in fact bills seeking payment, none of these items were admissible as evidence. The lower court therefore erred in permitting them to be entered as evidence and relying on them in awarding the excessive damages award of over four million dollars in this case. This permissive treatment of improperly authenticated evidence was especially inappropriate where Appellant's liability in this case was established on a narrowly applied technicality in the absence of any evidence.

b. The expert testimony relied upon by Respondent at the damages hearing was unreliable and therefore inadmissible.

"The admission of expert testimony is governed by Rule 702, SCRE, which provides: 'If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise.'" *Watson v. Ford Motor Co.*, 389 S.C. 434, 445, 699 S.E.2d 169, 175 (2010) (citing Rule 702, SCRE). "[I]n executing its gatekeeping duties, the trial court must make three key preliminary findings which are fundamental to Rule 702 before the jury may consider expert testimony…. Expert testimony is not admissible unless it satisfies all three requirements with respect to subject matter, expert qualifications, and reliability." *Id*. Accordingly, "[t]he trial court must evaluate the substance of [expert] testimony and determine whether it is reliable." *Id*. (citing *State v. Council,* 335 S.C. 1, 20, 515 S.E.2d 508, 518 (1999)).

"The trial [court] should apply the *Jones* factors to determine reliability." *Matter of Ridley*, 433 S.C. 316, 320, 858 S.E.2d 165, 167 (Ct. App. 2021) (citing *State v. Jones*, 343 S.C. 562, 573, 541 S.E.2d 813, 819 (2001), and *Council*, 335 S.C. at 20). "The *Jones* reliability factors take into consideration: (1) the publications and peer reviews of the technique; (2) prior application of the method to the type of evidence involved in the case; (3) the quality control procedures used to ensure reliability; and (4) the consistency of the method with recognized scientific laws and procedures." *Id*. at 320–321 (citation omitted). "Once the evidence is admitted under these standards, the jury may give it such weight as it deems appropriate." *Id*. (citation omitted).

"The expertise, reliability, and the ability of the testimony to assist the trier of fact are all threshold determinations to be made prior to the admission of expert testimony..." *State v. Tapp*, 398 S.C. 376, 388, 728 S.E.2d 468, 474–75 (2012). "We overrule *Morgan* to the extent it suggests

that only scientific expert testimony must pass a threshold reliability determination by the trial court prior to its admission in evidence…. Nonscientific expert testimony must satisfy Rule 702, both in terms of expert qualifications and reliability of the subject matter." *State v. White*, 382 S.C. 265, 273, 676 S.E.2d 684, 688 (2009) (overruling *State v. Morgan*, 326 S.C. 503, 513, 485 S.E.2d 112, 118 (Ct. App. 1997)). "[T]he trial court in the discharge of its gatekeeping role in determining admissibility *must* initially answer the always present threshold questions of qualification and reliability." *White*, 382 S.C. at 274 (emphasis added) (see also *Tapp*, 398 S.C. at 388, 389 ("In *White,* this Court clarified that all expert testimony, not just scientific expert testimony, must be vetted for its reliability prior to its admission at trial…. [u]nder *White,* after qualifying Prodan as an expert, the circuit judge should have then evaluated the substance of Prodan's testimony to determine if it was reliable, as required by Rule 702, SCRE.").

The lower court in the present case did not fulfill this gatekeeping role with respect to Ms. Reed's proffer of expert testimony. Whereas cases like *Watson*, *White*, and *Tapp* make clear that the substance of an expert's testimony *must* be evaluated by the trial court and a finding made with respect to its reliability prior to its admission into evidence, the master-in-equity in this case did not make reference to any such finding either at the damages hearing or in subsequent orders, despite OHM's objections and explicit request for such a ruling. (*See* Transcript of March 31, 2025 Hearing (R.p. 184-260); Order of Judgment (R.p. 23-28); Motion to Alter or Amend Pursuant to Rule 59(e) or, in the alternative, Motion for Relief from Judgment Pursuant to Rule 60(b) at 4 (R.p. 506); and May 15, 2025 Form 4 Order denying OHM's Motion to Reconsider or for Relief from Judgment (R.p. 30-32)). Nonetheless, the master-in-equity directly relied on this evidence in arriving at the damages award. (*See* Order of Judgment at 5 (R.p. 27)). That omission of a reliability evaluation under *Jones* was erroneous.

Had the lower court engaged in the required analysis of the expert testimony submitted by Ms. Reed, it is difficult to see how it could have deemed the testimony reliable. In opining on alleged future medical costs, Ms. Reed's expert relied heavily on the cost of residence at a skilled nursing facility, which she projected to be $9,939 per month. (*See* Transcript of March 31, 2025 Hearing at 65:9–23 (R.p. 248)). But the medical records previously submitted by Ms. Reed showed that she was already residing at a skilled nursing facility at less than one-fifth this cost, $1,700 per month. (*Id*. at 63:21–65:1 (R.p. 246-48)). Remarkably, when cross-examined on this issue, Ms. Reed's expert admitted that she was not even aware that Ms. Reed was currently residing in a skilled nursing facility. (*Id*. at 63:12–14 (R.p. 246)). Such testimony, contradicted by Respondent's own submissions to the court at the hearing, was manifestly not reliable, and therefore inadmissible.

CONCLUSION

For the reasons stated above, Appellant OHM respectfully requests that this Court reverse the lower court's order denying OHM relief from default, which was founded on improper service and regarding which good cause to set aside was shown, or, in the alternative, reverse the lower court's order denying OHM's motion for relief from judgment, which was excessive and not supported by admissible evidence.

Signature Page Follows

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This 6th day of March, 2026.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

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

Shirley Reed,

Respondent,

v.

OHM Florence, LLC,

Appellant,

FINAL REPLY BRIEF OF APPELLANT

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ARGUMENT IN REPLY

I. OHM Did Not Waive Its Improper Service Argument.

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

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

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

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

Importantly, the remaining actions to which Reed points as further indications of OHM's purported waiver of its improper service argument—"s[eeking] summary judgment, s[eeking]

dismissal, cross-examin[ing] Ms. Reed on liability and damage issues, clos[ing] on the sufficiency of the damages evidence, and request[ing] a zero verdict" (Brief of Respondent at 11)—all occurred *after* Judge Porter had already denied OHM's motion for relief from default based on improper service on September 4, 2024 and denied OHM's motion to reconsider that decision on October 30, 2024. *See* Order Denying Defendant's Amended Motion to Set Aside Entry of Default (R.p. 7-9) and October 30, 2024 Form 4 Order denying the Motion to Reconsider (R.p. 11-13). OHM's improper service argument was thus fully argued and was in no way waived before it was erroneously rejected by the court below. OHM cannot have waived an argument that it fully exhausted before the trial court to no avail. *See Ex parte Trustgard Ins. Co.*, 442 S.C. 485, 507, 900 S.E.2d 448, 459 (Ct. App. 2023) ("Objections to personal jurisdiction, unlike subject matter jurisdiction, are waived unless raised[;] [a] waiver is a voluntary and intentional abandonment or relinquishment of a known right[;] [w]aiver requires a party to have known of a right and known that right was being abandoned" (citing *Bakala v. Bakala*, 352 S.C. 612, 576 S.E.2d 156, 165 (2003); Rule 4(d), SCRCP; and *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 685 S.E.2d 600, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009)).

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

As already described in OHM's own brief (*see* Brief of Appellant at 14–15), service was not proper in this case because it was not accepted by OHM's registered agent, Sagar Patel, but rather by another person, whom Reed states was an accountant named Mr. Lightheart (*see* Brief of Respondent at 18). Pursuant to Rule 4(d)(8), SCRCP, "default or judgment by default shall be set aside pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person," and the only person authorized to accept service on behalf of a domestic corporation under S.C. Code Section 15-9-210 is that corporation's

registered agent. *See* Rule 4(d)(8), SCRCP; S.C. Code § 15-9-210(a). Rule 4(d)(1) does not alter this equation, providing that service may be affected "by delivering a copy to an agent authorized by appointment or by law to receive service of process." *See* Rule 4(d)(1), SCRCP.

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

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

> Whether apparent authority can suffice to show authorization to accept service under Rule 4 is an unsettled question. *See Schultz v. Schultz,* 436 F.2d 635, 637 (7th Cir.1971) (describing as "dubious" the "assumption that such authority may be

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

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

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

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

summons and complaint to a professional—like the accountant Mr. Lightheart—who has rendered professional services to the corporation.

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

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

Reed's brief continues to labor under the same confusion regarding the *Sundown* good cause analysis that led the master in equity to erroneously deny relief from default, mistakenly collapsing the threshold *Sundown* satisfactory explanation and subsequent *Wham* good cause factors into an analysis of whether service was validly effected on the registered agent by virtue of his actual notice of the suit. *See, e.g.,* Brief of Respondent at 20 ("Defendant never states exactly what the 'good cause' is that required the Master to then analyze the *Wham* factors"); Transcript of August 12, 2024 Hearing at 22:18–27:12 (R.p. 109-14); Order Denying Defendant's Amended Motion to Set Aside Entry of Default at 2 (R.p. 8).

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

> Defendant contends, in conclusory fashion, that "good cause existed to set aside the default." (App. Br. p.15). The remainder of the argument sets forth the standards for reviewing that decision (App. Br. pp. 15-16) and an attack on the sufficiency of the Master's order. (App. Br. pp. 16-18). Defendant never states exactly what the 'good cause' is . . . .
> … Defendant asserted that… OHM mistakenly concluded that responsive action was still unnecessary, and that it did not forward that document to its insurer, either.[] (App. Br. p. 4). This is the only "cause" the Defendant offers in its brief to support turning to the *Wham* factors…

(Brief of Respondent at 19–20, 21).

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

Reed's brief also makes much of the fact that OHM's discovery production efforts eventually revealed that OHM's registered agent, Sagar Patel, had emailed OHM's insurance broker a copy of the complaint on the day it was improperly served. *See* Brief of Respondent at 21–22. This argument is misdirected for two reasons. First, this information was not before the master in equity at the time that he denied OHM's motions for relief from default, as the information did not enter the record until Reed's April 28, 2025 response in opposition to OHM's

motion to alter or amend the default judgment, after the master's orders denying relief from default were entered on September 4, 2024 and April 14, 2025, respectively.[1] *See* Brief of Respondent at 21.

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

In sum, OHM provided a satisfactory explanation for how the default occurred—whether that explanation is considered to be the explanation provided by OHM to the court below based on its investigations *at that time of its motions for relief from default* or the latter explanation discovered by OHM in its production efforts and provided to the court by Reed *after* the denial of OHM's motions for relief. OHM also repeatedly provided substantial evidence and argumentation in support of good cause for relief from default under the *Wham* factors. It was clear error

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

amounting to abuse of discretion for the master in equity to collapse the good cause inquiry[2] into the entirely distinct question whether the default was void for improper service, especially in light of OHM's repeated but unsuccessful attempts to have their good cause arguments reviewed by the master in equity.

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

Reed's brief asserts that OHM's argument regarding the excessive and unsupported nature of the default damages award below is merely conclusory and should therefore be considered waived, despite OHM having spent five pages of its brief (*see* Brief of Appellant at 18–23) arguing this issue. *See Whitehurst v. Town of Sullivan's Island*, 446 S.C. 137, 919 S.E.2d 402 (2025) (finding conclusory argument to have been abandoned); *R & G Constr., Inc. v. Lowcountry Reg'l Transp. Auth.*, 343 S.C. 424, 437, 540 S.E.2d 113, 120 (Ct. App. 2000) ("An issue is deemed abandoned if the argument in the brief is only conclusory"); *see also First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) ("Appellant next asserts that the special referee abused his discretion by failing to grant all the relief he sought in his motion to reconsider[;]

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

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

Appellant fails to provide arguments or supporting authority for his assertion[:] [t]hus, he is deemed to have abandoned this issue." (citing *Matthews v. City of Greenwood,* 305 S.C. 267, 407 S.E.2d 668 (Ct.App.1991))).

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

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

The proportionality prong of OHM's challenge to the trial court's default damages award is simple and was accordingly set forth succinctly in OHM's brief. The award of $4,161,541.00

was patently out of proportion with the $1.14 million in alleged medical expenses plus future medical expenses projected by Ms. Reed, especially where the alleged medical expenses, past and future, were not supported by admissible evidence, as further discussed at length in OHM's brief. *See* Brief of Appellant at 18–23. Reed's assertion of waiver in an attempt to avoid OHM's challenge to the award on this appeal, therefore, should not be countenanced.

Respectfully submitted,

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