

STATE OF SOUTH CAROLINA

COUNTY OF BERKELEY

Jeffrey A. Ross;

Plaintiff,

vs.

L&D Auto Sales, LLC d/b/a Luis Auto
Repair/L&D Auto Sales;

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CIVIL ACTION NO.: 2023-CP-08-02007

**ORDER DENYING DEFENDANT'S MOTION
TO SET ASIDE ENTRY OF DEFAULT AND
DEFAULT JUDGMENT**

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Jun 30 2026

SC Court of Appeals

This matter came before the Court on March 12, 2026, on Defendant L&D Auto Sales, LLC d/b/a Luis Auto Repair/L&D Auto Sales' Motion to Set Aside Entry of Default and Default Judgment. Both parties, Jeffrey A. Ross ("Plaintiff" or "Ross") and Defendant L&D Auto Sales, LLC d/b/a Luis Auto Repair/L&D Auto Sales ("Defendant" or "L&D") were represented by Counsel. Following a review of the record herein, and in consideration of the Memorandums and arguments of counsel, the Court finds Defendant L&D has not met the standard for obtaining relief from the entry of default, nor has Defendant met the standard for obtaining relief from the entry of default judgment and its motion is therefore DENIED in its entirety for the reasons stated below.

I. Procedural Background

Plaintiff filed its Summons and Complaint on July 19, 2023. Plaintiff alleged Negligence/Gross Negligence/Recklessness, Respondeat Superior, Breach of Contract, Breach of Implied Warranty of Workmanlike Services, Negligent Misrepresentation, Breach of South Carolina Unfair Trade Practices Act, and Fraud within their Complaint. Defendant's registered agent (Daisy Del Carmen Amaya) was properly served the Summons and Complaint at L&D's

principal place of business on September 18, 2023. The Affidavit of Service was filed with the Berkeley County Clerk of Court September 20, 2023.

The thirty-day deadline to plead or otherwise defend expired on October 20, 2023 pursuant to South Carolina Rules of Civil Procedure Rule 12(a), therefore deeming all of the allegations in the Complaint admitted. Plaintiff's attorney did not immediately place L&D in default. Instead, Plaintiff's counsel utilized multiple methods numerous times in attempts to communicate with Defendant. Plaintiff's counsel sent multiple demand letters dated October 26, 2023 and December 7, 2023. Plaintiff's counsel asked that Defendant or Defendant's attorney contact him immediately regarding this matter. Defendant failed to respond to the demand letters. Plaintiff then served discovery requests on the Defendant on February 6, 2024 via Certified Mail. Defendant failed to answer or respond to discovery requests. Ultimately, Plaintiff filed a Motion for Entry of Default on March 19, 2024 and the Honorable Jennifer B. McCoy, subsequently, entered an Entry of Default on March 21, 2024. On March 26, 2024, Plaintiff properly informed Defendant of the Entry of Default by way of letter sent through certified mail.

In a further attempt to reach Defendant, Plaintiff noticed the deposition of Defendant pursuant to South Carolina Rules of Civil Procedure Rule 30(b)(6) on April 10, 2024. Plaintiff properly served Defendant with the Notice of Deposition on April 15, 2024. Defendant failed to appear for their deposition noticed for and held in Defendant's absence on April 25, 2024.

Plaintiff filed their Motion for Default Judgment and Damages Hearing on October 7, 2024. In a final attempt to get Defendant to respond or appear in this matter, Plaintiff, again, noticed the 30(b)(6) deposition of Defendant on December 13, 2024. Plaintiff was notified by the South Carolina Court System of the date of the Motion for Damages hearing on December 23, 2024. In good faith, Plaintiff served, via certified mail and process server, a letter upon Defendant's registered agent informing Defendant of the hearing date as well as reminding them of their

January 6, 2025 deposition. Defendant again failed to appear at their deposition on January 6, 2025, and failed to appear at the Motion for Damages hearing on January 8, 2025.

At the hearing on January 8, 2025, Plaintiff provided sufficient evidence through the use of photographs, receipts, spoken testimony, and other evidence to show actual damages in the amount of \$114,730.53. Plaintiff was awarded Attorney's costs and fees in the amount of \$11,118.68 at the forementioned hearing. Finally, the Honorable Dale E. Van Slambrook, pursuant to South Carolina Code Ann. § 39-5-140 (a), awarded Plaintiff treble damages.

The Court ordered Defendant L&D to pay plaintiff \$355,310.27 on February 7, 2025. On February 27, 2025, Plaintiff motioned for an Execution of Judgment. On May 5, 2025, Plaintiff filed a Notice of Motion and Motion for Reference to the Master in Equity and for Supplemental Proceedings requesting the opportunity to examine the Defendant under oath concerning assets which they may own in order to locate and ascertain the financial assets of the Defendant for the purpose of satisfying the judgment obtained. The Court ordered that this case be referred to the Master in Equity for Berkeley County on May 6, 2025.

Plaintiff filed a proposed Rule to Show Cause which was signed and ordered by the Honorable J. Camden West on May 13, 2025. On May 28, 2025, counsel for Defendant appeared in this matter. Additionally, on May 28, 2025, a Consent Order for Continuance of Rule to Show Cause was filed, signed by counsel for both parties and ordered by the Honorable J. Camden West, continuing the Rule to Show Cause hearing previously scheduled for June 5, 2025.

Defendant's Notice of Motion and Motion to Set Aside Entry of Default and Default Judgment Pursuant to Rules 55(c) and 60(b), SCRCF followed on July 7, 2025.

II. Asserted Excuses of the Defendant

Defendant's counsel asserts there is good cause to set aside the Entry of Default and that there are sufficient grounds to set aside the Default Judgment based on mistake, inadvertence or excusable neglect under rule 60(b)(1), SCRCF. Defendant's counsel submitted a sworn Affidavit

of Carl Dinkins, Jr., a commissioned notary public and bail bondsman. Wherein, Mr. Dinkins claims that Defendant was not proficient in reading English, and relied on his advice that the legal documents appeared fraudulent and could be ignored. Defendant's counsel argued that the language barrier, Defendant's reliance on mistaken advice from a nonlegal professional, and the amount of damages awarded all constitute grounds for setting aside the Entry of Default and Default Judgment.

Defendant's counsel also argued that the Court's Order Awarding Damages relies on Requests to Admit that Defendant claims were never served because they were not identified in the cover letter and Certificate of Service accompanying the requests. Finally, Defendant argues that treble damages previously awarded in this matter are void under Rule 60(b)(4), SCRCP.

III. Standards of Relief

a. Legal Standard of Relief Under Rule 55(c)

The standard for relief from an entry of default is "good cause." See Rule 55(c), SCRCP ("For good cause shown the court may set aside an entry of default[.]").

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; (3) the degree of prejudice to the plaintiff if relief is granted.

Sundown Operating Co. v. Intedge Industries, Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009) (emphasis added) (citing *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). The Court need not consider the *Wham* factors until the party seeking to set aside the default establishes a satisfactory explanation for the default. *Regions Bank v. Owens*, 402 S.C. 642, 649, 741 S.E.2d 51, 55 (Ct. App. 2013) ("Because we find the master did

not err in finding Owens failed to show good cause for failing to answer the complaint, we need not consider the *Wham* factors.”).

b. Legal Standard for Relief Under Rule 60(b)

Relief from a default judgment is an extraordinary remedy and the moving party bears the burden to establish both timeliness and all elements required for relief. Courts apply different standards depending on whether relief is sought from an entry of default under Rule 55(c) or from a default judgment under Rule 60(b), with Rule 60(b) requiring "a more rigorous" standard than the "good cause" requirement of Rule 55(c). *Hill v. Dotts*, 345 S.C. 304 (2001), *Campbell v. City of North Charleston*, 431 S.C. 454 (2020). Courts disfavor setting aside judgments absent strict compliance with the governing rules and a persuasive showing on each required factor.

Courts apply the default factors "with greater liberality within the context of Rule 55(c) vis-à-vis Rule 60(b)". *Hill v. Dotts*, 345 S.C. 304 (2001). South Carolina courts have consistently upheld denials of motions to set aside default judgments when movants fail to demonstrate the required elements under Rule 60(b), SCRCP, particularly when there is untimeliness, lack of excusable neglect, absence of a meritorious defense, failure to act promptly, and prejudice to the plaintiff.

“The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge.” *Roberson v. Southern Finance 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. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162–63, 375 S.E.2d 321, 322–23 (Ct.App.1988).

IV. Application of Law to Facts

- a. Defendant has not shown good cause necessary to set aside Entry of Default under Rule 55(c), SCRCP.

In the matter before the Court, Defendant has failed to put forth a satisfactory explanation for the default. Defendant L&D contends that a language barrier and L&D's reliance on advice from a nonlegal professional constitute good cause. The Court disagrees. Defendant received multiple mailings, and quite possibly other communications, as evidenced by Plaintiff's Memorandum in Opposition of Defendant's Motion to Set Aside, accompanying exhibits to the forementioned memorandum, and previous Affidavits and Proofs of Service filed in this matter. No timely action was taken. Defendant repeatedly chose to ignore ample notice given. Defendant did not merely fail to exercise due diligence. Defendant chose not to exercise due diligence.

The Court also finds the argument of a language barrier unconvincing. Defendant chose to seek legal advice from someone other than a legal professional (a Mr. Dinkins) regarding multiple legal documents that were properly served. Defendant admits he was capable of understanding his communications with Mr. Dinkins. Defendant, in fact, made the decision to ignore these proceedings based upon those communications with a nonlegal professional.

Defendant also presented the Court with arguments for consideration as to its July 7, 2025 filing of the Motion to Set Aside being timely, meritorious defenses existing, and prompt action once aware of the suit. Based on the Court's findings that Defendant could not demonstrate the requisite good cause or other qualifying ground recognized by the rule, the Court does not address the *Wham* factors.

- b. Defendant has not shown mistake or excusable neglect necessary to set aside Default Judgment under Rule 60(b)(1), SCRCF.

Defendant contends that mistake or excusable neglect warrant setting aside the Default Judgment entered against Defendant on February 7, 2025. The Court disagrees. Excusable neglect does not encompass a deliberate choice to ignore pleadings, court notices, or service; it requires a showing that the neglect was reasonable under the circumstances. The evidence shows Defendant

did not merely fail to exercise due diligence. Rather, Defendant chose not to act despite ample notice.

As mentioned above, the record establishes Defendant received multiple mailings and possibly other communications regarding this action, including notices related to default and the subsequent judgment, and chose to ignore them. Defendant's contention that a language barrier excuses the default is unconvincing. The record reflects Defendant sought advice from someone other than a licensed attorney and admits to understanding the communications received. A generalized language difficulty, particularly where the party acknowledges understanding and declines to seek qualified legal assistance, does not establish excusable neglect. 'Defendant's (the defaulting party) actions, therefore, in failing to note the contents of the Summons or the allegations against him in the Complaint, indicates neglect, but does not constitute excusable neglect.' *Nicholson v. Mull*, 266 S.C. 559, 561, 225 S.E.2d 186, 187 (1976); *McInerny v. Toler*, 260 S.C. 382, 196 S.E.2d 122 (1973). Therefore, Defendant has not demonstrated mistake, inadvertence, surprise, or excusable neglect under Rule 60(b)(1), SCRCP.

c. Treble damages are not void and the damages awarded are not disproportionate.

Further, I find Defendant's argument of the treble damages portion of the judgment being void unconvincing. A judgment is void only where the rendering court lacked jurisdiction or entered relief beyond its lawful authority. "The definition of void under the rule only encompasses judgments from courts which failed to provide proper due process, or judgments from courts which lacked subject matter jurisdiction or personal jurisdiction." *Belle Hall Plantation Homeowner's Ass'n, Inc. v. Murray*, 419 S.C. 605, 617, 799 S.E.2d 310, 316 (Ct. App. 2017) (quoting *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, 661 (Ct. App. 2002)). The trial court had jurisdiction over the parties and subject matter and was authorized to award the damages imposed based on the evidence presented. Disagreement with the measure of damages or the Court's exercise of discretion does not render a judgment void under Rule 60(b)(4).

Likewise, Defendant's argument of patently disproportionate damages is unpersuasive. The trial Judge, at the time of judgment, considered the evidence before him, determined the evidence to be sufficient and determined the damages appropriate. Plaintiff provided evidence including, but not limited to, the cost of repairing his vehicle and the loss of use for the amount of time he was unable to use the vehicle, and the trial court found such evidence reasonable and sufficient to grant such award. The necessary statute was pled and argued before the trial court regarding treble damages and the trial court, in its discretion, granted treble damages.

V. Conclusion

Defendant has not shown good cause necessary to set aside Entry of Default under Rule 55(c), SCRCP. Defendant has also failed to show mistake and/or excusable neglect necessary under Rule 60(b)(1). The record herein along with evidence presented by Plaintiff provide little to no question as to the attempts made by Plaintiff to communicate with Defendant from the inception of this lawsuit in July 2023, and possibly before. Defendant chose not to partake in litigation of this matter despite his awareness of such pending action.

Further, Defendant's argument that the treble damages portion of the judgment being void is unconvincing. Likewise, Defendant's argument of patently disproportionate damages is unpersuasive. The trial Judge at the time of judgment considered the evidence before him, determined the evidence to be sufficient and determined the damages to be appropriate.

Accordingly, Defendant's Motion is **DENIED** in its entirety.

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JUDGE'S ELECTRONIC SIGNATURE PAGE TO FOLLOW



Berkeley Common Pleas

Case Caption: Jeffrey A. Ross VS L&D Auto Sales, Llc , defendant, et al

Case Number: 2023CP0802007

Type: Order/Other

AND IT IS SO ORDERED!

s/ J. Camden West #3092