THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas

Honorable Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-002429

Lower Court Case No. 2022-CP-23-00240

DiscoverFresh Foods, Inc., Respondent,

v.

Jesus Concepcion, Kendry S. Tavarez a/k/a Kendry Solange Feliz, and National Risk Solutions, LLC, Defendants, of which Jesus Concepcion is the Appellant.

FINAL BRIEF OF APPELLANT JESÚS CONCEPCIÓN

Jesus Concepcion, Appellant Pro Se

524137-A5-38

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REQUEST TO ARGUE

Appellant respectfully requests oral argument. The appeal presents intertwined issues of constitutional due process, Rule 17(c) protection for an out-of-state imprisoned civil defendant, attorney abandonment, notice after default, and entry of a multimillion-dollar final default judgment after unresolved pre-judgment motions. Oral argument would materially assist the Court in addressing the procedural chronology and the constitutional significance of the lower court's acknowledged failure to hear Appellant before final judgment was entered.

ISSUES PRESENTED

1. Whether the circuit court abused its discretion and erred as a matter of law by entering, and later refusing to vacate, a final default judgment where Appellant filed motions to stay on June 7, 2023 and October 23, 2023 before final judgment, but those motions were not heard until after judgment had already been entered.

2. Whether, if Appellant was deemed represented by retained counsel, the court failed to meaningfully address attorney abandonment under Rule 60(b), SCRCP, where Respondent's counsel acknowledged that counsel "went radio silent" at the beginning of the case.

3. Whether, if Appellant was deemed pro se, due process and Tobias v. Rice required meaningful notice and an opportunity to be heard before dispositive proceedings and final judgment were entered against him.

4. Whether Rule 17(c), SCRCP, together with Ex parte Foster and Gossett v. Gilliam, required appointment of a guardian ad litem or other protective procedure before final judgment because Appellant was imprisoned outside South Carolina and the judgment affected substantial property rights.

5. Whether the renewed 2024 default judgment application, which sought a different "sum certain" than the 2023 default judgment application, reinforced the need for proper notice and an opportunity to contest damages before entry of final judgment.
6. Whether Respondent's default authorities, which address ordinary default practice, fail to answer the constitutional and prisoner-protection defects presented by this record.

STANDARD OF REVIEW

A ruling on a motion to set aside default judgment under Rule 60(b), SCRCP, is generally reviewed for abuse of discretion. However, a court abuses its discretion when its ruling is controlled by an error of law or rests on an unsupported legal conclusion. To the extent the appeal presents constitutional due process, voidness, notice, service, or interpretation of Rule 17(c), those questions are legal questions reviewed without deference to the circuit court's legal conclusion. See McDaniel v. U.S. Fidelity & Guaranty Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). The discretionary label cannot insulate a constitutionally defective judgment. When the record shows that an imprisoned litigant filed pre-judgment motions seeking protection and a stay, that the court did not hear those motions until after judgment, and that the judgment affected major property rights, the appeal requires this Court to decide whether the procedure used was fundamentally fair.

STATEMENT OF THE CASE AND FACTS

This appeal arises from a civil fraud action filed by DiscoverFresh Foods, Inc. on January 18, 2022. The Verified Complaint alleged that Jesús Concepción, Kendry S. Tavarez a/k/a Kendry Solange Feliz, National Risk Solutions, LLC, and Jeffrey L. Mahon participated in a three-part scheme involving payments to National Risk Solutions, alleged phantom employees, and alleged unauthorized salary increases and bonuses. (R. pp. 34-66). The Complaint alleged "over Four Million Dollars" in converted funds, but its prayer for relief requested damages "in an amount to be proven at trial," not a fixed sum certain. (R. pp. 35, 65). Mr. Concepción was incarcerated outside South Carolina during the relevant proceedings. Respondent's own lower-court chronology acknowledged that he was personally served at MDC Brooklyn on March 9, 2022 with the summons, complaint, order, lis pendens, and initial emergency-relief package. (R. pp. 165, 246). A later personal service occurred on April 24, 2023, when he was served at MDC Brooklyn with default/default-judgment materials. (R. pp. 165-166, 249). Those two personal services are the critical service events reflected in the record. Appellant has consistently maintained that many civil documents were not received by him in real time and that numerous filings came into his possession much later through related criminal discovery after his transfer and arrival in South Carolina. (R. pp. 133-150). The record also reflects early service irregularity. On April 20, 2022, after a proposed entry of default was denied, the court's notice stated: "No Affidavit of Service for Defendant Jesus Concepcion in file. Please address and resubmit." (R. pp. 247-248). The same notice stated that Mr. Concepción and the other non-e-filers had not been electronically served by the court and therefore had to be served by traditional means. (R. pp. 247-248). Default was entered on October 25, 2022. (R. pp. 3-4, 77-84, 165-166). On February 9, 2023, Plaintiff moved for default judgment and later filed an amended affidavit of damages. Respondent's own supplemental chronology states that the February 9, 2023 application sought a "sum certain" of $6,590,204.26. (R. p. 165). The court declined to sign the proposed default judgment order on February 14, 2023 pending resolution of claims against co-defendant Mahon. (R. p. 166). After being served with default-related materials, Mr. Concepción did not ignore the case. He filed a Motion to Stay on June 7, 2023, seeking to stop the civil action because of the parallel criminal investigation, his incarceration, lack of practical access to counsel, and the need to protect his ability to present evidence and defenses. (R. pp. 107-110). He filed a second Motion to Stay on October 23, 2023, raising the parallel federal indictment, Fifth Amendment concerns, lack of complete pleadings and filings, inability to monitor the docket from prison, and a request that he be re-served. (R. pp. 111-114). On the same date, attorney Kevin O'Connor filed a letter/request explaining that Mr. Concepción did not have a complete set of case documents, that the case overlapped with criminal defense concerns, and that his rights should be reserved. (R. pp. 250-251). On December 21, 2023, Mr. Concepción again advised the court that he was incarcerated and unable to appear, and he indicated his intent to participate and defend his interests. (R. pp. 252-253). On August 30, 2024, after the plaintiff's claims against Mahon and Smart were resolved, Plaintiff renewed its default-judgment effort. Respondent's supplemental memorandum states that on September 19, 2024 Plaintiff filed a renewed Motion for Default Judgment for $6,523,537.64 against Mr. Concepción, Ms. Tavarez, and National Risk Solutions, LLC. (R. pp. 7-12, 115-120). That was a different amount than the $6,590,204.26 sought in 2023. (R. pp. 91-106, 115-132, 164-166). Final Default Judgment was entered on October 2, 2024. (R. pp. 7-12, 115-120). The lower court later recognized the central procedural problem. At the October 6, 2025 hearing, the court explained that Mr. Concepción filed two motions to stay before judgment was entered and stated that those motions "should have been considered before the judgment." The court further stated it "didn't think it was just kind of an oversight." (R. p. 207, line 16-R. p. 208, line 1). The October 14, 2025 order likewise acknowledged that "no hearing had been afforded" to Mr. Concepción on any of his motions before the court ordered a hearing on April 21, 2025. (R. p. 22). The hearing transcript also confirms that the guardian ad litem issue was not invented after judgment. Respondent's counsel acknowledged that counsel for Mahon, Andy Arnold, had raised the guardian issue, and stated:

"I'm not objecting to it, but my client is not going to pay for it." (R. p. 224, lines 16-25). Later she again stated: "Mr. Arnold did raise it." (R. p. 226, lines 4-17). The transcript further confirms the abandonment problem. Appellant explained that he retained counsel before the answer deadline to protect himself, his wife, and National Risk Solutions. (R. p. 209, line 23-R. p. 210, line 22). Respondent's counsel then acknowledged that counsel "literally went radio silent at the very beginning, and we proceeded with this case." (R. p. 234, lines 1-4). Mr. Concepción responded that he "was not running from this matter" but "running towards it by hiring the attorney," and explained that his wife speaks "no English at all," which was one reason counsel was retained. (R. p. 235, lines 3-17). On October 14, 2025, the circuit court denied relief. (R. pp. 21-26). Mr. Concepción moved for reconsideration on October 21, 2025. (R. pp. 195-204). The court denied reconsideration on October 30, 2025. (R. pp. 27-29). This appeal followed.

ARGUMENT

I. THIS COURT SHOULD KEEP THE APPEAL FOCUSED ON THE CONSTITUTIONAL DEFECT: A FINAL DEFAULT JUDGMENT WAS ENTERED AFTER UNRESOLVED PRE-JUDGMENT MOTIONS, WITHOUT RULE 17(c) PROTECTION, AND WITHOUT A MEANINGFUL OPPORTUNITY TO BE HEARD.

This case is not an ordinary default. The record shows an imprisoned out-of-state defendant who was served, retained counsel, later learned that no meaningful defense had been filed, and then filed multiple pre-judgment motions asking the court to stop and protect his rights before final judgment. (R. pp. 107-114). Those motions were not heard before judgment. (R. pp. 22, 207-208). That is the constitutional defect at the center of this appeal. Due process requires notice and an opportunity to be heard at a meaningful time and in a meaningful manner before a person is deprived of property. A judgment entered without due process is void. McDaniel v. U.S. Fidelity & Guaranty Co., 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). Original service of the summons cannot end the due-process inquiry when a court later enters a multimillion-dollar final judgment after unresolved pre-judgment motions by an incarcerated litigant. The lower court itself recognized the irregularity. At the October 6, 2025 hearing, the court stated that Mr. Concepción filed motions to stay on June 7, 2023 and October 23, 2023 before judgment, and that those motions "should have been considered before the judgment." (R. p. 207, line 16-R. p. 208, line 1). The October 14 order likewise stated that "no hearing had been afforded" to Mr. Concepción on any of his motions until the court later ordered a hearing. (R. p. 22). A post-judgment hearing did not cure the defect. By October 6, 2025, default had already been entered, the renewed sum-certain application had already been granted, judgment had already been entered, judgment enforcement had already begun, and the case posture had hardened. A hearing after the property deprivation is not equivalent to a hearing before the deprivation where the litigant had already filed pre-judgment motions asking the court to hear him. Respondent's delay narrative is therefore incomplete. Respondent argued that Mr. Concepción waited too long and did not request the correct hearing. But the record shows that he filed the June 7, 2023 motion, the October 23, 2023 motion, the O'Connor request, and the December 21, 2023 letter before final judgment. (R. pp. 107-114, 250-253). He was not trying to evade the case; he was trying to enter it. The circuit court's own later order confirms those motions existed and were not heard. (R. p. 22). Due process does not permit unanswered pleas for protection to be recast as waiver.

II. IF MR. CONCEPCIÓN WAS REPRESENTED BY COUNSEL, THEN THE COURT HAD TO ADDRESS WILLFUL ABANDONMENT UNDER RULE 60(b); IF HE WAS DEEMED PRO SE, THEN TOBIAS REQUIRED MEANINGFUL NOTICE AND DUE PROCESS.

Respondent cannot have it both ways. If Mr. Concepción was represented by counsel, then the failures of that counsel had to be evaluated as possible willful abandonment under Rule 60(b). If he was not effectively represented and was treated as pro se, then Tobias v. Rice required meaningful notice and an opportunity to be heard before dispositive action was taken. The transcript confirms the factual basis for the abandonment argument. Mr. Concepción explained that he retained South Carolina counsel before the answer deadline and that the representation was intended to protect him, his wife, and National Risk Solutions. (R. p. 209, line 23-R. p. 210, line 22). Respondent's counsel then acknowledged that counsel "literally went radio silent at the very beginning, and we proceeded with this case." (R. p. 234, lines 1-4). That is not a normal missed deadline. It is the precise kind of breakdown that required meaningful Rule 60(b) analysis. South Carolina recognizes that attorney conduct may justify relief when it transcends ordinary neglect and amounts to willful abandonment. See Stearns Bank National Association v. Glenwood Falls, LP, 373 S.C. 331, 644 S.E.2d 793 (Ct. App. 2007). The circuit court, however, treated the issue primarily as delay and access to the court system. It did not meaningfully analyze the effect of counsel's disappearance on all three remaining defendants at the critical preanswer and pre-default stages. If the court deemed Mr. Concepción pro se, the result is no better for Respondent. Tobias v. Rice, 386 S.C. 306, 688 S.E.2d 552 (2010), establishes the controlling fork. If a party is represented, counsel bears notice obligations; if a party is pro se, the party must receive due process and notice of the proceedings. Here, the record shows a litigant who was simultaneously treated as if counsel's failure bound him and as if he personally bore the burden to monitor every filing from prison. Tobias does not permit that contradiction. The facts show continuing notice problems. Mr. Concepción filed papers stating he lacked complete documents and requested re-service. (R. pp. 111-114, 250-251). He later told the court he had not received the supplemental memorandum filed shortly before the October 2025 hearing. (R. p. 237, line 23-R. p. 238, line 18). The NEFs in the record show that non-e-filers, including Mr. Concepción, had to be served by traditional means. (R. pp. 247-248, 256-257, 275-276, 281-

282). This record cannot support the conclusion that meaningful notice and participation were actually provided.

III. RULE 17(c), FOSTER, AND GOSSETT REQUIRED PROTECTION FOR AN OUT-OF-STATE IMPRISONED DEFENDANT BEFORE FINAL JUDGMENT AFFECTING MAJOR PROPERTY RIGHTS.

Rule 17(c), SCRCP, protects persons who cannot fully protect themselves in litigation because of their status, including imprisoned litigants. Ex parte Foster, 350 S.C. 238, 565 S.E.2d 290 (2002), explains that the rationale for prisoner protection is not mental incompetence but the physical restraint of imprisonment. Gossett v. Gilliam, 317 S.C. 82, 452 S.E.2d 6 (Ct. App. 1994), confirms that where an imprisoned party's property rights are at stake, the court must ensure that the prisoner's interests are protected before default judgment is entered. This case falls squarely within that protection. Mr. Concepción was imprisoned outside South Carolina. The judgment affected substantial present and future property rights. He filed motions asking the court to stay the matter and allow him to defend. (R. pp. 107-114). Yet no guardian ad litem was appointed and no equivalent protective procedure was implemented before final judgment. (R. pp. 21-26). The record's own Rule 17 discussion strengthens this point. Appellant's April 1, 2025 GAL motion included the text of Rule 17 provisions addressing appointment and protective orders for parties under restraint, including the court's authority to make orders allowing additional time or other orders necessary to protect the interests of such parties. (R. pp. 151-163). That language is important because it shows the rule contemplates proactive protection, not merely after-the-fact denial once the judgment has already entered. The GAL issue was visible before the October 2025 hearing. Respondent's counsel acknowledged that Andy Arnold, counsel for co-defendant Mahon, had raised the guardian issue. She stated: "I'm not objecting to it, but my client is not going to pay for it." (R. p. 224, lines 16-25). She later stated: "Mr. Arnold did raise it." (R. p. 226, lines 4-17). Those admissions defeat the suggestion that the Rule 17 issue was unforeseeable or invented only after judgment. The need for protection was recognized during the litigation, and the court still did not ensure protection before entering final judgment. Respondent's waiver argument misunderstands Rule 17. Filing handwritten motions from prison does not prove a litigant can meaningfully litigate a complex civil fraud action involving millions of dollars, parallel criminal proceedings, a language barrier affecting a co-defendant spouse, default damages, and property rights. Rule 17 exists because imprisonment itself creates a restraint on meaningful participation. The fact that Mr. Concepción managed to mail motions only proves that he was trying to participate; it does not prove that the court could ignore the rule's protective function. Nor can Respondent shift responsibility entirely to Mr. Concepción's family or to another party. Once the prisoner-protection issue was visible to the court and counsel, and once the defendant's property rights were at stake, the court had an independent obligation to ensure a constitutionally adequate procedure. Foster and Gossett do not authorize a multimillion-dollar default judgment against an out-of-state prisoner without meaningful pre-judgment protection.

IV. THE CHANGED DAMAGES AMOUNTS AND RENEWED SUM-CERTAIN APPLICATION STRENGTHEN THE DUE-PROCESS DEFECT AND REQUIRED MEANINGFUL NOTICE BEFORE FINAL JUDGMENT.

The damages history matters. The Verified Complaint did not demand a fixed dollar judgment. It alleged "over Four Million Dollars" in the introduction, but the prayer requested damages "in an amount to be proven at trial." (R. pp. 35, 65). That matters because a defendant reading the complaint would not know that a $6.59 million or $6.52 million "sum certain" judgment would later be sought without an evidentiary hearing at which he could meaningfully participate. Respondent's own supplemental memorandum establishes that the amount later changed. Plaintiff's February 9, 2023 default-judgment application sought $6,590,204.26. (R. p. 165). Plaintiff's September 19, 2024 renewed motion sought $6,523,537.64. (R. pp. 7-12, 115-120). The renewed application was filed after the June 7, 2023 and October 23, 2023 stay motions remained unresolved and after the court had not provided Rule 17 protection. The final judgment was entered on October 2, 2024. (R. pp. 7-12, 115-120). The point is not simply that the later amount was lower. The point is that the amount was different, the complaint did not pray for that fixed sum, the case had unresolved pre-judgment motions, and the alleged "sum certain" was the basis for a multimillion-dollar property judgment. Rule 54(c), SCRCP, limits default relief to relief that is not different in kind from or in excess of what was demanded. Rule 55(b), SCRCP, requires careful attention when default judgment is sought on a claimed sum certain. At minimum, the evolving damages presentation made meaningful notice and a real opportunity to contest damages constitutionally necessary. This is especially true because Mr. Concepción was personally served with an earlier default package in April 2023. (R. pp. 165-166, 249). The record does not contain a comparable filed return proving actual personal service of the September 19, 2024 renewed motion and its changed damages amount before the October 2, 2024 final judgment. Instead, the record confirms repeated traditional-service issues for non-e-filers. (R. pp. 247-248, 256-257, 275-276, 281-282). In a case involving an imprisoned pro se litigant and a changed multimillion-dollar damages presentation, due process required more than assumptions about notice. The damages change also undermines Respondent's argument that this was a straightforward sum-certain default. A true sum certain should not require a moving target after the complaint. If the amount required affidavits, amended affidavits, renewed motions, and changes after co-defendant resolution, the court should not have entered final judgment without first resolving Appellant's pending motions and ensuring he had a fair chance to contest damages.

V. RESPONDENT'S AUTHORITIES DO NOT ANSWER THE ISSUES PRESENTED BY THIS RECORD.

Respondent relied on ordinary default and Rule 60 cases such as Hill, Goodson, Roberson, Sundown, Graham, Fassett, Stark Truss, and ITC Commercial Funding. Those cases stand for general propositions: trial courts have discretion over default relief, Rule 60(b) imposes a higher burden after judgment, and parties ordinarily must monitor their litigation. Those propositions do not decide this appeal. Respondent also argued that Appellant could not show a meritorious defense because he later pleaded guilty in the related federal criminal case on June 9, 2025. (R. p. 190). That argument is legally and chronologically flawed. The entries of default were entered in October 2022; the first default-judgment application was filed in February 2023; Plaintiff renewed its default-judgment request in September 2024; and the final default judgment was entered on October 2, 2024 - all before the June 9, 2025 plea. (R. pp. 3-12, 91-106, 115-132, 164-166, 190, 277). Respondent cannot retroactively use a later criminal plea to prove that Appellant had no meritorious civil defense at the time the defaults were entered, at the time his pre-judgment motions were ignored, or at the time final judgment was entered. Nor does a later guilty plea waive Appellant's separate civil due-process objections to notice, Rule 17(c) protection, attorney abandonment, service of later dispositive papers, or the amount and procedure of the civil default judgment. The plea point also does not defeat the civil merits defense proffer. The civil complaint alleged multiple theories, multiple defendants, property remedies, punitive damages, National Risk Solutions transactions, alleged phantom employees, alleged salary issues, and a damages model that changed between the 2023 and 2024 default-judgment applications. (R. pp. 34-66, 91-106, 115-132, 164-166). A later criminal plea cannot be used as an after-the-fact substitute for the evidentiary hearing, Rule 17 protection, notice, and merits opportunity that should have preceded the civil final judgment. The relevant appellate issue is not whether Respondent now believes it can rely on a later plea; it is whether the procedure used before judgment was constitutionally adequate when the judgment was entered. It was not. This record contains facts those ordinary default cases did not involve: an out-of-state imprisoned defendant; retained counsel who "went radio silent" at the beginning; pre-judgment motions to stay filed in June and October 2023; a parallel criminal case and Fifth Amendment concerns; an acknowledged failure to hear those motions before judgment; a Rule 17(c) issue raised during the litigation; a co-defendant spouse who did not speak English; evolving claimed damages; and a multimillion-dollar property judgment. (R. pp. 22, 107-114, 151-166, 207-208, 224-226, 234-235, 250-253). Ordinary default cases cannot be used to erase those constitutional features. Respondent also cited Council v. Catoe and Liberty Builders for stay principles. But those cases do not address the combined problem presented here: parallel criminal proceedings, a prisoner litigant outside South Carolina, unresolved motions before final judgment, Rule 17(c) protections, and a default judgment affecting property rights. The stay issue cannot be separated from due process and Rule 17(c). The cases that fit are Tobias, Foster, Gossett, McDaniel, and Stearns Bank. Tobias controls the represented/pro se notice fork. Foster and Gossett control the protection owed to an imprisoned litigant whose property rights are at stake. McDaniel confirms that due process defects can render a judgment void. Stearns Bank recognizes that attorney abandonment may require relief. Respondent's authorities do not overcome these principles because they do not answer the actual procedural sequence in this record.

VI. THE PROPER REMEDY IS TO VACATE THE FINAL DEFAULT JUDGMENT AND REMAND FOR PROTECTIVE PROCEEDINGS AND MERITS LITIGATION.

The proper remedy is vacatur and remand. This Court need not decide the ultimate merits of DiscoverFresh's allegations or Appellant's defenses in this appeal. The dispositive point is that final judgment was entered through a process that did not provide constitutionally adequate protection before depriving Appellant of property rights. On remand, the circuit court should be instructed to determine whether counsel's conduct amounted to willful abandonment; whether, if Appellant was effectively pro se, due process required additional notice and service; whether Rule 17(c) required appointment of a guardian ad litem or equivalent protective measures; whether the June 7, 2023 and October 23, 2023 stay motions should have been resolved before any final judgment; and whether damages may be litigated on a constitutionally adequate record. Respondent will suffer no legally cognizable prejudice from litigating through a fair procedure. By contrast, leaving the judgment intact would ratify a multimillion-dollar property judgment entered after the lower court acknowledged that pre-judgment stay motions should have been considered before judgment. (R. pp. 22, 207-208). South Carolina law favors resolution on the merits, and constitutional fairness requires it here.

CONCLUSION

This Court should reverse the October 14, 2025 order, reverse the October 30, 2025 order denying reconsideration, vacate the October 2, 2024 final default judgment, and remand for constitutionally adequate proceedings. The record does not show an ordinary default. It shows an imprisoned out-of-state defendant who retained counsel, was abandoned, filed pre-judgment motions seeking a stay and protection, raised criminal-defense and Rule 17 concerns, and was not heard until after final judgment. That procedure does not satisfy due process.

Respectfully submitted,

Jesús Concepción
/s/ Jesús Concepción

Jesús Concepción, Appellant Pro Se

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Dated: July 23, 2026

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CERTIFICATE OF SERVICE

I certify that on July 23, 2026, I served a copy of the foregoing Final Brief of Appellant Jesús Concepción by U.S. Mail and/or electronic mail, as permitted, upon counsel for Respondent: Sarah Anderson Timmons, Esq. Timmons Brogdon Law Firm, LLC 25 Delano Drive, Suite E Greenville, South Carolina 29601 sarah@timmonsbrogdon.com I further certify that a copy was submitted to the South Carolina Court of Appeals in accordance with the applicable appellate filing rules.

Jesús Concepción
/s/ Jesús Concepción

Jesús Concepción, Appellant Pro Se