STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas

W. Haigh Porter, Master-in-Equity

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

Shirley Reed, ... Respondent,

v.

OHM Florence, LLC d/b/a Thunderbird Country Buffet, ... Appellant.

BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF THE CASE

Ms. Reed filed a complaint on March 5, 2024 against OHM Florence, LLC d/b/a Thunderbird Country Buffet. (R. 36-44). She alleged that on November 8, 2023, while visiting Defendant's restaurant, Ms. Reed slipped on loose rocks in the parking and fell backwards, suffering severe injuries. (R. p. 39, ¶¶ 10, 11). Ms. Reed stated causes of action for premises liability as well as ordinary negligence. (R. pp. 40-43, ¶¶ 13-23). She also asserted Defendant had vicarious liability for the negligence of its employees. (R. pp. 43-44, ¶¶ 24-28).

On March 12, 2024, Ms Reed sent the pleadings to Sagar Patel, the registered agent of process, by certified mail, restricted delivery and return receipt requested. (R. p. 45; p. 46, ¶ 3). On March 18, 2024, the return receipt green card was signed "Patel" and returned to Plaintiff's counsel. (R. pp. 45). On April 25, 2024, Ms. Reed filed the green card with the clerk. (R. p. 45).

On April 26, 2024, Ms. Reed filed a request for entry of default since Defendant had not filed an answer or a pre-answer motion within 30 days of service. (R. p. 46, ¶ 5). On May 2, 2024, the circuit court entered an order of default. (R. pp. 1-4). The court found service upon Defendant was "proper and good" and that the clerk of court properly entered the default. (R. p. 2).

On May 8, 2024, Ms. Reed filed a motion for the circuit court to refer the matter to the Master in Equity for a damages hearing. (R. p. 60). On May 9, 2024, the circuit court entered an order referring the matter to the Master. (R. pp. 5-6).

On June 21, 2024, Defendant appeared by counsel and moved to set aside the entry of default. (Motion of 6/21/24). The ground for the motion was that Defendant "assumed that ... no response was necessary since [a document seeking evidence preservation] sought information

about an unknown incident with no responsive information to the request." (R. p. 61-62). Defendant asserted further:

> Given the lack of information, OHM gave no consideration for a submission of this document to its insurance company since there were, in the mind OHM, no obligations to satisfy. This led to a simple, explainable, and excusable misunderstanding as to the nature of the second document – the Complaint – that resulted in the present position. Upon realization of the nature and purpose of the Complaint, the insurance carrier who will be ultimately responsible for any damages awarded was notified, and counsel was retained, **all within a matter of a few days**.

(R. p. 62) (bold in original). Defendant described it as a "misunderstanding of the documents that led to default." (R. p. 62).

On August 1, 2024, Defendant filed an amended motion to set aside entry of default, claiming "the default is explainable and excusable." (R. pp. 64-79). Defendant added that the default should be set aside "as a matter of law, because its registered agent was not served." (R. p. 64). Defendant admitted that Sagar Patel was the registered agent and the proper address for service was "340 Plantation View Ln, Mt Pleasant, South Carolina 29464." (R. p. 65). However, Defendant claimed that Mr. Patel was not at that address on the date of service and did not sign the return receipt. (R. p. 65). Defendant contended the receipt was signed by an unauthorized person because, pursuant to S.C. Code Ann. § 15-9-210 (a):

> when a domestic corporation has a registered agent, *the only authorized person for service of process is that registered agent*. The agent cannot deputize a sub-agent, nor does the Rule 4(d)(1) analysis of those "of suitable age and discretion then residing therein" apply.

(R. p. 65) (emphasis added). Defendant repeated its earlier argument of failing to realize the significance of the documents as grounds for its claim of "good cause." (R. p. 66). Defendant also contended it had a meritorious defense of comparative fault. (R. pp. 66-67). Finally,

Defendant claimed the default was defective because Plaintiff failed to file proof of service within 10 days. (R. pp. 67-68)

On August 7, 2024, Ms. Reed filed a memorandum in response to Defendant's amended Motion. (R. pp. 80-87). Ms. Reed contended that service was proper as Defendant failed to establish the pleadings were not accepted by an unauthorized person. (R. pp. 84-85). Ms. Reed also pointed out defects in Defendant's alleged meritorious defense. (R. p. 86).

On September 4, 2024, the Master entered an order denying Defendant's motion to set aside the entry of default. (R. pp. 7-10). On September 6, 2024, Defendant filed a motion to alter or amend the Master's order, seeking a more detailed order. (R. pp. 118-119). The Master entered a Form 4 order on October 30, 2024, denying Defendant's motion. (R. pp. 11-16).

On March 20, 2025, Defendant filed another motion to set aside entry of default or, alternatively, for summary judgment. (R. pp. 148-183). Defendant repeated its arguments about defective service, but added a new "meritorious defense" to its motion, namely, that it was not responsible for the dangerous condition of the property. (R. p. 151). Defendant stated this ground as a basis for its motion for summary judgment. (R. p. 153).

The Master held a trial on March 31, 2025. (R. pp. 184-260). Defendant appeared through counsel and participated as fully as permitted by Rule 55, SCRCP, and on April 14, 2025, the Master entered a judgment for Ms. Reed for $4, 161,541.00. (R. pp. 17-29). In the order, the Master denied the renewed motion to set aside the entry of default. (R. pp. 24-25).

On April 24, 2025, Defendant filed a motion to alter or amend the order of judgment, seeking specific rulings on several arguments Defendant raised in its motion to set aside default. (R. pp. 261-265). Defendant also contended the award lacked evidentiary support and was

excessive. (R. p. 264).

On April 28, 2025, Ms. Reed filed a memorandum in opposition of Defendant's motion. (R. pp. 266-277). On May 15, 2025, the Master entered a Form 4 order denying Defendant's motion to set aside default and motion for reconsideration. (R. pp. 30-35).

This appeal follows.

STANDARD OF REVIEW

DEFAULT

The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial court. *Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009); *Roberson v. Southern Finance of SC*, 365 S.C. 6, 615 S.E.2d 112 (2005). The trial court's decision will not be set aside absent a clear showing of an abuse of discretion. *Richardson*; *Roberson. Accord BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006) (same). Questions of fact arising on service of process issues are to be determined by the court, and "the findings of the circuit court on such issues are binding on the appellate court unless wholly unsupported by the evidence or manifestly influenced or controlled by error of law." *Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996).

DAMAGES

An action in tort for damages is an action at law. *Culler v. Blue Ridge Elec. Co-Op., Inc.*, 309 S.C. 243, 422 S.E.2d 91 (1992); *Portrait Homes - South Carolina, LLC v. Pennsylvania Nat. Mut. Cas. Ins. Co.*, 442 S.C. 515, 900 S.E.2d 245 (Ct. App. 2023). In an action at law, the trial judge's factual findings will not be disturbed unless a review of the record discloses there is no evidence which reasonably supports the judge's findings. *Culler*, at 246, 422 S.E.2d at 93.

"The trial judge has considerable discretion regarding the amount of damages, both actual or punitive." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004); *see also Id.* at 311, 594 S.E.2d at 873 (holding the court's review is "limited to the correction of errors of law. Our task in reviewing a damages award is not to weigh the evidence,

but to determine if there is any evidence to support the damages award." (citations omitted)).

An abuse of discretion occurs when 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 Harbor Island Assoc. v. Preferred Island Properties, Inc.*, 369 S.C. 540, 633 S.E.2d 497 (2006); *BB & T v. Taylor*, at 551, 633 S.E.2d at 503.

FACTS

This is a slip and fall case. The issues in this appeal involve: (1) whether Defendant made a voluntary appearance in the matter which waived service; (2) whether Ms. Reed effected proper service upon Defendant; (3) whether the Master abused his discretion in refusing to set aside the entry of default or default judgment; (4) whether the damages the Master awarded are excessive; and (5) whether there is sufficient evidence to support the Master's damages award.

A. Evidence Relevant to Service of Process

Defendant is a corporation organized under the laws of South Carolina. (R. p. 65). Defendant listed its registered agent with the Secretary of State as "Sagar Patel, 340 Plantation View Ln, Mt Pleasant, South Carolina 29464." (R. p. 65).

Ms Reed served Defendant by sending the pleadings to Mr. Patel by certified mail, restricted delivery, return receipt requested at the Plantation View Lane address. (R. p. 69). The receipt was returned with the signature "Patel" and a delivery date of March 18, 2024. (R. p. 45). The signature was placed on the card by Defendant's accountant, Kevin Lightheart, who assisted in organizing Defendant's articles of organization for filing with the Secretary of State. (R. pp. 273-274). Mr. Lightheart immediately emailed the pleadings to Mr. Patel, who then sent them to his insurance company. (R. p. 277). Defendant did not respond to the Complaint.

On April 26, 2024, Ms. Reed filed a request that the Clerk of Court enter default against Defendant. (R. p. 46-59). On May 2, 2024, the circuit court (Judge DeBerry) entered an order finding "proper and good service was made upon Defendant pursuant to Rule 4(d)(1), SCRCP." (R. p. 1-4). The court found the clerk properly entered the default and held it was proper to hold a hearing for entry of judgment. (R. p. 2).

The circuit court proceeded to find facts related to the fall and that Defendant "is jointly and severally liable for the damages suffered by Plaintiff on November 8, 2023, as described in Plaintiff's complaint." (R. p. 3). The matter was then referred to the Florence County Master in Equity. (R. p. 5).

Defendant hired counsel, who noticed an appearance on June 20, 2024. On June 21, 2024, Defendant filed its motion to set aside entry of default, contending that when presented with an evidence preservation letter from Plaintiff, Defendant "assumed that [] no response was necessary since this document sought information about an unknown incident with no responsive information to the request." (R. pp. 60-63). Defendant claimed:

> Given the lack of information, [Defendant] gave no consideration for a submission of this document to its insurance company since there were, in the mind of [Defendant], no obligations to satisfy. This led to a simple, explainable, and excusable misunderstanding as to the nature of the second document – the Complaint – that resulted in the present position.

(R. p. 62). This was the only excuse Defendant offered.

On March 20, 2025, Defendant filed a renewed Motion to Set Aside Entry of Default or, Alternatively, for Summary Judgment. (R. pp. 148-183). This motion claimed as a matter of law Defendant was not liable since it was the landlord of the property where the fall occurred. (R. pp. 151-152). While this motion set forth arguments under the *Wham* factors, Defendant did not explain any cause, much less good cause, for failing to respond to the Complaint other than its argument that "because Reed did not serve [Defendant's] registered agent with process, the court *must* set aside the default." (R. pp. 150-151).

At bottom, there is simply no explanation provided as to why Defendant or its insurance broker, who both had the pleadings on the date of service, failed to respond to the complaint.

B. Evidence Relevant to Damages

Ms. Reed's daughter-in-law, Lisa Reed ("Lisa"), has Ms. Reed's power of attorney. (R. p. 195, l. 2 - p. 196, l. 7). She testified that prior to the fall Ms. Reed lived alone "across the yard" at Lisa's home. (R. p. 196, ll. 8-18). Ms. Reed was able to take care of herself: "She walked. She cleaned her house. She went to town, drove herself to town, and did her everyday living." (R. p. 196, ll. 19-24). Ms. Reed walked with no assistance at all. (R. p. 196, l. 25 - p. 197, l. 4).

Lisa and her husband regularly did activities with Ms. Reed, including shopping, going out to eat, and attending church. (R. p. 197, ll. 5-8). Ms. Reed was "happy...very outgoing... just liked to have fun and do things." (R. p. 197, ll. 12-14).

Lisa was with Ms. Reed when Ms. Reed fell. (R. p. 197, ll. 15-17). They had just eaten at The Thunderbird restaurant and were returning to the vehicle. (R. p. 197, ll. 20-25). Lisa did not see her fall because she was on the other side of the vehicle (a van). (R. p. 197, ll. 24-25).

Additional facts are discussed under each issue below.

ARGUMENTS

I. DEFENDANT WAIVED ANY ISSUE REGARDING PERSONAL JURISDICTION BY MAKING A VOLUNTARY APPEARANCE IN THIS MATTER

Defendant appeared, moved to set aside the default on a new ground (an affirmative defense), sought summary judgment, sought dismissal, cross-examined Ms. Reed on liability and damages issues, closed on the sufficiency of the damages evidence, and requested a zero verdict. Defendant has thus voluntarily appeared and waived any issue regarding personal service. This Court may therefore decline to address any issue related to the propriety of service upon Defendant.

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. *Stearns Bank Ass'n v. Glenwood Fall, LP*, 373 S.C. 331, 337, 644 S.E.2d 793, 796 (Ct. App. 2007), citing Rule 4(d), SCRCP ("Voluntary appearance by defendant is equivalent to personal service."). The Court in *Stearns Bank* explained:

> * * * "The term 'appearance' is used particularly to signify or designate the overt act by which one against whom suit has been commenced submits himself to the court's jurisdiction." 4 Am. Jur. 2d *Appearance* § 1 (1995). "An appearance may be expressly made by formal written or oral declaration, or record entry, *or it may be implied from some act done with the intention of appearing and submitting to the court's jurisdiction.*" *Id.* No specific act constitutes an appearance, as "a defendant may choose to come into court with trumpets, or quietly by the back door." *Stephens v. Ringling*, 102 S.C. 333, 342, 86 S.E. 683, 685 (1915). Accordingly, courts decide on a case by case basis whether a defendant's act demonstrates an intent to submit to the court's jurisdiction.

Stearns Bank, at 338, 644 S.E.2d at 796 (emphasis added). *Compare New Hampshire Ins. Co. v. The Bey Corp.*, 312 S.C. 47, 49, 435 S.E.2d 377, 378 (Ct. App. 1993) (finding defendant did not voluntarily appear where defendant's appearance at the hearing "was limited to setting aside the

default" and "the thrust of [defendant's] presentation of evidence addressed the requirement of showing a basis for setting aside the default").

In this case, Defendant did more than simply appear to present evidence or argument in support of its motion to set aside the default due to allegedly defective service of process.[1] Defendant renewed its motion to set aside default but not on the basis of alleged defective service. (R. pp. 148-183). Instead, Defendant sought the affirmative relief of summary judgment in the alternative. (R. pp. 151, 153; R. p. 187, ll. 18-24).

At the damages hearing, Defendant's counsel stated, "what we're doing here today is raising an additional ground with respect to success on the merits." (R. p. 188, ll. 10-12). Defendant provided the court with a copy of the lease covering the property and argued Ms. Reed could not recover against a lessor, an affirmative defense that must be raised prior to default. (R. p. 188, l. 12 - p. 189, l. 11; pp. 153, 155-175). *See Bardoon Props., NV v. Eidolon Corp.*, 326 S.C. 166, 170-71, 485 S.E.2d 371, 373-74 (1997) (holding because a defendant had not raised the issue of whether he was a real party in interest prior to the entry of default, the argument was waived). Defendant's counsel stated, "on that basis, we ask the Court again to set aside the [default] *and dismiss O.H.M. Florence from this case*." (R. p. 189, ll. 16-19) (emphasis added). Thus, Defendant voluntarily appeared and sought affirmative relief from the Court, which the

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[1] In support of its amended Motion to Set Aside Entry of Default filed August 1, 2024, Defendant included the hearsay affidavit of Pernell Applewhite, who described an "understanding of the events ... based on a discussion with Louvinia Taylor, a cook at the on-site restaurant who witnessed the events and described them to me...." (Amended Motion of 8/1/2024, Attachment). The Motion indicates both Mr. Applewhite and Ms. Taylor are "persons who can be further questioned about the case...." (Amended Motion, p. 4). Thus, Defendant was interviewing witnesses and offered this evidence in support of a defense on the merits, not in support of a claim of lack of effective personal service. This is further support for a finding of a voluntary appearance.

Court denied. (R. p. 194, l. 5).

At the hearing on damages, Defendant again did not limit its participation to issues related to the sufficiency of service of process and personal jurisdiction. Instead, Defendant objected to Ms. Reed's evidence related to damages (R. p. 199, ll. 15-17; p. 199, l. 21 - p. 200, l. 1; p. 200, ll. 12-16; p. 202, l. 25 - p. 203, l. 3; p. 203, ll. 1-17; p. 208, l. 21 - p. 209, l. 10; p. 210, ll. 9-15) and vigorously cross-examined the witnesses on the damages testimony. (R. p. 216, l. 23 - p. 219, l. 19; p. 225, l. 3 - p. 237, l. 10; p. 244, l. 22 - p. 249, l. 3). At the close of Ms. Reed's case Defendant's counsel stated:

> Your Honor, the defendant, of course, consistent with the law in this state, does not have a case to present at this time *and has asked the Court, though, to consider its questions on cross-examination.*

(R. p. 249, ll. 10-14) (emphasis added).

Furthermore, Defendant did not limit its cross-examination to the extent of damages. *See Palmetto Const. Grp., LLC v. Restoration Spec., LLC*, 444 S.C. 328, 349, 907 S.E.2d 129, 140 (Ct. App. 2024) (a defendant in default admits liability but not the damages). Counsel cross-examined Ms. Reed's daughter-in-law, who was with Ms. Reed the day of the fall, about the facts of the fall (a liability issue). (R. p. 219, l. 4 - p. 222, l. 1). Counsel stated that although there was no dispute "about the fact that a fall happened" (R. p. 222, ll. 21-22) and "something going on with her being able to get in the van." (R. p. 223, ll. 19-20; see also p. 223, l. 23 - p. 224, l. 11).

Defendant's counsel also did not limit his closing argument to the issue of the propriety of service upon Defendant but argued against the foundation of damages evidence (R. p. 255, ll. 9-12) and the sufficiency of the damages evidence itself. (R. p. 255, ll. 12-24). This included

criticism of Ms. Reed's "cost projection" evidence. (R. p. 255, l. 25 - p. 256, l. 8). Counsel disputed the evidence under the actuarial tables (R. p. 256, ll. 10-12) and asked the Court not to consider other verdicts. (R. p. 256, ll. 13-24). Finally, Defendant's counsel requested the affirmative relief of a "zero damages" verdict. (R. p. 255, ll. 24-25).

This participation indicated an intent to generally appear and defend up to and beyond the extent permitted a party in default who intends to challenge only service of process. *E.g.*, *Limehouse v. Hulsey*, 404 S.C. 93, 116, 744 S.E2d 566, 578 (2013) (the Court adhered to the procedures adopted in *Howard v. Holiday Inn, Inc.*, 271 S.C. 238, 246 S.E.2d 880 (1978) (in a default damages proceeding defense counsel's participation is limited to cross-examination and objection to plaintiff's evidence)). Defendants actions constitute a voluntary appearance as contemplated by Rule 4(d), SCRCP, which is equivalent to personal service. *Stearns Bank.*

Although the Master did not rule on this issue, it serves as an additional reason to affirm the Master's decision to proceed to judgment. *See Covil Corp. v. Pennsylvania Nat. Mut. Cas. Ins. Co.*, 444 S.C. 117, 125 n. 2, 906 S.E.2d 558, 562 n. 2 (2024) (citing *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 419, 526 S.E.2d 716, 723 (2000) ("[A] respondent—the 'winner' in the lower court—may raise on appeal any additional reasons the appellate court should affirm the lower court's ruling, regardless of whether those reasons have been presented to or ruled on by the lower court.") and Rule 208(b)(2), SCACR ("Respondent's brief ... may contain argument asking the court to affirm for any ground appearing in the record as provided by Rule 220(c).")).

The Court should therefore decline to address any of Defendant's arguments regarding the sufficiency of service of process.

II. THE TRIAL COURT CORRECTLY HELD THE ENTRY OF DEFAULT WAS PROPER AS DEFENDANT HAD BEEN PROPERLY SERVED WITH THE SUMMONS AND COMPLAINT BUT FAILED TO RESPOND

Defendant contends that S.C. Code Ann. § 15-9-210(a) (2005) mandates service *only* upon the registered agent of a domestic corporation and does not permit anyone else (even if designated by the agent) to accept service. That is, "that registered agent is the *only* person authorized to accept service of process for the corporation." (App. Br. pp. 14-15). The Circuit Court and the Master in Equity both rejected this argument. This Court should affirm.

Section 15-9-210 provides:

> (a) A domestic business or nonprofit corporation's registered agent is the agent of the corporation for service of any process, notice, or demand required or permitted by law to be served, and the service is binding upon the corporation.

S.C. Code Ann. § 15-9-210(a). Defendant contends this statute does not authorize the appointment of a "'sub-agent' or other persons to receive service of process on behalf of the registered agent or the corporation" (App. Br. p. 14), and the ONLY way to serve a domestic corporation is by actual service upon the statutory registered agent. The Court should reject this specious argument.

Defendant conspicuously omits a key provision in the statute, which provides:

> (d) This section does not prescribe the only means, or necessarily the required means, of serving a domestic business or nonprofit corporation.

S.C. Code Ann. § 15-9-210(d). That is, the statute itself belies Defendant's argument.

Furthermore, as found by both courts below, Ms. Reed obtained proper service upon Defendant. Rule 4(d)(8), SCRCP, permits service upon a defendant by certified mail, return receipt requested and delivery restricted to the addressee. The Rule provides further that:

> Service pursuant to this paragraph shall not be the basis for the entry of default or a judgment by default unless the record contains a return receipt showing the acceptance by the defendant. Any such default or judgment 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. When the defendant is a corporation or partnership, Rule 4 provides further:

> **(d) Summons: Personal Service.** The summons and complaint must be served together. The plaintiff shall furnish the person making service with such copies as are necessary. Voluntary appearance by defendant is equivalent to personal service; and written notice of appearance by a party or his attorney shall be effective upon mailing, or may be served as provided in this rule. Service shall be made as follows:
>
> * * *
>
> **(d)(3) Corporations and Partnerships**. Upon a corporation or upon a partnership or other unincorporated association which is subject to suit under a common name, by delivering a copy of the summons and complaint to an officer, a managing *or* general agent, *or* to any other agent authorized by appointment or by law to receive service of process and if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

Rule 4(d), SCRCP. Therefore, pursuant to Rule 4(d)(3), proper service upon a corporation is accomplished by delivering the summons and complaint to any one of the following persons: (1) an officer; (2) a managing agent; (3) a general agent; (4) any other agent authorized by appointment; OR (5) any other agent authorized by law to receive service of process. That is, contrary to Defendant's contention, there are multiple candidates for obtaining valid service upon a domestic corporation in South Carolina. Defendant's argument that the statutory registered agent is the ONLY valid person to receive service on a corporation is absurd, and completely ignores not only Section 15-9-210(d) but also the plain language of Rule 4(d).

Even so, a plaintiff need only show compliance with the rules. *Roberson v. Southern Finance of SC*, 365 S.C. 6, 615 S.E.2d 112 (2005). When the civil rules on service are followed, there is a presumption of proper service. *Id.*; *Graham Law Firm v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012). Exacting compliance with the rules is not required to effect service of process. *Richardson v. P.V., Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). *See, e.g.*, *Roche v. Young Bros., Inc., of Florence,* 318 S.C. 207, 211-212, 456 S.E.2d 897, 900 (1995) ("Rule 4(d)(8) requires that the return receipt be restricted to the addressee and show acceptance by the defendant. The rule simply does not require the specific addressee to sign the return receipt."). In this case, Plaintiff's return receipt was restricted to the addressee, Mr. Patel, and the receipt demonstrates acceptance by the defendant (*i.e.*, through delivery to an officer or agent appointed to receive service who signed Mr Patel's name).

Of course, once the plaintiff has demonstrated compliance with the rules, the defendant can rebut an inference that service was effected only by showing that the return receipt was signed by an unauthorized person. *Graham Law Firm*, citing Rule 4(d)(8), SCRCP. As the Supreme Court explained in *Graham Law Firm*:

> The class of persons authorized to sign on behalf of defendants is narrow: "Actual appointment for the specific purpose of receiving process normally is expected and the mere fact a person may be considered to act as defendant's agent for some purpose does not necessarily mean that the person has authority to receive process." *Moore v. Simpson*, 322 S.C. 518, 473 S.E.2d 64 (Ct. App.1996). *Service on an employee is effective when the employee has apparent authority to receive it on behalf of the employer. See Richardson v. P.V., Inc.*, 383 S.C. 610, 682 S.E.2d 263 (2009) (holding that hotel receptionist had authority to receive service of process where she was only employee present in office, which represented to third parties that she was in charge).
>
> An agent's high level of actual or apparent responsibility suffices to permit service to be effective as against the principal. *See Richardson, supra*; *Roberson*

> *v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 615 S.E.2d 112 (2005) (holding that service on clerical employee of registered agent was improper); *Burris Chemical, Inc. v. Daniel Construction Co.*, 251 S.C. 483, 163 S.E.2d 618 (1968) (finding that an acting general superintendent in charge of fifteen men was an agent upon whom service could be made). This Court has also held service on a corporate officer effective as against the corporation. *Roche*, *supra*.

Graham Law Firm, at 295-296, 721 S.E.2d at 433. (emphasis added).

Whether an employee may accept service on behalf of a corporation depends on the authority the corporation conferred upon the employee. *Richardson*, at 615, 383 S.E.2d at 615. In order to determine whether an employee is an authorized agent, the court must look to the circumstances surrounding the relationship and find authority which is either express or implied from the type of relationship between the defendant and the alleged agent. *Id.*, citing *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 67 (Ct. App. 1996). While actual authority is expressly conferred upon the agent by the principal, apparent authority is when the principal knowingly permits the agent to exercise authority, or the principal holds the agent out as possessing such authority. *Richardson*, citing *Roberson*, 365 S.C. at 10-11, 615 S.E.2d at 115.

In this case, Defendant asserts "[i]t was Mr. Patel's accountant, Kevin Lightheart, 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." (App. Br. p. 3; R. p. 191, ll. 6-21). Mr. Lightheart, however, is the accountant for the Defendant, OHM Florence, LLC. (R. p. 273, ¶ 1).

Mr. Patel 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. Mr. Lightheart immediately forwarded the pleadings to Mr. Patel, who then forwarded them to his insurance broker, Acrisure. (R. p. 191, ll. 17 - p. 192, l. 2). Both Mr. Patel and his insurance broker had

actual notice of the suit. *See, e.g., Burris Chemical, Inc. v. Daniel Const. Co.,* 251 S.C. 483, 163 S.E.2d 618 (1968) (the principal object of service of process is to give notice to the defendant corporation of the proceedings against it). Finally, Mr. Lightheart was Defendant's accountant so that service upon his was effective. *Roche v. Young Bros., Inc., of Florence*. Service upon Mr. Lightheart, who signed Mr. Patel's name on the receipt, at the address Mr. Patel provided to the Secretary of State, was effective.

Interestingly, while Mr. Patel provided an affidavit that he did not sign the receipt (R. 77, ¶ 3) and that he was not present at the address he provided to the Secretary of State on the date of service (R. 77, ¶ 4), Mr. Patel did not state that Mr. Lightheart was not authorized to accept service. Furthermore, Defendant's counsel argued merely that Mr. Patel could not "deputize" or designate a "sub-agent" under the statute, but never argued, nor provided evidence, that Mr. Patel did not expressly or impliedly authorize Mr. Lightheart to accept service. (App. Br. pp. 14-15; R. pp. 64-79; R. p. 193, l. 6 - p. 194, l. 1).

The Court should reject Defendant's argument and affirm the finding by both the Circuit Court and the Master that service upon Defendant was proper.

III. THE TRIAL COURT PROPERLY FOUND DEFENDANT FAILED TO ESTABLISH CAUSE, MUCH LESS GOOD CAUSE, FOR FAILING TO RESPOND TO THE COMPLAINT SO AS TO JUSTIFY SETTING ASIDE THE ENTRY OF DEFAULT

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 that required the Master

to then analyze the *Wham* factors. The Court should reject this argument.

This Court recently set forth the standards for reviewing a trial court's decision on whether to set aside an entry of default or default judgment. In *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*, the Court stated:

> The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (citations omitted). "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." *Id.* at 607, 681 S.E.2d at 888.
>
> "Rule 55(a)[, SCRCP] provides that when a party fails to respond to a complaint, the clerk shall record an entry of default. However, Rule 55(c)[, SCRCP] permits a party to move to set aside the entry of default." *Id.* "The standard for granting relief from an entry of default under Rule 55(c) is mere 'good cause.'" *Id.* (quoting 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." *Id.* "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id.* at 607-08, 681 S.E.2d at 888 (citing *Wham v. Shearson Lehman Bros.*, 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 on the record for the finding of the lack of good cause." *Id.* at 608, 681 S.E.2d at 888 (citing *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 179, 463 S.E.2d 636, 639 (Ct. App. 1995)).

444 S.C. 328, 339-340, 907 S.E.2d 129, 135 (Ct. App. 2024).

The Supreme Court reaffirmed these principles in *Green v. Johnson*, 446 S.C. 326, 919 S.E.2d 894 (2025). The Court stated, "[t]he 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 *Wham* factors. *Green v. Johnson*, at 338-39, 919 S.E.2d at 900.

Under this heading, Defendant proffers no reason, much less a good reason, for not timely answering the complaint. In its factual recitation Defendant asserted that "[Defendant] did not forward the [evidence preservation letter] 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." (App. Br. p. 4). This is the only "cause" the Defendant offers in its brief to support turning to the *Wham* factors, and it is stated in another part of the brief. Court should refuse to address this argument.

Even so, these statements are contrary to the evidence in this case. On March 18, 2024, the same day Mr. Lightheart signed for the pleadings, Mr. Lightheart forwarded the papers by email to Mr. Patel. (R. p. 277). Mr. Patel immediately forwarded the pleadings to his insurance broker, Acrisure, with the note "I think we will need the insurance company to provide representation in this case." (R. p. 191, l. 6 - p. 192, l. 1; p. 192, l. 20 - p. 193, l. 2; p. 277). Defendant and its insurance broker both received the pleadings on the date they were served.

Further, Defendant's responses to Ms. Reed's requests for admissions provide:

> 3. Admit that on March 18, 2024, Kevin Lightheart received via registered mail at 304 Plantation View Ln Mount Pleasant, SC 29464 the summons and complaint filed by the Plaintiff, C.A. FILE NO.:2024-CP-21-00548, and signed the green card that was returned to the Plaintiff's counsel.
>
> **Response: Admit**
>
> * * *
>
> 5. Admit that on March 18, 2024, Mr. Lightheart emailed a copy of the complaint to Sagar Patel, the registered agent of OHM Florence, LLC. (Exhibit 2)
>
> **RESPONSE: Admit**
>
> 6. Admit that on March 18, 2024, Sagar emailed Kevin Timmons, an

independent insurance broker working for Commercial Insurance Solutions, a copy of the complaint. (Exhibit 2)

RESPONSE: Admit

(R. p. 273-274, ¶¶ 3, 5, 6; p. 515-519). These admission establish for this case that, contrary to Defendant's claim in its brief, Mr. Patel actually did receive the pleadings and forwarded them to his insurance broker, who dropped the ball. *See* Rule 36(b), SCRCP ("Any matter admitted under this rule is conclusively established unless the court on motion permits withdrawal or amendment of the admission"); *Hamilton v. Regional Medical Center*, 440 S.C. 605, 635-636, 891 S.E.2d 682, 698 (Ct. App. 2023) (requests for admissions are just as binding as pleadings on the parties; "the efficacy of these admissions are akin to the doctrine of judicial estoppel: an admission precludes the admitting party from arguing facts at trial contrary to its responses to a request to admit, absent an amendment to or revocation of the admission as allowed under the rules"). Neglect by an insurance agent has *never* provided a sufficient excuse for failing to respond to a pleading. *See, e.g., Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601, 609, 681 S.E.2d 885, 889 (2009) (an insurance company's misconduct is imputable to the client; "a defendant may not be relieved from the entry of default *solely* because it relied to its detriment on a negligent insurance agent").

Finally, even if the Master should have provided more detail on some portions of his ruling, the failure to do so does not serve as a basis for invaliding his ruling. *Cf. Borg Warner Acceptance Corp. v. Darby*, 296 S.C. 275, 279, 372 S.E.2d 99, 101-02 (Ct. App. 1988) (holding Rule 52(a)[, SCRCP]'s requirement that a court in an action tried without a jury "find the facts specially and state separately its conclusions of law thereon" was "merely directory and

provide[d] no basis for invalidating a judgment"). *See, also, Palmetto Const. Grp., LLC v. Restoration Spec., LLC*, 444 S.C. 328, 340, 907 S.E.2d 129, 135 (Ct. App. 2024) ("The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause.")

If the Court decides to reach this issue, the Court should affirm the Master's denial of Defendant's motion to set aside entry of default because Defendant failed to establish cause, much less good cause, for failing to respond to the complaint.

IV. THE TRIAL COURT'S DAMAGES AWARD IS NOT EXCESSIVE

As mentioned above, following a hearing in which Defendant participated fully pursuant to Rule 55(b)(2), SCRCP, the Master entered a judgment for Ms. Reed for $4, 161,541.00. (R/ 23-29). Defendant contends "this award is excessive in relation to the $1.14 million in alleged medical expenses plus future medical expenses projected by Ms. Reed" which Defendant asserts "were not supported by admissible evidence...." (App. Br. p. 18). The Court should affirm the Master's award.

As this Court stated in *Austin v. Specialty Transp. Servs., Inc.*:

> Actual damages are properly called compensatory damages, meaning to compensate, to make the injured party whole, to put him in the same position he was in prior to the damages received insofar as this is monetarily possible. *See Clark v. Cantrell*, 339 S.C. 369, 529 S.E.2d 528 (2000). Actual damages are awarded to a litigant in compensation for his actual loss or injury. *Laird v. Nationwide Ins. Co.*, 243 S.C. 388, 134 S.E.2d 206 (1964). Actual damages are such as will compensate the party for injuries suffered or losses sustained. *Id.* They are such damages as will simply make good or replace the loss caused by the wrong or injury. Actual damages are damages in satisfaction of, or in recompense for, loss or injury sustained. *Barnwell v. Barber–Colman Co.*, 301 S.C. 534, 393 S.E.2d 162 (1989). The goal is to restore the injured party, as nearly as possible

> through the payment of money, to the same position he was in before the wrongful injury occurred. *Clark*, 339 S.C. at 378, 529 S.E.2d at 533.

358 S.C. 298, 311, 594 S.E.2d 867, 874 (Ct. App. 2004). "The trial judge has considerable discretion regarding the amount of damages, both actual or punitive." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004); *see also Id.* at 311, 594 S.E.2d at 873 (holding the court's review is "limited to the correction of errors of law. Our task in reviewing a damages award is not to weigh the evidence, but to determine if there is any evidence to support the damages award." (citations omitted)).

Defendant limits its attack on the damages award to two assertions: (1) "Respondent failed to properly authenticate the documents on which she relied at the damages hearing" (App. Br. pp. 18-20); and (2) "The expert testimony relied upon by Respondent at the damages hearing was unreliable and therefore inadmissible." (App. Br. pp. 20-23). Defendant makes *no* argument in support of its assertion that the amount of the damages "is excessive in relation to the $1.14 million in alleged medical expenses plus future medical expenses projected by Ms. Reed." The Court should therefore deem this portion of the argument abandoned. *E.g., Whitehurst v. Town of Sullivan's Island*, 446 S.C. 137, 919 S.E.2d 402 (2025) (conclusory argument deemed 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"); *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 620, 602 S.E.2d 747, 750 (2004) (noting issues are deemed abandoned when the arguments on those issues are conclusory).

Even so, the amount of damages in this case is not excessive. Defendant attempts to anchor Ms. Reed's damages solely to the amount of the past and future medical bills and costs,

but damages recoverable in a personal injury tort case include much more than that. Actual damages in tort recovery include such elements as past and future pain and suffering, *Campbell v. Hall*, 210 S.C. 423, 430-431, 43 S.E.2d 129 (1947) ("Pain and suffering is recognized by the Courts of this State as a very material element of damages on which a recovery may be bottomed"); *Watson v. Wilkinson Trucking Co.*, 244 S.C. 117, 136 S.E.2d 286 (1964) (elements of damage for personal injury claim include pain and suffering, medical expenses, and any future damages resulting from permanent injuries), and loss of enjoyment of life separate and apart from pain and suffering, *Boan v. Blackwell*, 343 S.C. 498, 541 S.E.2d 242 (2001). As the Supreme Court stated in *Boan*:

> An award for pain and suffering compensates the injured person for the physical discomfort and the emotional response to the sensation of pain caused by the injury itself. Separate damages are given for mental anguish where the evidence shows, for example, that the injured person suffered shock, fright, emotional upset, and/or humiliation as the result of the defendant's negligence. *See, e.g., Turner v. ABC Jalousie Co. of North Carolina, Inc.*, 251 S.C. 92, 160 S.E.2d 528 (1968) (physical and emotional injuries may be compensable even where there is no threat of physical violence).
>
> On the other hand, damages for "loss of enjoyment of life" compensate for the limitations, resulting from the defendant's negligence, on the injured person's ability to participate in and derive pleasure from the normal activities of daily life, or for the individual's inability to pursue his talents, recreational interests, hobbies, or avocations. *See Overstreet v. Shoney's, Inc.*, 4 S.W.3d 694 (Tenn. Ct. App.1999); *Sawyer v. Midelfort*, 227 Wis.2d 124, 595 N.W.2d 423 (1999); *K.M. Leasing, Inc. v. Butler*, 749 So.2d 310 (Miss. Ct. App.1999). For example, an award for the diminishment of pleasure resulting from the loss of use of one of the senses, or for a paraplegic's loss of the ability to participate in certain physical activities, falls under the rubric of hedonic damages. In our view, "loss of enjoyment of life" damages compensate the individual not only for the subjective knowledge that one can no longer enjoy all of life's pursuits, but also for the objective loss of the ability to engage in these activities.

Id., at 501-502, 541 S.E.2d at 244-245.

The evidence in this case more than supports the Master's award.[2] Ms. Reed presented testimony as well as exhibits that the Master considered in his award. That evidence is as follows.

1. Testimony of Lisa Reed (Lisa) Ms. Reed's daughter-in-law

Lisa holds medical and financial powers of attorney (POAs) for Ms. Reed. (R. p. 195, ll. 2-7; Pl. Exh. 1, pp. 261-264). Ms. Reed executed the medical POA in January 2023 and the financial POA in 1998. (R. p. 195, ll. 15-25). The financial POA permits Lisa to sign Ms. Reed's checks and pay her bills. (R. p. 196, ll. 3-7; p. 200, l. 19 - p. 201, l. 5; pp. 265-268).

In November 2023, Ms. Reed was living alone in her home. (R. p. 196, ll. 8-14). Ms. Reed as independent: "she walked. She cleaned her house. She went to town, drove herself to town and did her everyday living." (R. p. 196, ll. 19-24). Ms. Reed walked with no assistance at all. (R. p. 196, l. 25 - p. 197, l. 4; p. 219, ll. 4-15).

Lisa lived in a home "across the yard...." (R. p. 196, ll. 15-18). Lisa and her husband did a number of activities with Ms. Reed, including going to church, eating out, and shopping. (R. p. 197, ll. 5-9). Ms. Reed "was very happy. She was very outgoing. She just liked to have fun and do things." (R. p. 197, ll. 9-14).

Lisa was with Ms. Reed at the time of the fall. (R. p. 197, ll. 15-25). Ms. Reed "did bust the back of her head a little bit, but it was not a fracture," nor did she lose consciousness. (R. p. 231, l. 23 - p. 232, l. 6). Ms. Reed was transported to the McLeod Regional Medical Center by ambulance and has not been able to return home since the fall. (R. p. 198, ll. 1-8). Lisa followed

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[2] Defendant separately challenges on appeal the Master's discretionary rulings admitting this evidence. (App. Br. pp. 18-23). Ms. Reed addresses those arguments below, but for purposes of this argument, Ms. Reed provides cites to the evidence that supports the amount of the award.

behind the ambulance. (R. p. 230, ll. 14-18). Ms. Reed "was hollering the whole time that her back was hurting." (R. p. 232, ll. 16-17).

Ms. Reed now lives in a nursing home in Lake City, South Carolina. (R. p. 203, ll. 18-25). Lisa has been with Ms. Reed basically every day since November 2023. (R. p. 202, ll. 14-18; p. 230, ll. 19-23). As of the date of the trial Ms. Reed was unable to walk or sit, "and she has to stay basically in the bed at all times." (R. p. 201, ll. 15-19; p. 201, l. 25 - p. 202, l. 2). This is because Ms. Reed fractured her T-9 vertebrae in the fall, which resulted in back surgery. (R. p. 202, ll. 3-13; p. 231, ll. 10-11; p. 233, ll. 13-15). Dr. Tanaheel related the back injury to the fall. (R. p. 232, l. 22 - p. 233, l. 12).

Ms. Reed has "a new spot on her back that the hardware is trying to come through that they put in." (R. p. 203, ll. 6-9). She has had to return to McLeod Regional due to an infection in her back. (R. p. 204, ll. 7-18). Ms. Reed remains "in so much pain." (R. p. 202, ll. 11-13). Dr. Tanaheel stated Ms. Reed may never walk again. (R. p. 233, ll. 9-12).

Lisa reviewed Ms. Reed's medical bills. (R. p. 204, ll. 19-25; p. 206, ll. 16-21; p. 229, ll. 11-19; Pl. Exh. 2, pp. 269-398). Ms. Reed will be responsible for the medical charges and, as her POA, Lisa is ultimately responsible for ensuring the charges get paid. (R. p. 207, ll. 3-11; p. 228, l. 20 - p. 229, l. 7). Lisa stated the documents were "a fair and accurate representation of what [she understands] to be the billing for the services that she's received related to the injuries she had from the fall[.]" (R. p. 207, ll. 12-17). Lisa also verified the accuracy of the index at the beginning of the documents. (R. p. 207, l. 18 - p. 208, l. 2; pp. 269-271). The total of the charges was $1,147,077.00. (R. p. 208, ll. 3-11; p. 271).

After her release from McLeod Regional in December 2023, Ms. Reed went to the

Sumter Family Health Nursing Home. (R. p. 210, l. 20 - p. 211, l. 9). Ms. Reed then went back to McLeod Regional because her back "had busted open. And they had to go back into her back again. And then she had to be in the hospital for a while longer." (R. p. 211, ll. 12-20). Ms. Reed then went to Edisto Acute in Orangeburg where she remained for about a month. (R. p. 211 , l. 21 - p. 212, l. 4). Ms. Reed then went to Orangeburg Hospital, who transported her back to McLeod Regional for "more infection." (R. p. 212, ll. 7-11). She then went to Faith Rehabilitation Nursing Home in Florence. (R. p. 212, ll. 12-15). From there Ms. Reed was transported to Scranton Nursing Home in Lake City where she was residing at the time of trial. (R. p. 212, ll. 16-22).

Lisa identified photographs of Ms. Reed's back that Lisa took. (R. p. 213, ll. 3-22; Pl. Exh. 3; pp. 488-494). She also identified photographs she took of Ms. Reed in March 2025. (Rr. p. 214, ll. 12-24; Pl. Exh. 4, pp. 496-497). When asked how Ms. Reed is doing, Lisa stated, "Ms. Reed is not doing good.... She's very weak and she hurts all the time." (R. p. 215, ll. 1-3; p. 216, ll. 8-11).

Ms. Reed attempted physical therapy to attempt to walk again but she could not walk. (R. p. 215, ll. 8-13). She requires help getting out of the bed and into a wheelchair. (R. p. 215, ll. 18-23). Ms. Reed can sit in the wheelchair for a few minutes but cannot sit in a chair. (R. p. 235, ll. 5-8).

Vanessa Teachey is a registered nurse who works for Project Works. (R. p. 238, ll. 15-19). Ms. Teachey provided a curriculum vitae which revealed her education and employment history. (R. p. 239, ll. 1-15; p. 241, ll. 5-25; Pl. Exh. 5, pp. 498-500). She is a cost projection specialist and provided a report for an estimate of future medical treatment Ms. Reed will

require. (R. p. 238, ll. 19-21; p. 239, ll. 18-25; p. 245, ll. 9-13). Ms. Teachey uses various resources for her projections, such as C.P.T. codes under a database that provides usual and customary pricing and an allowance for other things, like physical therapy or diagnostics. (R. p. 240, ll. 1-10).

For Ms. Reed's case Ms. Teachey gave a price of what the costs would be for Ms. Reed to be in a skilled nursing home. (R. p. 240, ll. 16-19). The report provided for allowances for therapy and diagnostic studies, surgical prices, and price for skilled nursing home care. (R. p. 242, ll. 2-10). For the skilled nursing care, Ms. Teachey used "GenWorth.com," a website that allows average pricing for each State. (R. p. 243, ll. 6-13). This is a resource Ms. Teachey's profession regularly relies upon. (R. p. 243, ll. 14-17). Ms. Reed offered the medial cost summary without objection. (R. p. 244, ll. 2-7; Pl. Exh. 6, pp. 501-502).

On cross-examination, Ms. Teachey stated she was not aware that Ms. Reed was already in a skilled nursing care facility. (R. p. 246, ll. 12-14). The facility currently bills at an average of $1,700.00 per month. (R. p. 247, l. 3 - p. 248, l. 1; p. 248, l. 24 - p. 250, l. 3). Ms. Teachey's cost projection estimates $9,939.00 per month. (R. p. 248, ll. 2-23). In argument, Ms. Reed's counsel pointed out to the Master that the range of services would be between $25,000 to $30,000 per year up to $100,000 per year and Ms. Reed had an actuarial life expectancy of 11 years. (R. p. 251, ll. 2-22). Ms. Reed sought $5,000,000 in damages. (R. p. 253, ll. 13-25). Defendant attacked the sufficiency of the evidence and sought a "zero" verdict. (R. p. 254, l. 18 - p. 255, l. 25).

In tort cases with unliquidated damages, when a verdict falls within the range of the evidence, an appellate court will not disturb it on the ground of excessiveness. *E.g.*, *Satcher v. Berry*, 299 S.C. 381, 385, 385 S.E.2d 41, 43 (Ct. App. 1989) (rule applied in a fraud case). In this

case, the Master noted Lisa testified the bills related to Ms. Reed's treatment totaled $1,462,413.00 (R. p. 26) and Ms. Teachey estimated the future costs of skilled nursing care to be $1,323,874.80. (Pl. Exh. 6, pp. 501-502). These figures total $2,786,287.80, and do not account for physical and emotional pain and suffering or the loss of enjoyment of life. The Master's verdict of $4,161,541.00 has evidentiary support in the record. (R. p. 27).

Assuming the Court reaches the issue of the sufficiency of the evidence to support the verdict the Court should affirm.

V. THE TRIAL COURT'S DAMAGES AWARD WAS SUPPORTED BY ADMISSIBLE EVIDENCE

As mentioned above, the thrust of Defendant's attack on the verdict is two-fold: (1) "Respondent failed to properly authenticate the documents on which she relied at the damages hearing" (App. Br. pp. 18-20); and (2) "The expert testimony relied upon by Respondent at the damages hearing was unreliable and therefore inadmissible." (App. Br. pp. 20-23). The Court should reject both of these contentions.

(A) MS. REED PROPERLY AUTHENTICATED THE DOCUMENTS ON WHICH SHE RELIED AT THE DAMAGES HEARING

Defendant contends the Master erred in permitting Lisa Reed to testify in support of the medical bills "without authenticating testimony from any party who was responsible for paying the alleged bills or seeking payment for the alleged bills...." (App. Br. p. 20). Defendant also attacks the admission of the POAs without Ms. Reed present to authenticate them. The Master permitted the documents into evidence on the basis of Lisa Reed's testimony. The Court should

reject Defendant's arguments.

The admissibility of evidence is within the sound discretion of the trial court and will not be reversed on appeal absent an abuse of discretion or the commission of legal error prejudicing the defendant. *Wright v. Craft*, 371, S.C. 1, 33, 640 S.E.2d 486, 503 (Ct. App. 2006). "If the facts and circumstances proved give rise to a reasonable inference of a causal connection between a plaintiff's present condition and the earlier accident, the absence of medical testimony need not be conclusive." *Howle v. PYA/Monarch, Inc.*, 288 S.C. 586, 596, 344 S.E.2d 157, 162 (Ct. App.1986) (citing *Gambrell v. Burleson*, 252 S.C. 98, 165 S.E.2d 622 (1969); *Grice v. Dickerson, Inc.*, 241 S.C. 225, 127 S.E.2d 722 (1962)).

In *Howle*, the Plaintiff testified prior to the accident she did not have vision problems and following the accident she did have vision problems. 288 S.C. at 597, 344 S.E.2d at 162. As to emotional problems, the Plaintiff testified she was never hospitalized for emotional problems prior to the accident, while doctors testified she was upset and depressed following the accident. *Id.* at 597, 344 S.E.2d at 163. The Court held that, although the Plaintiff might have presented additional testimony to establish the casual connection between the accident and her visual and emotional problems, a common sense connection that was more than "mere temporal sequence" existed to support her claim. *Id.*

In this case, Lisa's testimony satisfied the standards described in *Howle*. Her testimony provides more than a reasonable inference of a causal connection between the bills, for which she had a financial and health care POA, and Ms. Reed's injuries.[3]

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[3] Twice in its brief Defendant asserts "Ms. Reed (1) entered medical records as evidence on the assumption they were related to the subject incident...." (App. Br. pp. 9, 20). This is factually incorrect. Ms. Reed did not offer any medical records; rather, she offered only the

"The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. "By way of illustration only, and not by way of limitation, the following are examples of authentication or identification conforming with the requirements of this rule: (1) *Testimony of Witness with Knowledge.* Testimony that a matter is what it is claimed to be." Rule 901(b)(1), SCRE. "'[T]he burden to authenticate ... is not high' and requires only that the proponent 'offer[ ] a satisfactory foundation from which the [factfinder] could reasonably find that the evidence is authentic.'" *Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015).

Furthermore, Ms. Reed's counsel pointed out to the Master that the general durable POA was recorded in the public records and was, therefore, part of the public record. (R. p. 200, ll. 8-10; Pl. Exh. 1, pp. 265-267). The POA was recorded in the public record as provided by S.C. Code Ann. § 62-8-109 (c) (Supp. 2025). *Cf. Stott v. White Oak Manor, Inc.*, 426 S.C. 568, 574 n. 4, 828 S.E.22d 82, 85 n. 4 (Ct. App. 2019) (noting Section 62-8-109(c) requires durable powers of attorney to be recorded). The POA was accordingly admissible as such. *See* Rule 901(b)(7), SCRE (a public record is admissible if it is shown to be "from the public office where items of this nature are kept.").

The Master exercised his sound discretion in finding Lisa was a sufficient witness to lay a foundation for the related medical bills and to authenticate the POAs. This Court should reject Defendant's arguments and affirm those rulings.

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medical bills through Lisa, who held the POAs.

(B) MS. TEACHEY'S TESTIMONY WAS RELIABLE AND ADMISSIBLE

Defendant contends it made "objections and [an] explicit request for" a ruling on the reliability of Ms. Teachey's testimony. (App. Br. p. 22). The record, however, tells a different story.

Ms. Reed called Ms. Teachey and questioned her extensively about her report and its foundation. (R. p. 237, ll. 17-18; p. 237, l. 23 - p. 238, l. 12). Defendant did not object to her CV (R. p. 241, ll. 9-25) or to her report. (R. p. 244, ll. 2-7). In fact, at no time during her testimony did Defendant's object to her opinions or claim they were not admissible. Defendant's counsel cross-examined Ms. Teachey extensively (R, p. 244, l. 22 - p. 249, l. 5), but made no motion directed at the sufficiency of her testimony or the reliability of her opinions, nor did Defendant move to exclude the testimony. *See Webb v. CSX Transp., Inc.*, 364 S.C. 639, 655, 615 S.E.2d 440, 449 (2005) (holding appellant waived its right to complain about issue on appeal when an expert testified regarding the report in question without a contemporaneous objection from the appellant); *State v. Sweet*, 374 S.C. 1, 5, 647 S.E.2d 202, 205 (2007) ("To properly preserve an issue for review there must be a contemporaneous objection that is ruled upon by the trial court[.]").

Defendant filed a motion pursuant to Rule 59(e), SCRCP, in which Defendant sought "definitive rulings" regarding its evidentiary objections, including:

> Defendant's argument at the hearing that Plaintiff's proffered medical cost projection contained deficiencies making it unreliable as evidence, especially in that it provided Plaintiff's monthly cost for residing at a skilled nursing facility was $9,939 per month, whereas Plaintiff's current records showed that she was residing at a skilled nursing facility presently at a cost of approximately $1,700 per month.

(R. p. 264). Defendant did not challenge the reliability of Ms. Teachey's testimony on this basis at the time it was offered, nor did Defendant seek to strike that testimony on this basis. This objection therefore came too late. *See, e.g.*, *Bank of New York v. Sumter County*, 387 S.C. 147, 159, 691 S.E.2d 473, 479 (2010) ("It is axiomatic that an issue cannot be raised for the first time in a post-trial motion."); *S.C. Dep't of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("an issue may not be raised for the first time in a post-trial motion."). Therefore, this Court should not consider the issue. *Beverly S. v. Kayla R.*, 395 S.C. 399, 401, 718 S.E.2d 224, 225 (Ct. App. 2011) ("An appellate court will not consider an issue that has not been preserved for appellate review.").

Even so, the verdict in this case fell below the amount Ms. Reed sought in closing argument but was within the range of the evidence. The Master heard the Defendant's contention that Ms. Teachey's estimates were well above what the current charges were; that argument went to the weight of the evidence, not its admissibility. The Master judged that weight and entered judgment accordingly.

The Court should find the specific argument Defendant makes on appeal is not preserved for this Court's review. Alternatively, the Court should affirm the Master's discretionary ruling admitting the evidence and the judgment the Master entered based upon its weight.

CONCLUSION

For the reasons stated this Court should affirm the Master's order.

Respectfully submitted,

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CONCLUSION

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