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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
The Honorable Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. 2025-002197
Civil Action No. 2024-CP-10-04878

Thomas Scott Jackson,
Respondent,

v.

Candelabra, Inc. d/b/a Meadow Blu d/b/a Lyndon Leigh and
Whitney Moore,
Appellants.

RESPONDENT'S INITIAL BRIEF

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June 29, 2026 Charleston,
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STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court acted within its discretion in denying Appellant's motion to vacate where the record showed the Summons and Complaint were delivered by certified mail to Candelabra's registered agent address, accepted by a management-level employee at the registered agent address with authority to accept mail, receipt of the Summons and Complaint was communicated to Candelabra’s owner, and where Candelabra failed to satisfy Rule 60(b).

II. Whether the circuit court correctly rejected Candelabra's attempt to use Rule 55 to avoid a default judgment after judgment had already been entered and after Candelabra failed to appear, answer, or timely respond after notice.

III. Whether the circuit court properly entered default judgment on the wage and contract claims asserted against Candelabra for a sum certain after Candelabra was provided notice and failed to appear for a default hearing.

IV. Whether the circuit court properly dismissed Moore's counterclaims where Moore alleged harm to Candelabra's property, Candelabra's employment contract, and duties allegedly owed to Candelabra - not to Moore personally.

V. Whether Appellants abandoned any challenge to the Order of Reference by failing to present a separate issue or a developed argument showing reversible error.

STATEMENT OF THE CASE

Respondent filed a Summons and Complaint on September 28, 2024, asserting claims against his former employer, Candelabra, and its owner, Whitney Moore, arising from his employment and subsequent termination prior to the completion of his contract. (Compl. pp. 2, 5-12; R. __.) Respondent’s lawsuit asserted the following claims:

1. Violation of the South Carolina Payment of Wages Act – Against Candelabra
2. Breach of Contract – Against Candelabra
3. Tortious Interference with a Contract – Against Moore
4. Breach of Contract with Fraudulent Intent – Against Candelabra
5. Civil Conspiracy – Against All Defendants
6. Defamation – Against All Defendants

7. Intentional Infliction of Emotional Distress – Against All Defendants

The underlying action arises from Candelabra's alleged breach of contract and failure, as Respondent's employer, to pay wages owed during Respondent's employment. This appeal arises from the circuit court's denial of Candelabra's motion to vacate the default judgment and the dismissal of Moore's counterclaims.

PERTINENT FACTS

Candelabra, Inc. d/b/a Meadow Blu d/b/a Lyndon Leigh, is a retail sales business that, under the name "Meadow Blu," holds itself out as a "fashion-forward lighting, furniture, and home décor" retail store. (Compl. p. 2; R. __.) Under the name "Lyndon Leigh" the Company holds itself out as a "trendy lighting, furniture, and home décor" retail store. Both retail stores are located in Mt. Pleasant, South Carolina. (*Id.*) Candelabra designated 1944 Long Grove Dr. Ste 1, Mt. Pleasant, South Carolina, 29464 (the "Long Grove" address) as the address where its registered agent could be served. (Candelabra Secretary of State information p. 1; R. __.) This address is where Candelabra operates its retail business. The Summons and Complaint were delivered by certified mail to the Long Grove address on October 1, 2024. (Plaintiff's Proof of Service reflecting service of the Summons and Complaint on Candelabra on October 1, 2024, filed October 9, 2024, pp. 1-2; R. __.) Claire Huff, Candelabra's manager, signed for the certified mailing. (*Id.*) Huff worked at the Long Grove address in a managerial capacity, could hire and fire employees, had authority to accept mail on behalf of Candelabra, and held herself out as a person of business authority. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 2; R. __.) (Affidavit of Claire Huff, p. 2; Candelabra pay record / paystub attached to the Affidavit of Claire Huff, p. 5; R. __.)

On October 1, 2024, Huff notified Candelabra's owner and the listed registered agent, Appellant Whitney Moore, that she signed for the envelope that contained the Summons and Complaint. (*Id.*) During the relevant time period, Moore exclusively worked remotely from her home located at 2101 Cheswick Lane, Mt. Pleasant, SC, 29466 (the "Cheswick Lane" address) (Affidavit of Whitney Moore submitted in support of Candelabra's Motion to Vacate, p. 1; R. __.) Notably, the Cheswick Lane address is not listed as a location where Candelabra can be served or where its registered agent can be located. Moore instructed Huff to inform Mona Flinn, another Candelabra employee, about the envelope. (Affidavit of Claire Huff, p. 3; Text-message attachment to the Affidavit of Claire Huff, p. 7; R. __.) Huff then texted Flinn a picture of the envelope and informed her of Moore's instructions. (Affidavit of Claire Huff, p. 3; Text-message attachment to the Affidavit of Claire Huff, p. 7; R. __.) Flinn responded that she would pick the envelope up and take it to Moore. (Affidavit of Claire Huff, p. 3; Text-message attachment to the Affidavit of Claire Huff, p. 7; R. __.) The circuit court found that this was the standard process for Candelabra's mail. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 3; R. __.)

Notably, Respondent attempted to serve Appellant Moore with a copy of the Summons and Complaint at the Cheswick Lane address, which is the location where she claims she works remotely. Respondent made no fewer than twenty (20) attempts to serve Moore in her individual capacity by way of a legal intern, a professional process server, and two private investigators. (Process Server Affidavit, January 20, 2025); (Affidavit of Madison Barrett); (Process Server Affidavit, April 11, 2025); (Plaintiff's Affidavit of Service, April 1, 2025). However, Defendant Moore made overt, purposeful attempts to avoid service. (Process Server Affidavit, January 20, 2025). Notably, Defendant Moore has boasted about her ability to evade legal service and has instructed her employees to limit the information they give to any person attempting to locate her. (Affidavit of Thomas Scott Jackson, July 28, 2025, pp. 1-4; R. __.)

Moreover, Defendant Moore demonstrated awareness of the benefit of having an attorney handle legal matters even before Plaintiff's suit was filed. On March 27, 2024, Defendant Moore emailed Respondent from her Candelabra business email address. (Email from Moore to Plaintiff, March 27, 2024, pp. 2-3; R. __.) In her email, Defendant Moore instructed Respondent to let her know about any attempt to take legal action so she could get her attorney involved. (Email from Moore to Plaintiff, March 27, 2024, pp. 2-3; R. __.) In that email, Moore states to Plaintiff, "[i]f you decide to have your attorney involved, we will need to have their information to give to Nelson Mullins." (*Id.*) (emphasis added) On August 12, 2024, counsel for Plaintiff sent a preservation letter to Candelabra and Moore by way of U.S. Mail and hand delivery. (Letter to Defendants Moore and Candelabra concerning demand and records preservation, August 6, 2024; Affidavit of Madison Barrett) Counsel for Plaintiff also emailed the preservation letter to Defendant Moore's business email address three times on August 12, August 26, and August 30, 2024. (Email to Moore, August 12, 2024); (Email to Moore, August 26, 2024); (Email to Moore, August 30, 2024).

Without any response from Moore or Candelabra, on November 5, 2024, Respondent moved for entry of default and default judgment against Candelabra only. Candelabra was provided notice of the default hearing by way of U.S. Mail to the Long Grove Road address. Notice was also sent to the Cheswick Lane address, and also to the business email Moore previously used to communicate with Respondent. (Notice of Default letter, November 21, 2024, and Notice of Default email, November 22, 2024, pp. 2-6; R. __.) On December 17, 2024, the circuit court held a hearing on Respondent's motion for default. (Order of Default Judgment against Candelabra, February 13, 2025, p. 1; R. __.) On February 13, 2025, the court entered an Order of Default

Judgment against Candelabra. (Order of Default Judgment against Candelabra, February 13, 2025, p. 1; R. __.) The court found Candelabra was served on October 1, 2024, failed to answer by November 5, 2024, and was in default. (Order of Default Judgment against Candelabra, February 13, 2025, pp. 1-2; R. __.) The court only entered judgment on Respondent's wage and contract claims for a sum certain in the total amount of $612,121.86. (*Id.*) Again, the Order of Default was mailed to the Long Grove Road address, the Cheswick Lane address, and emailed to Moore's business email address. (Letter and email to Whitney Moore enclosing or providing notice of the Order of Default Judgment, February 13, 2025, pp. 2-3; R. __.)

Candelabra did not move to vacate until April 1, 2025, which was 152 days after the deadline to file a responsive pleading. (Candelabra's Motion to Vacate Default and Default Judgment, April 1, 2025, p. 1; R. __; Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 6; R. __.) Candelabra's motion did not identify a proper basis for relief under Rule 60(b), SCRCP. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 6; R. __.) Instead, Candelabra attempted to relitigate service and default issues that had already been determined after it failed to appear.

On March 30, 2025, Moore, as an individual, was served at her place of residence in compliance with Rule 4 of the South Carolina Rules of Civil Procedure. (Affidavit of Service on Whitney Moore, March 30, 2025, p. 1; R. __.) On April 28, 2025, Moore filed an Answer and Counterclaims. (Moore's Answer and Counterclaims, with exhibit, April 28, 2025, pp. 1, 16-21; R. __.) Her counterclaims alleged conversion, breach of contract, breach of fiduciary duty, breach of loyalty, and negligence-related claims against Respondent. (*Id.*)

On May 22, 2025, Respondent moved to dismiss Appellant Moore's counterclaims. On August 4, 2025, the circuit court held a hearing on Appellant's motion to vacate the default judgment and Respondent's motion to dismiss Appellant's counterclaims. On August 19, 2025, after briefing and argument, the circuit court denied Candelabra's motion to vacate and granted Jackson's motion to dismiss Moore's counterclaims. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 26; R. __.) Appellants moved to reconsider, and the court denied that motion. (Form 4 Order Denying Defendants' Motion to Reconsider, Alter or Amend, September 30, 2025, p. 1; R. __.) This appeal followed.

STANDARD OF REVIEW

The denial of relief from a default judgment under Rule 60(b), SCRCP, is reviewed for abuse of discretion. *Sundown Operating Co. v. Intedge Indus., Inc*., 383 S.C. 601, 608, 681 S.E.2d 885, 888–89 (2009); *Carson v. CSX Transp., Inc*., 400 S.C. 221, 229, 734 S.E.2d 148, 152 (2012). "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, 614, 682 S.E.2d 263, 265 (2009) (citing *Roberson v. S. Fin. of South Carolina, Inc.,* 365 S.C. 6, 9, 615 S.E.2d 112, 114 (2005)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Id.* "The Court has never required exacting compliance with the rules to effect service of process, but instead looks to whether the plaintiff substantially complied with the rules such that the court has personal jurisdiction over the defendant and the defendant has notice of the proceedings." *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995).

White Oak Manor, Inc. v. Lexington Ins. Co., 407 S.C. 1, 10, 753 S.E.2d 537, 542 (2014). Entry of default judgment on sums certain is permitted under Rule 55(b)(1); courts have discretion on damages and fees, but failure to apply controlling standards is legal error reviewed de novo. Rule 55(b), SCRCP; *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 760 (1997). Rule 12(b)(6) dismissals are reviewed de novo. *Cap. City Ins. Co. v. BP Staff, Inc*., 382 S.C. 92, 99, 674 S.E.2d 524, 528 (Ct. App. 2009).

ARGUMENT

I. APPELLANT FAILED TO SATISFY ANY RULE 60(b) GROUND TO SUPPORT ITS MOTION TO VACATE.

Appellants' brief attempts to recast this appeal as if Candelabra merely sought relief from an entry of default under Rule 55(c). That is not what happened. The circuit court entered a default judgment on February 13, 2025. Once default judgment was entered, Candelabra's remedy was under Rule 60(b), SCRCP, not under the Rule 55(c) standard. As the Supreme Court noted in *Sundown Operating Co. v. Intedge Indus*., 383 S.C. 601, 608, 681 S.E.2d 885, 888-89 (2009):

> Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct. App. 1987). Rule 60(b) requires a more particularized showing of mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or "other misconduct of an adverse party." Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk's entry of default.

Here, Appellant’s motion to vacate did not identify a specific Rule 60(b) basis. (Candelabra's Motion to Vacate Default and Default Judgment, April 1, 2025, p. 1; R. __.) It did not establish mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, misconduct, satisfaction of judgment, or any other ground for relief. (Order

Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, pp. 18-19; R. __.) Instead, Appellant attempted to reargue service and default after judgment was entered.

The record supports the circuit court's decision. The Summons and Complaint were delivered to Candelabra's registered agent address by way of certified mail with delivery restricted to Candelabra. (Plaintiff's Proof of Service reflecting service of the Summons and Complaint on Candelabra on October 1, 2024, filed October 9, 2024, pp. 1-2; R. __.) Huff, an agent of Candelabra with authority to accept mail, signed for the envelope. (Affidavit of Claire Huff, p. 3; R. __.) Huff notified Moore and Flinn that the envelope arrived. (Affidavit of Claire Huff, p. 3; R. __.) Flinn, another Candelabra employee, stated she would pick it up. (Text-message attachment to the Affidavit of Claire Huff, p. 7; R. __.) The circuit court found this was Candelabra's standard mail process. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 3; R. __.)

Even assuming Candelabra later misplaced the envelope, that is not a basis to vacate a default judgment. In *Roche,* the Supreme Court rejected relief where the summons and complaint were received but lost within the corporation's internal process. *Roche v. Young Bros. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 900 (1995). The Supreme Court's decision in *White Oak Manor, Inc. v. Lexington Ins*. Co., 407 S.C. 1, 12, 753 S.E.2d 537, 543 (2014), likewise confirms that losing a complaint is not a satisfactory explanation for failing to respond.

Candelabra's delay also supports affirmance. It moved to vacate 152 days after its responsive pleading was due. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 6; R. __.) During that time, Jackson incurred additional costs attempting to serve Moore individually and enforce a judgment Candelabra did not timely challenge, even after the court held a hearing on the matter out of an abundance of caution for Appellants' benefit. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, pp. 4-6; R. __.) Appellant was notified of the December 17, 2024, default hearing by way of U.S. Mail to the Long Grove Road address, Moore's Cheswick Lane address, and by way of email (Notice of Default letter, November 21, 2024, and Notice of Default email, November 22, 2024, pp. 2-6; R. __.) Still, Appellants refused to act. The circuit court acted within its discretion in refusing to set aside the judgment and, therefore, its decision must be affirmed.

II. SERVICE ON CANDELABRA WAS SUFFICIENT UNDER RULE 4(d)(8) OR, AT MINIMUM, SUBSTANTIALLY COMPLIANT AND SUPPORTED BY ACTUAL NOTICE.

Appellants argue the judgment is void because Huff was not listed as Candelabra's registered agent. Rule 4(d)(8), however, does not require the specific registered agent to sign the return receipt. *Roche* holds that Rule 4(d)(8) requires the receipt to show acceptance by the defendant, but "does not require the specific addressee to sign the return receipt." *Roche*, 318 S.C. at 211, 456 S.E.2d at 900.

The circuit court noted that Appellant's position (that service on a company is proper only when a summons and complaint is personally delivered to the specifically named registered agent at the location of the address provided by the company) would produce an absurd result and would make service on Candelabra nearly impossible. Moore admitted she worked remotely from home full-time while Candelabra identified the Long Grove Road location as the address where the registered agent can be found and where the business can be served. (Affidavit of Whitney Moore submitted in support of Candelabra's Motion to Vacate, p. 1; R. __.) Rule 4 does not require that impractical result.

Here, the certified mailing was delivered to the address of the registered agent Candelabra placed on file. (Candelabra Secretary of State information p. 1; Plaintiff's Proof of Service reflecting service of the Summons and Complaint on Candelabra on October 1, 2024, filed October 9, 2024, pp. 1-2; R. __.) Huff, a management-level employee with authority to accept mail, signed the certified letter at the Long Grove Road location. (Id.) The circuit court found Huff was paid by Candelabra, worked as a store manager, had authority to accept mail, had authority to hire and fire select employees, and held herself out as a person of business authority. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 2; R. __.) Huff's own affidavit and attachments support the court's factual finding that she was authorized to accept mail and that she promptly notified Moore and Flinn of the envelope containing the Summons and Complaint. (Affidavit of Claire Huff, pp. 2-3; R. __.) Huff also provided, as an example, an email in which Flinn told her to expect a FedEx package containing employee pay records. (Email from Mona Flinn to Claire Huff concerning collection of mail or packages at the Long Grove Road address, January 9, 2025, p. 3; R. __.)

Appellants' affidavits did not compel a different result but, instead, support the circuit court's finding that Candelabra was properly served. Moore and Flinn swore that neither of them received lawsuit-related mail until March 17, 2025, but Huff swore that she called Moore on October 1, 2024, to inform her about the mailing and produced a text message supporting her action and Flinn's response. (Affidavit of Whitney Moore submitted in support of Candelabra's Motion to Vacate p. 3, ¶¶ 24, 26; Affidavit of Mona Flinn submitted in support of Candelabra's Motion to Vacate p. 2, ¶¶ 12-14; Affidavit of Claire Huff ¶ 13 & Att. 2; R. __.) Moore told Huff to give the envelope to Flinn, and Huff then texted Flinn a photograph of the envelope. (*Id.*)

Of further concern, Moore swore, under penalty of perjury, that Huff was not a Candelabra employee in an effort to support her claim that Candelabra was not properly served. (Affidavit of Whitney Moore submitted in support of Candelabra's Motion to Vacate p. 2, ¶¶ 9-16.) However, Huff's affidavit attached a Candelabra paystub reflecting state and federal withholdings. (Affidavit of Whitney Moore submitted in support of Candelabra's Motion to Vacate p. 2, ¶¶ 9-16; Affidavit of Claire Huff ¶ 7 & Att. 1; R. __.) That paystub also indicates Huff had an employee number and was paid a salary. (*Id.*) This contradiction reinforces the circuit court's decision and it was not required to accept Appellants' self-serving affidavits over the contemporaneous text message, the certified-mail receipt, process server/private investigator notes, and payroll documentation.

The circuit court also correctly considered actual notice and substantial compliance. Although Respondent fully complied with the Rules of Civil Procedure, South Carolina courts do not require hyper-technical compliance where the plaintiff substantially complied with the rules, the court had personal jurisdiction, and the defendant had notice. See *Roche*, 318 S.C. at 210-12, 456 S.E.2d at 899-900; *Trustgard Ins. Co. v. Full Logistics, Inc.*, 442 S.C. 485, 511, 900 S.E.2d 448, 462 (Ct. App. 2023). The record shows proper formal notices and informal notice many times over by way of pre-suit preservation communications, hand delivery, multiple emails, certified mail delivery, the Huff/Flinn text exchange, mailed default-hearing notices, and extensive attempts to serve Moore individually. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, pp. 15-16; R. __.)

Because Candelabra failed to demonstrate the judgment was void, Rule 60(b)(4) does not allow for reversal and the circuit court's decision must be affirmed.

III. DEFAULT JUDGMENT WAS PROPERLY ENTERED ON THE WAGE AND CONTRACT CLAIMS.

Appellants next argue the circuit court entered judgment prematurely and without a sufficient damages analysis. The argument fails for several reasons. Rule 55(b)(1) permits entry where the claim is for a sum certain or which by computation can be made certain. Moreover, Rule 55(b)(2) provides that in all other cases, a party who has appeared in the action is entitled to notice and a hearing before default judgment may be entered. (See also *Stark Truss Co. v. Superior Constr. Corp.*, 360 S.C. 503, 510-11, 602 S.E.2d 99, 103 (Ct. App. 2004) ("Rule 55(b)(1), SCRCP, entitled 'Cases Involving Liquidated Damages or Sum Certain,' provides that where the amount sought is a sum certain and the defaulting party has ***not*** made an appearance, the judge may enter default judgment for the amount sought without holding a hearing. Rule 55(b)(2), entitled 'All Other Cases,' provides, in pertinent part, that a party who has 'appeared' in the action is entitled to notice and a hearing before judgment by default may be entered.")) (emphasis in original).

Here, the judgment was for a sum certain. Nonetheless, the court still held a default judgment hearing on December 17, 2024, out of an abundance of caution. Moreover, Appellants were provided notice of the hearing and still failed to appear. At the hearing, Respondent supported his wage and contract claims with affidavits quantifying his sum certain damages on the breach of contract claim.

A. Appellants Did Not Preserve Their Challenges to Damages or Fees.

South Carolina's preservation doctrine is well-settled and strictly enforced. It is well-accepted that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review. *Wilder Corp. v. Wilke*, 330 S.C. 71 (1998); *Staubes v. City of Folly Beach*, 339 S.C. 406 (2000). The South Carolina Supreme Court has articulated four basic requirements for preserving issues at trial for appellate review: the issue must have been (1) raised to and ruled upon by the trial court, (2) raised by the appellant, (3) raised in a timely manner, and (4) raised to the trial court with sufficient specificity. *South Carolina Dept. of Transp. v. First Carolina Corp*. of S.C., 372 S.C. 295 (2007). These requirements are grounded in the principle that preservation rules give the trial court a fair opportunity to rule on the issues and thus provide the appellate court with a platform for meaningful review. *Herron v. Century BMW*, 395 S.C. 461 (2011); *Stevens & Wilkinson of South Carolina, Inc. v. City of Columbia*, 409 S.C. 563 (2014).

It is a litigant's duty to bring to the court's attention any perceived error, and the failure to do so amounts to a waiver of the alleged error. *South Carolina Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295 (2007). South Carolina does not follow the federal plain error standard; instead, a party must have a contemporaneous and specific objection to preserve an issue for appellate review. *Moses v. State*, 442 S.C. 263 (2024). Accordingly, when a party fails to raise an issue at the trial court level, the appellate court generally will not consider it.

The preservation doctrine applies with equal force to challenges to attorney fee awards. In *Allen v. Allen*, 347 S.C. 177 (2001), the South Carolina Court of Appeals held that a husband's claim that the trial court erred in awarding the wife the full amount of her attorney fees was not preserved for appeal because he asserted the argument for the first time on appeal. Although the husband raised the issue of attorney fees in his post-trial motion for reconsideration, the motion did not mention the sufficiency of the wife's attorney fee affidavit, and he had not objected to the affidavit or challenged its sufficiency at trial. The court applied the foundational rule from *Wilder Corp. v. Wilke*, 330 S.C. 71 (1998) and declined to reach the merits.

Similarly, in *Vick v. South Carolina Dept. of Transp*., 347 S.C. 470 (2001), the Court of Appeals held that SCDOT's challenges to both plaintiff's entitlement to attorney fees and the excessiveness of the fee award were not preserved for review because SCDOT never raised these arguments to the circuit court. The court emphasized that alleged errors must be raised to and ruled upon by the trial judge to preserve issues for appellate review, and cannot be raised for the first time on appeal.

Here, Appellants did not raise the damages or fees issues before the circuit court. Raising the issue now is not permitted and is not properly before the Court. Appellants had the opportunity to address this issue at the default hearing held on December 17, 2024, and during the August 4, 2025, hearing on Candelabra's Motion to Vacate. Because Appellants failed to raise this issue before the circuit court, they waived it and cannot raise it for the first time on appeal.

B. Judgment Was Properly Entered Against Candelabra on Respondent's Wage and Contract Claims.

Rule 55(b)(1), SCRCP, permits judgment where the claim is for a sum certain or which by computation can be made certain. *Stark Truss Co. v. Superior Constr. Corp*., 360 S.C. 503, 510-11, 602 S.E.2d 99, 103 (Ct. App. 2004). Jackson submitted affidavits establishing unpaid wages, contract damages for the remaining term, fees, and costs. (Plaintiff's Motion for Entry of Default Judgment against Candelabra, Inc. d/b/a Meadow Blu d/b/a Lyndon Leigh, with exhibits, November 5, 2024, pp. 2-3; R. __.) The circuit court held a hearing out of caution, even though it could have entered judgment without a hearing on the liquidated amounts. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, p. 5; R. __.)

Here, Candelabra had notice of the default hearing and failed to appear. (Order of Default Judgment against Candelabra, February 13, 2025, p. 1; R. __.) Candelabra was provided notice on November 21, 2024, but failed to appear or object. (Order of Default Judgment against Candelabra, February 13, 2025, p. 1; R. __.) Notice was mailed to the Long Grove Road address and sent to

Moore's home and business email. (Notice of Default letter, November 21, 2024, and Notice of Default email, November 22, 2024, pp. 2-6; R. __.) A defaulting party that receives notice and chooses not to appear cannot later use Rule 60(b) to raise objections it could have raised at the hearing. The judgment was entered on claims asserted against Candelabra based on Candelabra's own wage and contract obligations. The court did not enter judgment against Moore. The wage claim and breach of contract claim were asserted against Candelabra and supported by affidavits. (Order of Default Judgment against Candelabra, February 13, 2025, pp. 1-2; R. __.) The fact that separate claims remained pending against Moore does not make the judgment on Candelabra's wage and contract obligations inconsistent.

The line of cases from *Frow v. De La Vega,* 82 U.S. 552, 554 (1872) Appellants cite does not require reversal. *Frow* concerns the risk of inconsistent judgments in cases involving truly joint liability or claims that necessarily rise or fall together. Here, the default judgment was based on Candelabra's failure to pay wages and breach of Candelabra's employment agreement. Moore's remaining claims involve different theories and different elements. A later determination regarding Moore's individual tort liability would not negate Candelabra's defaulted wage and contract liability.

IV. THE CIRCUIT COURT CORRECTLY DISMISSED APPELLANT MOORE'S COUNTERCLAIMS.

The circuit court correctly determined Moore's counterclaims fail because she sued in her individual capacity for alleged harm belonging, if at all, to Candelabra.

A. Conversion.

Conversion requires ownership or the right to possession of identifiable property at the time of conversion. *Austin v. Indep. Life & Accident Ins. Co.*, 296 S.C. 156, 161, 370 S.E.2d 918, 921 (Ct. App. 1988). Moore did not identify specific property she personally owned. Instead, she alleged "upon information and belief" that Jackson converted "products, inventory, goods, and/or assets" from "Defendant(s)." (Moore's Answer and Counterclaims, with exhibit, April 28, 2025, Paragraph 92; R. __.)

Those allegations are insufficient. Products, inventory, goods, and business assets of Candelabra belong to Candelabra - not Moore individually. *Davis v. Hamm*, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989) ("In the case before us, the [property] was admitted to be an asset of the corporation; the loss of the [property], therefore, was a loss to the corporation. If there was a cause of action because of [defendant's] removal of the [property], the cause of action belonged to the corporation and not to [plaintiff]").

If any corporate property was converted, the claim belongs to the corporation. Moore did not plead individual ownership, individual right to possession, or a specific chattel that was allegedly converted. The circuit court properly dismissed the conversion claim.

B. Breach of contract.

The circuit court likewise properly dismissed Moore's breach of contract counterclaim. The contract identified in the pleadings is the employment agreement between Jackson and Candelabra. (Moore's Answer and Counterclaims, with exhibit, April 28, 2025, paragraphs 12-15, 86; R. __.) Moore signed the employment agreement in her capacity as owner of Candelabra. She was not individually Jackson's employer and was not a party to Jackson's contract with Candelabra. A nonparty to a contract generally cannot maintain a breach of contract action. "South Carolina contract law carries a presumption that an individual who is not a party to a contract lacks privity to enforce it." *Thomas Trancik, M.D., P.A. v. USAA Ins. Co.*, 354 S.C. 549, 553-54, 581 S.E.2d 858, 861 (Ct. App. 2003) (citing *Touchberry v. City of Florence*, 295 S.C. 47, 48-49, 367 S.E.2d 149, 150 (1988)). "By the same token, an individual who is not a party to a contract generally cannot be liable for its breach." *Id.* (citing *Holder v. Haskett*, 283 S.C. 247, 251, 321 S.E.2d 192, 194 (Ct. App. 1984)).

Moore's counterclaim also fails to identify any contract term Jackson breached. Moore listed generalized complaints about Jackson's alleged performance, but the circuit court correctly concluded she did not identify contractual language imposing those obligations on Jackson in favor of Moore individually. (Order Denying Candelabra's Motion to Vacate and Granting Plaintiff's Motion to Dismiss Moore's Counterclaims, August 19, 2025, pp. 21-23; R. __.) The breach of contract counterclaim was properly dismissed.

C. Breach of fiduciary duty and duty of loyalty.

Likewise, the circuit court properly dismissed Moore's fiduciary duty and loyalty claims against Respondent. The alleged relationship serving as the basis for these claims was Respondent's employment relationship with Candelabra. Moore did not plead facts creating a fiduciary relationship between her and Jackson individually. Any duty of loyalty arising from employment would run to the employer, Candelabra, and not to Moore personally. The circuit court correctly refused to recognize Moore's individual tort claims based on duties allegedly arising from Jackson's employment with Candelabra.

D. Negligence, gross negligence, and recklessness.

"A plaintiff, to establish a cause of action for negligence, must prove the following four elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; (3) resulting in damages to the plaintiff; and (4) damages proximately resulted from the breach of duty." *Thomasko v. Poole*, 349 S.C. 7, 11-12, 561 S.E.2d 597, 599 (2002). "An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff." *Id.* (citing *Bishop v. S.C. Dep't of Mental Health*, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998)). Moore did not plead a duty Jackson owed to her individually. Her allegations concern business operations, business property, business vendors, and alleged employment obligations. Those are Candelabra issues. The circuit court correctly dismissed Moore's negligence-based counterclaims.

E. Leave to amend.

Appellants argue the circuit court should have granted leave to amend. Moore did not submit a proposed amended pleading showing how amendment would cure the defects. A bare request to amend does not require reversal, particularly where the defects are legal and not merely technical. Amendment would be futile because Moore's claims, as framed, belong to Candelabra, not Moore individually. The circuit court did not commit reversible error by dismissing the counterclaims.

V. APPELLANTS ABANDONED OR FAILED TO ESTABLISH REVERSIBLE ERROR AS TO THE ORDER OF REFERENCE.

Appellants' Notice of Appeal referenced the Order of Reference, but their statement of issues and argument do not develop a separate argument demonstrating reversible error from that order. An issue not set forth and argued is abandoned. This Court should decline to address the Order of Reference.

In any event, the Order of Reference followed entry of judgment, issuance of execution, and a nulla bona return. (Plaintiff's Petition for Supplemental Proceedings, with exhibits, October 1, 2025, p. 1; Order of Reference to Master-in-Equity for Supplemental Proceedings, October 8, 2025, p. 1; R. __.) Appellants have not shown prejudice warranting reversal, especially where their principal attack is on the underlying default judgment. Because the default judgment should be affirmed, the supplemental proceedings must also be allowed to proceed in their ordinary course.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court affirm the circuit court's Order denying Candelabra's Motion to Vacate, affirm the dismissal of Moore's counterclaims, affirm the default judgment, and deny Appellants' requested relief.

Respectfully submitted,

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