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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Walton J. McLeod, Circuit Court Judge

COMMON PLEAS CASE NO. 2022-CP-32-01483

APPELLATE CASE NO.: 2025-001684

RUMSEY CONSTRUCTION & RENOVATION, LLC	RESPONDENT,
v.	
DEBRA SANSBURY	DEFENDANT,
v.	
PROPERTY LOSS MANAGEMENT, LLC and JINENE CURRY	APPELLANTS

INITIAL BRIEF OF APPELLANTS

James R. Snell, Jr.
Law Office of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, South Carolina 29072
(803) 359-3301
jamesrsnell@snelllaw.com
Attorney for Appellants
Property Loss Management, LLC
and Jinene Curry

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3. DID THE TRIAL COURT ERR IN AMENDING THE ACTUAL DAMAGES AWARD SUA SPONTE?

STATEMENT OF THE CASE

Appellants Property Loss Management, LLC ("PLM") and Jinene Curry ("Curry") appeal the trial court's denial of Curry's motion to set aside the court's default judgment under SCRCP 60(b). Rumsey Construction and Renovation, LLC ("Rumsey") commenced the underlying lawsuit against the homeowner, Respondent Debra Sansbury ("Sansbury"), for failing to pay Rumsey for repair work at her home after a water pipe burst. (Rumsey Complaint, p. 1.) Sansbury filed a third party complaint ("Sansbury Complaint") against PLM and Curry, a licensed insurance adjuster who had assisted Sansbury with her insurance claim. (Sansbury Complaint, pp 5-6.) The Sansbury Complaint alleged that PLM and Curry improperly handled her insurance claim; there was no allegation that PLM or Curry were liable for the payments Sansbury owed to Rumsey. *Id.*

PLM and Curry failed to timely answer the Sansbury Complaint, and the trial court entered a default. (Order for Entry of Default, p. 1.) A damages hearing was held, and on June 27, 2024, the trial court awarded damages against PLM and Curry totaling over $160,000 ($23,405.92 actual damages; $140,435.52 punitive damages). (Damages Order, pp. 1, 4-5.) On June 28, 2024, Curry first became aware of the fact that she had been sued; she had been out of the state taking care of a sick family member and dealing with personal health issues. (Curry's Amended Affidavit, pp. 2-4.)

On July 3, 2024, one week after Sansbury procured the default judgment, Curry motioned to set aside the default judgment. (Motion to Set Aside Default Judgment, p. 2.) Curry took prompt action as soon as she learned of the case and asserted a meritorious defense, explaining that the contract between PLM and Sansbury did not require PLM to manage contractors at Sansbury's home, so there could be no liability for any damages caused by the contractors; and PLM had earned the $23,000 contingency fee pursuant to a valid and enforceable contract between the parties. (Curry Amended Affidavit, p. 4.)

The trial court decided against setting aside the default judgment but did dismiss the punitive damages award. (Order Denying Reconsideration, pp. 5-7.) In reaching this decision, the court applied the wrong legal standard, failing to consider the relevant factors when deciding a motion to set aside a default judgment under the South Carolina Rules of Civil Procedure, Rule 60(b), including whether the movant demonstrated excusable neglect, the timeliness of the motion, the existence of a meritorious defense, and the prejudice to the other party. *See id.* Without explanation, the court also increased the actual damages award from $23,405.92 to $46,811.84. (*Id.,* at p. 7.)

The trial court's decision should be reversed because it did not apply the correct legal standard when it decided to not set aside the default judgment. Further, had the trial court applied the correct legal standard, the default judgment would have been set aside because Curry was not aware of the lawsuit until after the judgment was entered, made a timely motion for the judgment to be set aside, and there exist multiple grounds for a meritorious defense. PLM and Curry are not proper third parties as there are no grounds for derivative liability. There is no personal right of action for violations of the Public Insurance Adjuster Law. The evidence did not support the amount of damages awarded. Finally, Sansbury would suffer no prejudice by allowing a trial on the merits. The trial court's decision should be reversed and the default judgment vacated in its entirety.

STANDARD OF REVIEW

"[C]ourts should closely scrutinize default judgments to prevent harsh results and drastic action. It is the policy of the law to favor the trial of cases on the merits." *Renney v. Dobbs House, Inc.*, 275 S.C. 562, 567, 274 S.E.2d 290, 292 (1981); *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 510-511, 900 S.E.2d 448, 461-462 (2023). The appellate court applies an "abuse of discretion" standard to a trial judge's denial of a motion to set aside an entry of default or a default judgment. *Roberson v. Southern Finance of South Carolina, Inc.*, 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005). "An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Id.*, quoting *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997).

FACTS

In August 2021, Sansbury contracted with PLM, a limited liability company owned by Curry, a licensed public insurance adjustor, for assistance with Sansbury's insurance claim with Kemper Insurance Company ("Kemper") after Sansbury's home flooded when a water pipe burst. (Sansbury's Complaint, pp. 5-6; Amended Affidavit of Jinene Curry, Exhibit A ("the PLM Contract").) Per the terms of the PLM Contract, Sansbury agreed to pay PLM a 25% contingency fee of all sums recovered by PLM from Kemper on Sansbury's behalf. (Curry Affidavit, Ex. A, p. 2.) As part of the PLM Contract, Rumsey and Sansbury authorized PLM to endorse their signatures on all insurance checks pertaining to the claim, which PLM would deposit into a trust account and then distribute the funds between Sansbury and PLM according to their agreement. (Curry

Affidavit, Ex. A, p.8, Additional Ex. A, p. 1.) The PLM Contract did not obligate PLM to manage or pay contractors hired by Sansbury for the repairs to her home. The PLM Contract stated that "[t[his contract contains all promises and agreements between you and [PLM]." (Curry Affidavit, Ex. A, p. 2.)

In September 2021, Kemper sent PLM two checks in the amount of $10,000 and $41,550.30, respectively, which Curry deposited into PLM's Navy Federal Credit Union business account after endorsing on Sansbury and Rumsey's behalf, per the terms of the PLM Contract. (Curry Amended Affidavit, p. 3.) Curry then paid Sansbury the funds received, minus the 25% contingency fee owed to PLM. (May 16, 2024 Transcript, p. 13.) In 2022, Curry informed Sansbury that she was no longer able to assist her in the insurance claim because Curry had contracted the coronavirus, which impacted Curry's cognitive function. (Curry Amended Affidavit, p. 4.)

On May 2, 2022, Rumsey sued Sansbury for failing to pay for repair and reconstruction services provided at Sansbury's home. (Rumsey Complaint, p. 1.) Sansbury filed a third party complaint against PLM and Curry, alleging that PLM and Curry violated South Carolina Code § 38-48-10 *et seq*, ("the Public Insurance Adjusters Law" or "PIAL") by "failing to be honest and fair," "taking a financial interest in Sansbury's insurance claim," "forging Sansbury's signature to an insurance payment check," and "refusing to communicate with Sansbury and her attorneys before and after the lawsuit was filed." (Sansbury Complaint, pp. 5-6.) Sansbury's Complaint did not specify what damages Sansbury suffered as a result of PLM and Curry's actions. *See Id.* Sansbury did not allege that PLM or Curry were liable for the payments Sansbury owed to Rumsey. *See Id.* Sansbury did not allege that PLM or Curry had possession or control of the funds Sansbury owed to Rumsey. *See Id.*

PLM's registered agent was served, via certified mail, with the Sansbury Complaint on September 11, 2023. (Order Denying Reconsideration, p. 1.) Personal service was not made on Curry after four attempts by the Sheriff's Office in October 2023, and three attempts by a personal process server in August 2023. *Id.* The private process server's affidavit stated that the private process server left a copy of the Complaint with an unnamed "person of discretion residing at the defendant's residence…that knows the person to be the defendant mentioned and described in the pleadings." (Affidavit of Service, p. 1.) Thereafter, upon Sansbury's motion, the court issued an order for service by publication on Curry via the Lexington County Chronicle, to be posted on February 15th, 22nd, and 29th, 2024. (Order Denying Reconsideration, p. 2.) After neither PLM nor Curry answered Sansbury's Complaint, entries of default were filed on February 5, 2024 and April 4, 2024, respectively. *Id.*

A damages hearing was held on May 16, 2024, where Sansbury admitted that Kemper had paid her the full amount she was owed under her policy's limits. (Damages Hearing Transcript, p. 18.) Sansbury testified that PLM and Curry owed her damages resulting from the loss of her personal property when contractors stored them improperly during the repair process. (*Id.* at pp. 15-16.) Sansbury also alleged damages in the amount of the difference between what Kemper actually paid her for personal property losses compared to what she would have been paid if Curry had properly "facilitat[ed]" the claim; i.e., "actual cash value" vs. "replacement value." (*Id.,* p. 17.) However, Sansbury also testified that Kemper paid her the maximum amount she was owed under the policy's limits. (*Id.,* p. 18.)

On June 27, 2024, the trial court awarded damages against PLM and Curry totaling over $160,000 ($23,405.92 actual damages; $140,435.52 punitive damages). (Damages Order, pp. 1, 4-5.) On June 28, 2024, Curry first became aware of the fact that she had been sued; she had been out of the state taking care of a sick family member and dealing with personal health issues. (Curry's Amended Affidavit, pp 1-3.) When service attempts were made via certified mail, the Sheriff, the private process server, and by publication, between August 2023 and February 2024, Curry was travelling between Washington state, where she was caring for her sister who was suffering from end-stage ovarian cancer, Arizona, where she has a residence, and South Carolina, where she also resides. *Id.* When Curry was in South Carolina in October 2023, she was taking care of her daughter who had suffered a serious car accident. *Id.* From December 25, 2023 through February 21, 2024, Curry was in Washington caring for her sister until her sister passed away. *Id.*

Curry did not learn about the lawsuit against her or the default judgment until June 28, 2024. *Id.* On June 29, 2024, she received a box of mail which contained all of the documents about the suit. *Id.* She obtained legal counsel and within one week of learning she had been sued, filed the motion to set aside the default judgment. In response, Sansbury's counsel filed two unsigned, unverified documents claiming to be a timeline of Curry's Facebook posts alongside the timeline established by her affidavit. (Sansbury's August 13, 2024 and November 22, 2024 filings.) The trial court decided against setting aside the default judgment but did dismiss the punitive damages award. (Order Denying Reconsideration, pp. 5-7.) Without explanation, the court also increased the actual damages award from $23,405.92 to $46,811.84. (*Id.,* at p. 7.)

ARGUMENT

I. THE TRIAL COURT ERRED IN APPLYING THE WRONG LEGAL STANDARD TO THE MOTION TO SET ASIDE DEFAULT

In deciding not to set aside the default judgment against PLM and Curry, the trial court applied the "good cause" standard under South Carolina Rule of Civil Procedure, Rule 55(c), instead of the "mistake, inadvertence, surprise, or excusable neglect" standard of Rule 60(b)(1).

(*See* Order Denying Reconsideration, pp. 5-6.) This error of law was an abuse of discretion. *See Roberson v. Southern Fin. of S.C., Inc.*, 365 S.C. 6, 10, 615 S.E.2d 112, 114 (2005).

South Carolina Rule of Civil Procedure 55 provides, "[n]o judgment by default shall be entered against… a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action… unless the claimant establishes his claim to relief by evidence satisfactory to the Court." Rule 55(e), SCRCP. Also, "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." Rule 55(c), SCRCP. Once a default judgment has been entered, Rule 55(c) becomes "inapplicable" and the motion to set aside must be decided according to Rule 60(b). *Roberson v. Southern Fin. of S.C., Inc.*, 365 S.C. 6, 10, 615 S.E.2d 112, 114 (2005).

"Under Rule 60(b)(1), SCRCP, a party may be relieved from a final order for "mistake, inadvertence, surprise, or excusable neglect." In determining whether to grant a motion under Rule 60(b), the trial judge should consider: "(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-511, 548 S.E.2d 223, 226 (Ct. App. 2001), citing *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993); Harry M. Lightsey & James F. Flanagan, South Carolina *Civil Procedure* 82 (1985). A Rule 60(b) motion "shall be made within a reasonable time, and... not more than one year after the judgment, order or proceeding was entered or taken." Rule 60(b)(1), SCRCP.

Here, the trial court denied the Curry's motion to set aside the default after concluding that Curry had not demonstrated "adequate or good cause" to set aside the entry of default. (Order

Denying Reconsideration, pp. 5-6.) The trial court did not consider the timeliness of the motion, whether or not Curry or PLM had a meritorious defense, or whether or not Sansbury would be prejudiced by the granting of the motion. *See Id.* The court's failure to apply the correct legal standard was an abuse of discretion, and for this reason alone the decision should be reversed.

II. THE TRIAL COURT ABUSED ITS DISCRETION IN DECIDING NOT TO SET ASIDE THE DEFAULT JUDGMENT

"In determining whether to grant a motion under Rule 60(b), the trial judge should consider: "(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party." *Mictronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 510-511, 548 S.E.2d 223, 226 (Ct. App. 2001), citing *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 50, 435 S.E.2d 377, 379 (Ct. App. 1993); Harry M. Lightsey & James F. Flanagan, South Carolina *Civil Procedure* 82 (1985).

Here, the trial court abused its discretion in deciding not to set aside the default judgment because Curry made a timely motion for the judgment to be set aside, was not aware of the lawsuit until after the judgment was entered, there are multiple grounds for the existence of a meritorious defense, and Sansbury would not be prejudiced by allowing the parties to argue their claims and defenses on the merits. Accordingly, it was an abuse of discretion to deny the motion and the trial court's decision should be reversed.

A. The Motion to Set Aside Was Filed Within a Week After the Default Judgment Was Entered

Curry's motion to set aside was promptly filed within one week of Sansbury's procurement of the default judgment against PLM and Curry. South Caroline Rules of Civil Procedure, Rule 60(b) states that a motion to set aside a default judgment "shall be made within a reasonable time, and... not more than one year after the judgment, order or proceeding was entered or taken." Rule

60(b)(1), SCRCP. Accordingly, this factor weighs heavily in favor of setting aside the default judgment, and it was an abuse of discretion for the circuit court to not even consider this factor. *See Williams v. Watkins*, 384 S.C. 319, 327, 681 S.E.2d 914, 918 (2009) (magistrate court abused its discretion in denying Rule 60(b) motion when defendant appealed the default judgment to circuit court a month after it was entered and all other factors weighed in favor of setting aside the default judgment).

B. Curry Was Unable to Answer Sansbury's Complaint Because She Not Aware of it Until After the Default Judgment Was Entered

Curry demonstrated "excusable neglect" for not answering Sansbury's complaint within the time permitted because she did not receive notice of the complaint until June 28, 2024, the day after the default judgment was entered. (Curry Amended Affidavit, p. 3.) Although PLM's registered agent was served, via certified mail, with the Sansbury's complaint on September 11, 2023, Curry did not receive a copy until June 28, 2024. *Id.* Personal service was not made on Curry at any time, and Curry was out of state when service by publication was made via the Lexington County Chronicle, on February 15th, 22nd, and 29th, 2024. *Id.,* (Order Denying Reconsideration, p. 2.)

When service attempts were made via certified mail, the Sheriff, the private process server, and by publication, between August 2023 and February 2024, Curry was travelling between Washington state, where she was caring for her sister who was suffering from end-stage ovarian cancer, Arizona, where she has a residence, and South Carolina, where she also resides. (Amended Curry Affidavit, pp. 2-4.) When Curry was in South Carolina in October 2023, she was taking care of her daughter who had suffered a serious car accident. *Id.* From December 25, 2023 through February 21, 2024, Curry was in Washington caring for her sister until her sister passed away. *Id.* Curry learned about the lawsuit against her and the default judgment on June 28, 2024. *Id.* On June

29, 2024, she received a box of mail which contained all of the documents about the suit. *Id.* She obtained legal counsel and within one week of learning she had been sued, filed the motion to set aside the default judgment. (*See* Motion to Set Aside Default Judgment, p. 1.) Sansbury's counsel alleged that Curry had purposefully avoided service, alleging, without evidence, that the process server had observed a woman inside the home when attempting service on Sansbury's residence. (See November 22, 2024 Hearing Transcript, p. 8.) Sansbury's counsel also filed two unsigned, unverified documents claiming to be a timeline of Curry's Facebook posts alongside the timeline established by her affidavit. (Sansbury's August 13, 2024 and November 22, 2024 filings.) The circuit court was apparently persuaded by this unverified, undocumented information, in its decision to deny the motion to set aside the default judgment. This was an abuse of discretion.

C. There are Multiple Grounds for the Existence of a Meritorious Defense

In *Mictronics, Inc. v. S..C. Dep't pf Revenue*, "To establish a meritorious defense, a party is not required to show an absolute defense." *Thompson v. Hammond*, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989).

> [A] meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to real facts arising from conflicting or doubtful evidence.

Thompson v. Hammond, 299 S.C. 116, 120, 382 S.E.2d 900, 903 (1989). Moreover, "a party in default can satisfy the meritorious defense requirement under Rule 55(c) and Rule 60(b)(1) by showing he has a meritorious defense as to the amount of damages or proximate cause." *Green v. Johnson*, 446 S.C. 326, 340, 919 S.E.2d 894, 901 (2025). Here, PLM and Curry have multiple grounds for the existence of a defense that is worthy of a hearing, including that they are not proper third party defendants under SCRCP, Rule 14; there is no private right of action under the PIAL;

Sansbury's Complaint fails to state a claim for any other type of relief; and there is no evidentiary support for the amount of damages awarded.

1. PLM and Curry are Not Proper Third Parties under SCRCP Rule 14

Sansbury's claims against Curry and PLM are not proper and subject to dismissal because Sansbury does not allege that PLM or Curry may be liable to Sansbury for any part of Rumsey's claims against Sansbury. *See* Sansbury Complaint. Under SCRCP, Rule 14 (a), a third-party plaintiff "may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff's claim against him." "Rule 14 may be used only when the substantive law permits the defendant to shift some or all of his liability to the impleaded party." *Gathings v. Robertson Brokerage Co.*, 295 S.C. 112, 117, 367 S.E.2d 423, 426 (1988), quoting H. Lightsey & J. Flanagan, South Carolina Civil Procedure at 257 (1985). The question the court must answer is whether Sansbury has a cause of action against PLM or Curry which would impose liability upon PLM or Curry for all or part of Rumsey's claim against Sansbury. *See First Gen. Servs. v. Miller*, 314 S.C. 439, 442, 445 S.E.2d 446, 447-448 (1994).

In the underlying suit, Rumsey sued Sansbury for failing to pay Rumsey for repair work performed at Sansbury's home. (Rumsey Complaint, p.1.) Sansbury impleaded PLM and Curry as third party defendants for a violation of the public adjuster statute related to a contract between Sansbury and PLM for assistance with an insurance claim related to the same repair work at Sansbury's home. (Sansbury Complaint, pp. 5-6.) Sansbury does not allege that either PLM or Curry are liable to Sansbury for the funds Sansbury owes to Rumsey. Additionally, while it is true that Curry received funds from Kemper for the insurance claim on Sansbury's behalf, Sansbury admitted that Curry transferred the funds to Sansbury directly, minus the fee that Curry was owed for her public insurance adjuster services under the PLM Contract. (*See* May 26, 2024 Hearing

Transcript, p. 13.) On these undisputed facts, Sansbury cannot argue that either PLM or Curry are liable to Rumsey for payments that Sansbury and Sansbury alone owes to Rumsey. Under SCRCP Rule 14, neither PLM nor Curry are proper third parties in the underlying action, and Sansbury's Complaint is subject to dismissal as a result.

2. Sansbury's PIAL Claim Fails Because There is No Private Right of Action Under the PIAL

Sansbury's claim against PLM and Curry under the Public Insurance Adjuster Law is subject to dismissal for failure to state a claim for relief because there is no private right of action under the Public Insurance Adjuster Law. *See e.g., Linder v. Ins. Claims Consultants, Inc.*, 348 S.C. 477, 496-497, 560 S.E.2d 612, 622-623 (2002) (holding that the Unauthorized Practice of Law Rules, which provide remedies such as declaratory and injunctive relief, and criminal penalties for violations, do not authorize a private cause of action); *Doe v. Marion*, 373 S.C. 390, 399, 645 S.E.2d 245, 250 (2007) (holding that S.C. Code Ann. § 20-7-510, which makes a physician a mandatory reporter of abuse and neglect, does not create a private right of action).

> In determining whether a statute creates a private cause of action, the main factor is legislative intent: The legislative intent to grant or withhold a private right of action for violation of a statute or the failure to perform a statutory duty, is determined primarily from the language of the statute.... In this respect, the general rule is that a statute which does not purport to establish a civil liability, but merely makes provision to secure the safety or welfare of the public as an entity is not subject to a construction establishing a civil liability.

Doe v. Marion, 373 S.C. 390, 396-397, 645 S.E.2d 245, 248 (2007), quoting *Dorman v. Aiken Communications, Inc.*, 303 S.C. 63, 67, 398 S.E.2d 687, 689 (1990); *Whitworth v. Fast Fare Markets of South Carolina, Inc.*, 289 S.C. 418, 420, 338 S.E.2d 155, 156 (1985)). "When a statute does not specifically create a private cause of action, one can be implied only if the legislation was enacted for the special benefit of a private party." *Id.* citing *Citizens of Lee County v. Lee County*, 308 S.C. 23, 416 S.E.2d 641 (1992).

The statute at issue here, S.C. Code Ann. § 38-48-10 *et seq.*, is silent as to civil liability. Under § 38-48-130, a person who violates the provisions of the Public Insurance Adjustor Law is "guilty of a felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than two years, or both." Additionally, under §38-48-140 and §38-2-10, the Director of the Department of Insurance or his designee may impose fines and suspend or revoke the license of violators, after investigation and a hearing. Thus, the statute does not specifically create a private cause of action.

Nor can a private cause of action be implied, because there is no indication that the legislation was enacted for the special benefit of a private party. In *Masterclean, Inc. v. Star Ins. Co.*, 347 S.C. 405, 415, 556 S.E.2d 371, 377 (2001), the Supreme Court held that the South Carolina Insurance Law, S.C. Code Ann. § 38-3-110, which vests the Director of the Department of Insurance with determining whether an insurer has violated the insurance code, "clearly manifests legislative intent to create an administrative remedy and not a private right of action." Likewise, because the Public Insurance Adjustor Law also vests the Director of the Department of Insurance to determine whether a person has violated the Public Insurance Adjuster Law, the legislative intent is clear here, and no private right of action exists.

3. Sansbury Failed to Establish Her Claim for Relief with Satisfactory Evidence

South Carolina Rule of Civil Procedure 55(e) provides, "[n]o judgment by default shall be entered against… a party upon whom service of summons was made by publication, and who did not subsequently make appearance in the action… unless the claimant establishes his claim to relief by evidence satisfactory to the Court." Sansbury has not presented evidence to support a claim for relief under the PIAL or any other legal theory, because Sansbury has not presented evidence that she actually suffered damages due to an act or failure to act by PLM or Curry. As the Supreme Court concluded in *Green v. Johnson,* "a party in default can satisfy the meritorious defense requirement under Rule 55(c) and Rule 60(b)(1) by showing [s]he has a meritorious defense as to the amount of damages or proximate cause." 446 S.C. at 340, 919 S.E.2d at 901. That is the case here, where the circuit court's award of $23,405.92 in actual damages was not supported by the evidence presented by Sansbury.

At the hearing on damages, Sansbury testified that Curry took $23,405.92 in fees under their contract. (Damages Hearing Transcript, pp.14-15.) Sansbury also testified that Curry was responsible for alleged damages to her personal property when "one of the construction companies mixed all the mold and mildew stuff in with my good stuff and put it in piles in my front yard, so I literally lost everything I had." (Damages Hearing Transcript, pp.15-16.) Sansbury also admitted that Kemper paid for her losses:

> Q. They paid partially, didn't they?
>
> A. They paid for the original loss, like what -- I mean, what we had to throw away that day or whatever, but they didn't pay for the things that were put into storage. One of the construction companies that [Curry] was supposed to be working with put the bad moldy stuff in with the good stuff in these piles and left them there for the whole summer, actually for two years, to the point where nothing was salvageable. And three pods.

(*Id.,* p. 16.)

Sansbury alleged damages in the amount of the difference between what Kemper actually paid her for personal property losses compared to what she would have been paid if Curry had properly "facilitat[ed]" the claim; i.e., "actual cash value" vs. "replacement value." (*Id.,* p. 17.) However, Sansbury also testified that Kemper paid her the maximum amount she was owed under the policy's limits. (*Id.*, p. 18.)

Q. Okay. How much did you lose as a result of her not following up on that? If you know.

A. Well, let's put it this way, I had $250,000 in – what is that called -- for your property, and I lost everything I owned and so I can't subscribe a value.

Q. But how much did you actually get paid by Kemper for it?

A. If I'm being honest, I don't remember.

Q. Okay. But there was something?

A. Yes.

Q. But you didn't get the full 250?

A. Oh, no. Absolutely not. As a matter of fact, the insurance company said that they wouldn't pay any more because they weren't gonna pay for the mold and mildew because there was a ten thousand dollar policy limit and it wasn't -- I mean, it wasn't what it was.

Q. Well, what -- wasn't that because there was a deadline to make that claim and Ms. Curry missed the deadline?

A. Oh, yeah, there was -- yes.

Q. She was supposed to make a claim for that lost property within a certain period of time; is that correct?

A. Actually she was -- oh, gosh. The insurance company had already done their max –

Id. The circuit court awarded Sansbury a full refund of the $23,405.92 in fees paid to PLM based on this evidence, despite the fact that Sansbury was paid the policy limits by her insurance company and the contract between Sansbury and PLM did not obligate either PLM or Curry to manage the contractors working at Sansbury's home. (Default Judgment, p. 5.) Accordingly, the circuit court's award of damages was not supported by the evidence and the default judgment should not have been awarded. Accordingly, there are multiple grounds for finding that a meritorious defense exists in this case.

D. Sansbury Would Not Be Prejudiced by Setting Aside the Default Judgment

Sansbury would not be prejudiced by setting aside the default judgment, and if there were any prejudice to Sansbury by allowing PLM and Curry their day in court, it would be outweighed by the public interest in deciding a case on the merits. *See Mictronics, Inc.*, 345 S.C. at 511, 548 S.E.2d 223, 226 (lower court abused its discretion when it refused to set aside default when defendant showed good faith mistake, took swift action to try to remedy the situation, there was a meritorious defense, and the plaintiffs would not be prejudiced because resolution of the case would not be substantially delayed). *Williams v. Watkins,* 384 S.C. 319, 327, 681 S.E.2d 914, 918 (2009) (magistrate court abused its discretion in denying Rule 60(b) motion when defendant demonstrated good faith mistake, appealed the default judgment a month after it was entered, made a showing of a meritorious defense, and the plaintiff would not be prejudiced because they were immediately notified of the defendant's appeal). Because Curry's motion to set aside was filed within one week of the entry of the default judgment, and there is existence of a meritorious defense, there would be no prejudice to Sansbury, who was immediately on notice that PLM and Curry opposed the default judgment, and thus, had ample opportunity to preserve the evidence against them. Accordingly, it was an abuse of discretion to provide Sansbury with an economic windfall of over $46,000 without allowing PLM and Curry their day in court.

III. THE TRIAL COURT ABUSED ITS DISCRETION IN AMENDING THE ACTUAL DAMAGES AWARD SUA SPONTE

The circuit court also abused its discretion in amending the actual damages award *sua sponte* and without evidentiary support for the amount awarded. "The question of the inadequacy of damages is addressed to the sound discretion of the trial judge. His discretion will not be questioned on appeal unless his finding is wholly unsupported by the evidence or there has been an abuse of discretion amounting to an error of law." *Ravan v. Greenville County*, 315 S.C. 447, 455-456, 434 S.E.2d 296, 301-302 (1993); *South Carolina State Highway Dep't v. Clarkson*, 267 S.C. 121, 126, 226 S.E.2d 696, 697 (1976); *Toole v. Toole*, 260 S.C. 235, 239, 195 S.E.2d 389, 390 (1973). Here, the circuit court's decision was both wholly unsupported by the evidence and founded upon an error of law.

In its initial default judgment, the circuit court awarded Sansbury $23,405.92 in actual damages for reimbursement of the fees paid to PLM under the PLM Contract. (Default Judgment, pp. 3-5.) As stated *infra*, Section II, C(3), the damages awarded in the default judgment lacked evidentiary support because Sansbury did not state a claim for relief or provide evidence of damages caused by PLM or Curry. Nonetheless, even if there was support for this damages award, the circuit decided, *sua sponte*, to amend the actual damages award to $46,811.48 in its order denying Curry's motion to set aside the default judgment. (*See* Order Denying Reconsideration, p. 7.) The circuit court did not provide reasons or point to specific evidence supporting this award. Sansbury did not present any evidence supporting an award of over $46,000 in damages against PLM and Curry. Accordingly, the circuit court abused its discretion and the amended damages award should be reversed.

CONCLUSION

For the reasons stated above, this Court should reverse the judgment of the circuit court and vacate the default judgment entered in this case in its entirety.

Respectfully submitted,

James R. Snell, Jr.
Law Office of James R. Snell, Jr., LLC
123 Harmon Street
Lexington, South Carolina 29072
(803) 359-3301
jamessnell@snelllaw.com
Attorney for Appellants