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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.

Appellants' Initial Reply Brief

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Introduction

Respondent's brief tries to cure fundamental service defects with policy arguments about "absurd results," substantial compliance, and actual notice. None of those doctrines override the plain service requirements of Rule 4(d)(8), SCRCP. The certified mailing to Appellant Candelabra, Inc. ("Candelabra") was not restricted to the addressee, the receipt was signed by an employee of a different entity who was not authorized to accept service of process for Candelabra, and Candelabra's registered agent never received the pleadings. The default judgment entered against Candelabra is, therefore, void, and Rule 60(b)(4) required the circuit court to set it aside.

Even if service had been proper, the $612,121.86 judgment cannot stand because the circuit court failed to conduct the analysis required before awarding the damages and fees it imposed. The circuit court trebled damages without analysis as to whether a bona fide dispute existed, awarded contingency-based attorney's fees without applying the *Jackson v. Speed* factors, and entered judgment on only two claims while four interrelated claims remained pending. Respondent's preservation objection fails because these arguments were raised in Candelabra's motion to vacate and its motion to reconsider—the appropriate procedural vehicles for a defaulted party that received no notice of the underlying hearing.

Finally, with respect to Appellant Whitney Moore, Respondent misreads her counterclaims and ignores her two express requests for leave to amend. Under South Carolina's liberal pleading standard, Moore's counterclaims adequately stated claims for relief and should have survived a Rule 12(b)(6) motion, or at minimum, provided leave to amend to cure any perceived deficiencies. The Court, therefore, should reverse the circuit court's dismissal of Moore's counterclaims.

Argument

I. The default judgment against Candelabra is void because Plaintiff failed to comply with Rule 4(d)(8), SCRCP.

Respondent's brief spends considerable effort defending the form of service (certified mail to the registered-agent address), (Resp's Br. at 7–11), while glossing over the two dispositive defects: (1) the mailing was not restricted to the addressee, and (2) it was signed by someone who was neither Candelabra's registered agent nor an employee that Candelabra had authorized to accept service of process. Either defect requires vacatur of the default judgment.

Rule 4(d)(8) requires that a default judgment "*shall be set aside* pursuant to Rule 55(c) or Rule 60(b) if the defendant demonstrates to the court that the return receipt was signed by an unauthorized person." Rule 4(d)(8), SCRCP (emphasis added). This Court has separately held that a mailing not "restricted to the addressee" cannot sustain a default judgment. *Langley v. Graham*, 322 S.C. 428, 431, 472 S.E.2d 259, 261 (Ct. App. 1996). Because either failure deprived the circuit court of personal jurisdiction, the resulting judgment and related orders are void and must be set aside as a matter of right. *Richardson Const. Co. v. Meek Eng'g & Const., Inc.*, 274 S.C. 307, 309, 262 S.E.2d 913, 915 (1980). Respondent's attempt to frame the issue as one of judicial discretion, (Resp. Br. at 6), therefore, must be rejected—a court has no discretion to leave a void judgment in place. *Richardson Const. Co.*, 274 S.C. at 309, 262 S.E.2d at 915 ("Such relief [from judgment], when warranted, is not discretionary but a matter of right.").

A. Respondent failed to restrict delivery to Candelabra's registered agent and does not meaningfully rebut that failure.

Respondent's brief never squarely addresses the fact that the certified mail return receipt for the summons and complaint shows no "Restricted Delivery" designation. (Proof of Service, Ex. A, Oct. 9, 2024; R. __). That is not a minor defect. Rule 4(d)(8) requires that certified-mail service be "delivery restricted to the addressee." The receipt filed by Respondent shows no such restriction, and Respondent's brief provides no evidence to the contrary. Instead, Respondent argues that Rule 4(d)(8) does not require the specific addressee to sign, citing *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 212, 456 S.E.2d 897, 900 (1995). (Resp. Initial Brief at 9; R. __.) *Roche*, however, only answers *who* may sign for restricted delivery—holding that an officer of the corporation or authorized agent may sign in the addressee's place—and does not eliminate the restricted-delivery requirement. *Roche*, 318 S.C. at 211, 456 S.E.2d at 900.

This Court's decision in *Langley v. Graham* is squarely on point. There, the Court reversed a default judgment where "delivery was not restricted to [the] addressee" only as required by Rule 4(d)(8). *Langley*, 322 S.C. at 431, 472 S.E.2d at 261. Respondent does not try to distinguish *Langley*. He cannot. As in *Langley,* the certified mail here "was defective in that delivery was not restricted to the addressee," so it could not form the basis for a default judgment. *Id.* That defect alone requires vacatur of the default judgment, and the circuit court abused its discretion in determining otherwise.

The rest of Respondent's argument on this point is a policy argument dressed as legal analysis: he insists that the strict application of Rule 4(d)(8) would produce an "absurd result" because Moore worked remotely. (Resp. Br. at 9.) But nothing about the Rule prevented Respondent from mailing with restricted delivery to Moore, the registered agent, by name, or from resorting to the numerous other permissible methods of service on a corporation. Respondent chose the certified-mail route and failed to comply with its requirements. His policy arguments cannot rewrite the restricted delivery requirements of Rule 4(d)(8).

B. Claire Huff was not an authorized agent of Candelabra.

Respondent's brief describes Claire Huff, who signed the certified mail receipt, as "Candelabra's manager," a "management-level employee," and a person who "held herself out" as having business authority. (Resp. Br. at 2, 10.) The record does not support those characterizations. Even if it did, the operative legal standard is not what Ms. Huff held herself out as—it is what *Candelabra* authorized her to do—and the record contains no evidence that Candelabra ever authorized Ms. Huff to accept service of process.

First, Ms. Huff's own sworn testimony forecloses an "authorized agent" theory. She testified twice, under oath, that she was never authorized to accept service of process on behalf of "Lyndon Leigh, LLC, Candelabra, Inc., Meadow Blu or Whitney Moore," and that she never held herself out as having such authority. (Huff Aff. ¶¶ 10–11, July 7, 2025; R. __.) She also confirmed she was never an officer, director, or registered agent for either entity. (Huff Aff. ¶¶ 8–9; R. __.) Respondent selectively invokes Ms. Huff's affidavit only to argue that she was authorized to "accept mail" for Candelabra, while ignoring her sworn statements that she lacked service authority. (Resp. Br. at 10.) He cannot have it both ways.

Respondent also conflates Ms. Huff's employment with Lyndon Leigh, LLC, with employment by Candelabra, Inc. (Resp. Br. at 2.) These are separate legal entities with distinct organizational structures, bank accounts, and tax obligations. (*See* Moore Aff. ¶¶ 3, 8–9, Ex. A & B (Sec'y of State records); R. __.) Respondent asserts that Ms. Huff was Candelabra's employee because her paystub reflected withholdings from "Candelabra, Inc." (Resp. Br. at 11.) That label reflects nothing more than a shared payroll arrangement: Lyndon Leigh and Candelabra employees were processed through a single payroll system and paid from one disbursing entity for tax and administrative convenience. (*See* Appellants' Reply Memo. Supporting Mot. to Vacate at 7; R.

___.) In any event, the Supreme Court has been explicit that "not every employee of a corporation is an agent of the corporation for the purposes of service of process." *Richardson v. P.V., Inc.*, 383 S.C. 610, 615, 682 S.E.2d 263, 265 (2009). Whether or not Ms. Huff was employed by Candelabra, she was not authorized to accept service for Candelabra.

The circuit court's finding that Ms. Huff had authority to "accept mail" for Candelabra, (Order denying Mot. to Vacate at 2, n. 1; R. __), is not dispositive because mail-acceptance authority is not service-of-process authority. This Court recognized that distinction in *Moore v. Simpson*, 322 S.C. 518, 524, 473 S.E.2d 64, 67 (Ct. App. 1996). There, the court held that attempted service on a receptionist who "routinely received mail for defendant's employees" was insufficient because she lacked "express authority to accept service of process." *Id.* Respondent ignores *Moore* and fails to address it in his brief. This is a concession that the mere ability to sign for packages is not transmuted into legal authority to accept service of process for a corporation.

Likewise, Respondent's emphasis that Ms. Huff "held herself out as a person of business authority" is irrelevant to the analysis. (Resp. Br. at 2, 10.) "Whether an employee may accept service on behalf of a corporation depends on the authority the *corporation* conferred upon the employee." *Richardson v. P.V., Inc.*, 383 S.C. at 615, 682 S.E.2d at 265 (emphasis added); *Roberson v. S. Fin. of S.C., Inc.*, 365 S.C. 6, 11–12, 615 S.E.2d 112, 115 (2005) ("[I]t is [the corporation]'s past behavior which would be relevant and not [the signee's]."). Because the record contains no evidence that Candelabra authorized Ms. Huff to accept service or held her out as its service agent, the circuit court abused its discretion, and the default must be vacated. After all, Huff agrees that Candelabra did not authorize her to accept service of process, (Huff Aff. ¶¶ 10–11; R. ___), a clear indication that even she saw no evidence that Candelabra held Huff out as one on which process could be served.

C. Respondent's "actual notice" theory is insufficient.

Unable to defend the propriety of service, Respondent falls back on the argument that Candelabra had "actual notice" of the lawsuit because of the pre-suit communications, physical mailings, and a text message from Ms. Huff to employee Mona Flinn. (Resp. Br. at 11.) That argument fails as a matter of law and fact for at least four reasons.

First, actual notice cannot cure a jurisdictional defect. *Momani v. Van Surdam*, 296 S.C. 409, 410, 373 S.E.2d 691, 692 (Ct. App. 1988). Respondent's reliance on substantial compliance is misplaced. The doctrine forgives minor defects in the manner of effectuating otherwise valid service, not the fundamental failure to direct restricted-delivery service to an individual authorized to accept process. *See Roche*, 318 S.C. at 210, 456 S.E.2d at 900 (upholding service on the company's vice president where certified mail was properly addressed to the company's registered agent). The substantial compliance line of cases analyzes whether the plaintiff sufficiently complied with the rules *and* restricted delivery to the addressee—not whether the defendant happened to learn of the lawsuit through other means after service on an unauthorized person.

Second, Respondent's reliance on *Ex parte Trustgard Ins. Co*., 442 S.C. 485, 900 S.E.2d 448 (Ct. App. 2023), is similarly misplaced. The lone shareholder of the defendant-corporation in *Trustgard* confirmed in live testimony under oath that he received the pleadings. *Id.* at 499, 900 S.E.2d at 455. That service did not involve certified mail, but instead a process server delivering the pleadings to an authorized agent at the defendant's place of business. *Id*. *Trustgard* does not authorize service on an unauthorized employee of a different corporate entity, especially when the facts related to service are rebutted in the record. Nothing in *Trustgard* allows a court to dispense with the restricted-delivery requirement or with the requirement that the signer be authorized by the defendant. Instead, this case is more closely aligned with *Richardson* in that the affidavit of service here is facially defective because it fails to show that delivery was restricted to the addressee and the record includes two affidavits specifically denying service. *Richardson Const. Co*, 274 S.C. at 311, 262 S.E.2d at 916 ("The proof by affidavit in this case is insufficient when confronted with the other facts and circumstances attending it. When these factors are coupled with appellant's counteraffidavit denying service, the cumulative effect entitles appellant to relief from judgment as a matter of right, and any finding of the trial judge to the contrary is controlled by error of law."). Thus, the result here should align, not with *Trustgard*, but with *Richardson*, and the default judgment be set aside.

Third, the record does not establish actual notice to Candelabra's registered agent, Moore. Respondent's brief points to Huff's October 1, 2024 text message to Flinn as proof that Candelabra received the pleadings. But Flinn's sworn affidavit is unambiguous: "[she] did not receive any mail or written correspondence related to this lawsuit until on or about March 17, 2025." (Flinn Aff. ¶¶ 12–13; R. __.) Moore's affidavits agree. (Moore Aff. ¶ 24; R. ___; Moore Suppl. Aff. ¶¶ 20–21; R. __.) Whatever Huff told Flinn, the envelope never made it to the registered agent, much less notice of its contents. (Moore Suppl. Aff. ¶¶ 20–21; R. __.) A text from Ms. Huff to Ms. Flinn saying "an envelope arrived" is not proof of delivery of the summons and complaint to the registered agent or Candelabra. (Huff Aff. Ex. 2, Oct. 1, 2024 Text Message; R. __.) And even if that text message were somehow construed as an acknowledgment of service, our Supreme Court has held that "acknowledgement of service, made by a defendant after judgment has been rendered against him, is not equivalent to personal service upon him." *Langley*, 322 S.C. at 432, 472 S.E.2d at 261 (citing *State v. Cohen*, 13 S.C. 198, 202 (1880)).

Fourth, Respondent's brief repeatedly references pre-suit communications, including Moore's March 2024 email and the August 2024 preservation letter, as evidence of notice. (Resp.

Br. at 4, 11.) Those communications predate the September 28, 2024 filing of the complaint. (Email from Moore, March 27, 2024; R. ___; Preservation Ltr., August 12, 2024; R. ___; Emails to Moore, Aug. 12, 26, 30, 2024; R. ___.) Pre-suit correspondence cannot constitute notice of a lawsuit that did not yet exist.

Because the mailed summons and complaint was not restricted; Huff was not an authorized agent of Candelabra; and purported "actual notice" is not a substitute for compliance with Rule 4, the judgment is void under Rule 60(b)(4) and must be vacated as a matter of law. *Richardson Const. Co.,* 274 S.C. at 309, 262 S.E.2d at 915.

II. Candelabra also established grounds for relief under Rule 60(b)(1), SCRCP as an alternative ground for vacating the default judgment.

Even if Respondent properly served Candelabra, Candelabra separately established grounds for relief under Rule 60(b)(1). Respondent claims that Candelabra failed to identify a "specific basis" for relief under Rule 60(b) and emphasizes a 152-day delay in Candelabra moving to vacate. (Resp. Br. at 7–9.) Both points miss the mark.

First, Candelabra's motion to vacate and its supporting memorandum expressly invoked "excusable neglect, mistake, [and] confusion" arising from the fact that Huff—an employee of a different entity who lacked authority to accept service—signed for the envelope, that Candelabra's registered agent never received it, and that Candelabra did not learn of the lawsuit until the March 2025 letter from the sheriff's office. (*See* Memo. Supp. Mot. to Vacate (July 1, 2025) at 15–18; R. __.) These grounds are supported by the sworn testimony filed below as well. (Moore Aff. ¶¶ 22–25; R. ___; Flinn Aff. ¶¶ 12–14; R. ___; Huff Aff. ¶¶ 15–18; R. ___.) Those are precisely the categories of relief Rule 60(b)(1) contemplates. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 889 (2009).

Second, the 152-day figure—calculated from the deadline to answer a summons and complaint that were never properly served—is irrelevant. The timeliness of a Rule 60(b)(1) motion is measured from when the defaulting party learned of the judgment, not from when a plaintiff subjectively believes notice occurred. *See Williams v. Watkins*, 384 S.C. 319, 326, 681 S.E.2d 914, 917 (Ct. App. 2009). Candelabra promptly moved to vacate just two short weeks after it first learned of the lawsuit and two days after Moore was personally served. (Moore Suppl. Aff. ¶¶ 21–22; R. __.) In any event, the time between alleged service and Candelabra's filing to set aside the default judgment did not prejudice Respondent in any way because the litigation was, and still is, ongoing.

Third, Respondent does not contest that Candelabra has meritorious defenses—including as to the amount of damages. The Supreme Court has recently confirmed that meritorious defenses as to damages are sufficient to support Rule 60(b)(1) relief. *Green v. Johnson*, 446 S.C. 326, 340, 919 S.E.2d 894, 901 (2025). Candelabra identified specific defenses: the improper trebling of Wages Act damages without a bona fide dispute analysis, the contract-damages award that does not offset Plaintiff's subsequent earnings, and the contingency-based fee award entered without a *Jackson v. Speed* analysis, among others. (Appellant's Brief at 18–19.) Except for the attorneys' fees, Respondent does not address these defenses, each of which is meritorious.

Finally, South Carolina's long-standing preference for disposition on the merits weighs against enforcing this default judgment. *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986) ("We favor trial of issues on merit over securing judgment by slight technicalities."). Respondent identifies no genuine prejudice that would result from allowing the case to proceed on the merits, particularly given that he must litigate the same operative facts against Moore in his claims against her, which remain pending. What's more, Respondent still must litigate his remaining claims against Candelabra too. As a result, the circuit court's determination that Candelabra's alternative grounds for setting aside the default judgment under Rule 60(b)(1), SCRCP is not supported by the record and is instead controlled by an error of law amounting to an abuse of discretion. This Court should reverse on these alternative grounds as well.

III. The default judgment must be reversed because it was prematurely entered and the damages award lacks the required analysis.

A. Respondent's preservation argument fails.

Respondent argues that Appellants waived their challenges to damages and attorneys' fees because those issues were not raised at the December 17, 2024 damages hearing. (Resp. Initial Brief at 12–14.) The argument fails for two reasons.

First, Candelabra was not present at the December 17 hearing because it had not been properly served and had not received notice of the hearing. (*See* Appellant's Br. at 6, 23–24.) A defaulted defendant that was never notified of the underlying hearing cannot forfeit issues by not raising them at that hearing. *See Roche*, 318 S.C. at 212, 456 S.E.2d at 901. South Carolina preservation doctrine has never required the impossible. *Cf. Fettler v. Gentner*, 396 S.C. 461, 469, 722 S.E.2d 26, 30–31 (Ct. App. 2012) ("This court does not require parties to engage in futile actions in order to preserve issues for appellate review." (quoting *Staubes v. City of Folly Beach*, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000))).

Second, Candelabra *did* raise these issues at its first opportunity—in its motion to vacate and its motion to reconsider. There, Candelabra explicitly challenged its lack of notice of the damages hearing and resulting denial of opportunity to present its meritorious defenses as to the amount of damages sought—including the improper trebling of damages without analysis as to whether a bona fide dispute existed. (*See* Mem. Supp. Mot. Vacate at 14–20; R. __; Mot.

Reconsider at 6, 20–25; R. __.) The circuit court ruled on those issues—it improperly rejected them. (*See* Order Denying Mot. Vacate at 18–25; R. __; Form 4 Order Denying Mot. Reconsider, Sept. 30, 2025; R. __.)

Respondent's cited cases all involved parties who actually tried their cases and had the opportunity to raise their issues at the appropriate time yet failed to do so. (Resp. Br. at 12–13 (citing *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998); *Allen v. Allen*, 347 S.C. 177, 183, 554 S.E.2d 421, 424 (Ct. App. 2001); *Vick v. S.C. Dep't of Transp.*, 347 S.C. 470, 482–83, 556 S.E.2d 693, 699–700 (Ct. App. 2001))). Such is not the case here. Because Candelabra never received process and had no notice of the damages hearing, it raised these issues at the first procedurally appropriate moment by moving the circuit court to vacate the judgment entered against it while it was not present and then reconsider its ruling. The record fails to support Respondent's preservation argument. And even if one of the defenses had not been preserved, there is no question that Candelabra preserved its arguments of improper service and inconsistent verdicts, which would require vacatur of the default judgment and the damages awarded in it. *Nichiro Gyogyo Kaisha, Ltd. v. Norman*, 606 P.2d 401, 403 (Alaska 1980) (vacating default judgment in the case of multiple parties because the entry of default against one party should not result in a default judgment before an adjudication of the issues concerning the non-defaulting parties).

B. *Frow* bars piecemeal default judgment on interrelated claims.

Respondent argues that *Frow v. De La Vega*, 82 U.S. 552, 554 (1872), is inapplicable because his wage and contract claims against Candelabra involve "different theories" than his claims against Moore. (Resp. Br. at 15.) However, every claim here arises out of the same alleged employment relationship, the same alleged wage nonpayment, the same alleged termination, and the same alleged contract. (*See* Compl.; R. __). Indeed, the pending claims against Moore (tortious interference) and against Moore *and* Candelabra (breach of contract with fraudulent intent, civil conspiracy, defamation, and IIED) necessarily depend on many of the same factual determinations that serve the basis for the judgment against Candelabra. (*Id.* ¶¶ 54–87; R. __.)

If Moore prevails on the merits and a factfinder determines, for example, that Plaintiff was not entitled to the wages he claimed, or that no valid contract existed, or that his termination was lawful, this Court would be left with a $612,121.86 default judgment that rests on rejected factual premises. That is precisely the "unseemly and absurd" outcome *Frow* was designed to prevent. 82 U.S. at 554. Respondent's attempt to limit *Frow* to cases of strict joint liability ignores the modern consensus that *Frow* prohibits any default judgment "inconsistent with a judgment on the merits." (Appellants' Br. at 21 (collecting cases).) That principle applies equally to the piecemeal judgment Respondent asks the Court to affirm in this case. *Frow*'s rule has not been interpreted as narrowly as Respondent would have the Court apply it here. *See U. S. for Use of Hudson v. Peerless Ins. Co.*, 374 F.2d 942, 944 (4th Cir. 1967) (interpreting *Frow* to also apply when liability was not joint, but also several).

At base, the motivating factor for imposing a heightened standard on a party before setting aside a default judgment is finality. *See Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888–89 (2009) ("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."). Yet this purpose would not be furthered here by upholding the default judgment, as that judgment would bring no finality to the litigation. Indeed, that litigation must go on, both against Candelabra (the entity against which the default judgment was entered and against which claims remain pending), and Moore individually (against whom no default has been entered). If anything upholding the default judgment will just multiply the litigation below by requiring the parties to simultaneously litigate the merits of the claims and Respondent's attempts to execute on the judgment at the same time.

C. The circuit court's damages and fee award cannot stand.

Respondent's principal defense of the damages award is that it was for a "sum certain" under Rule 55(b)(1). (Resp. Br. at 12.) Yet the circuit court already rejected this argument. Respondent alleged the damages were liquidated damages, and asserted that a judgment without a hearing was appropriate under Rule 55(b)(1), SCRCP. (*See* Docket at 1; R. ___.) The circuit court refused to sign the proposed order entering the default judgment and instead scheduled a damages hearing. (*Id.*) Respondent did not appeal or otherwise challenge this rejection of his sum certain argument, so he should be precluded from relying on it here.

Even still, the record proves otherwise. Respondent's own affidavit did not yield a sum certain, but a series of discretionary calculations:

- a wage claim of $23,076.93 was rounded up to $25,000;
- the asserted contract damages of $385,000 do not equal 77 weeks of Respondent's stated salary, which yields $355,384.62; and
- the court awarded $75,000 in treble wages without making the bona fide dispute determination required by statute.

(Mot. Entry of Default; Ex. 3; R. __: Order of Default at 2; R. __.)

Where damages require the court to adjust figures, resolve mathematical discrepancies, and independently determine whether trebling is warranted, they are not "precisely determin[able] by operation of law or by the terms of the parties' agreement" and therefore are not a sum certain.

See Beckmann Concrete Contractors, Inc. v. United Fire & Cas. Co., 360 S.C. 127, 132, 600 S.E.2d 76, 79 (Ct. App. 2004) (vacating default judgment for unliquidated damages for failure to provide notice of a damages hearing).

Once the amounts are recognized as unliquidated damages, Rule 55(b)(2) required notice of the default hearing. Respondent offers no proof that Candelabra received notice of the December 17, 2024 hearing—only that mail and email were purportedly sent. (Resp. Br. at 9.) He filed no certificate of service, and Moore's and Flinn's affidavits deny any receipt of those communications. (Appellants' Br. at 6; R. __.) Without proof of notice, the resulting judgment cannot stand. Rule 55(b)(2), SCRCP.

Respondent also fails to defend the circuit court's trebling of Wages Act damages. The Supreme Court has held that automatic trebling is legal error and that a trial court must first determine whether a bona-fide dispute existed. *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 600, 675 S.E.2d 414, 415 (2009); S.C. Code Ann. § 41-10-80(C). The Order of Default performed no such analysis. Nor does Respondent point to anywhere in the record where one was performed. As a result, he has conceded that the default judgment is, at a minimum, defective in the amount of treble damages awarded by the circuit court.

Similarly, Respondent does not defend the attorneys' fee award on its merits. Nor could he. The $151,800 figure represents thirty-three percent of his contemplated $460,000 total recovery—the result of Plaintiff's contingency arrangement with his counsel rather than any evidentiary showing or judicial determination of reasonable fees. As the Supreme Court has held, a contingency contract "does not control the determination of a reasonable" fee, and that courts must independently analyze six factors when determining the reasonableness of the fee: (1) the case's nature, extent, and difficulty; (2) time necessarily devoted to the case; (3) counsel's professional standing; (4) contingency of compensation; (5) beneficial results obtained; and (6) customary legal fees for similar services. *Jackson v. Speed*, 326 S.C. 289, 308, 486 S.E.2d 750, 759–60 (1997). Nothing in the record shows that the circuit court undertook such an analysis. The fee award, therefore, cannot stand.

Finally, Respondent incorrectly argues that the damages issues are moot because Candelabra had opportunities to raise them at the December 17, 2024 default hearing or August 4, 2025 hearing on Candelabra's motion to vacate. (Resp. Br. at 12–14.) Candelabra could not have raised anything at the December 17, 2024 hearing because it had no notice of the hearing. Once it learned of the hearing and judgment, however, Candelabra promptly challenged the improper notice and damages awarded to the trial court and asked that it vacate the judgment so Candelabra could present its meritorious defenses to the amount of damages. (*See* Mem. Supp. Mot. Vacate at 19–21; R. ___; Mot. Reconsider at 23–26; R. ___; Aug. 4, 2025, Hr'g. Tr. 8:19–9:14, 17:2-12, R. __.) The circuit court improperly rejected these arguments. (Order at 17, R. ___; Sept. 30, 2025 Form 4 Order, R. __.) That is sufficient to preserve the issues for appellate review. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (holding Rule 59(e) motion is proper vehicle to preserve issues for appellate review).

In any event, defective service voids the judgment under Rule 60(b)(4). If this Court agrees that service was improper, the damages award and the resulting orders fall with the underlying judgment.

IV. The Court should reverse the dismissal of Moore's counterclaims at the pleading stage in light of the circuit court's misapplication of the standard under Rule 12(b)(6), SCRCP.

A. Moore sufficiently plead all causes of action

Respondent's defense of the Rule 12(b)(6) dismissal of Moore's counterclaims repeats the circuit court's central error: he treats generalized pleading of business-property conversion, breach of contract, breach of fiduciary duty, breach of the duty of loyalty, and negligence as if they must be plead with the particularity of fraud. In doing so, Respondent asks this Court to resolve disputed facts, determine ownership rights, define the scope of legal duties, and assess the ultimate merits of the claims at the pleading stage. Rule 12(b)(6) permits none of those inquiries.

On breach of contract, Respondent's own complaint alleges that Moore breached a contract with him, (Compl. ¶¶ 63–71; R. ___), which necessarily assumes a contractual relationship between Moore and Plaintiff. Respondent cannot rely on the employment agreement as the contractual predicate for claims against Whitney Moore, while simultaneously arguing at the pleading stage that Whitney Moore is categorically barred from asserting counterclaims arising from the same contractual relationship. If the circuit court's ruling stands, one side of the same contract is enforceable and the other side is not. Whether Moore can ultimately establish the contractual rights she alleges is a merits question; it is not a basis for Rule 12(b)(6) dismissal.

On conversion, Respondent argues that Moore did not allege "specific property she personally owned." (Resp. Br. at 15–16.) But at the pleading stage, Moore was required only to allege the elements of conversion and to give notice of the claim. She did so. Whether items ultimately belong to Moore, Candelabra, or both presents questions that cannot be resolved on a motion to dismiss. Respondent's reliance on *Davis v. Hamm*, 300 S.C. 284, 288, 387 S.E.2d 676, 678 (Ct. App. 1989), is misplaced. (Resp. Brief at 16.) There, this Court's standing analysis began from an undisputed premise: the property at issue "was admitted to be an asset of the corporation." 300 S.C. at 288, 387 S.E.2d at 678. Because the asset indisputably belonged to the corporation, the court held that any resulting injury and cause of action belonged to the corporation as well. No comparable admission exists here. Moore, therefore, sufficiently stated a claim for relief that should not have been dismissed at the pleading stage.

On fiduciary duty and loyalty, Respondent argues that these duties can only run to the corporation. South Carolina courts have declined to define fiduciary relationships so narrowly. (Appellants' Br. at 32–33; R. __.) More importantly, the question at this stage is not whether Moore will prevail, but whether her allegations plausibly support the existence of such duties and their breach. Moore alleged that Respondent engaged in competitive conduct, misused confidential information, and diverted business relationships—conduct that lies at the core of fiduciary-duty and loyalty-based claims. (Moore's Ans. ¶¶ 99–108; R. __.) At a minimum, whether Moore may pursue those claims in her individual capacity cannot be resolved by assuming that every alleged breach injured only the corporation.

On negligence, Respondent again treats the existence of a duty as if it can only arise from a contract. But South Carolina law recognizes that a tortfeasor may be liable to a third party "despite the absence of privity" where the tortfeasor's negligent performance foreseeably harms that party. (Appellants' Br. at 34–35.) Moore alleged individualized harm, including personal exposure to liability, that is independent of any contractual privity. (Ans. ¶¶ 88–109,112; R. __.) Those allegations suffice at the pleading stage.

B. The circuit court erred in denying Moore's repeated requests for leave to amend.

Addressing Moore's entitlement to amend her complaint, Respondent argues only that Moore did not file a proposed amended answer and that amendment would be "futile." (Resp. Br.

at 18.) Both arguments fail. Respondent offers no authority for his claim that a request for leave to amend must be accompanied by a draft amended pleading to trigger the "freely given" standard. *See* Rule 15(a), SCRCP. This is because no such requirement exists. Rule 15 requires only that a party ask to amend. And Moore asked twice. (Mem. Opp. Mot. Dismiss at 6–7; R. __; Mot. Reconsider at 30; R. __.)

The Supreme Court has held that a circuit court's failure to consider a Rule 15(a) request is itself an abuse of discretion. *Patton v. Miller*, 420 S.C. 471, 490, 804 S.E.2d 252, 262 (2017); *see also Foman v. Davis*, 371 U.S. 178, 182 (1962). And futility is not a proper Rule 15(a) inquiry when the pleading deficiencies identified by the circuit court concerned pleading specificity—the very thing amendment is designed to cure. *See Skydive Myrtle Beach, Inc. v. Horry Cnty.*, 426 S.C. 175, 179, 826 S.E.2d 585, 587 (2019). The circuit court's failure to make any specific findings about amendment under Rule 15(a) is reversible error.

V. The parties' challenge to the Order of Reference is preserved because it is derivative and dependent on the underlying default judgment.

Respondent argues that Appellants abandoned any challenge to the Order of Reference because they "do not develop a separate argument demonstrating reversible error from that order." (Resp. Br. at 18.) The argument misapprehends the relationship between the orders on appeal. The Order of Reference derives from the default judgment; it exists only because Respondent obtained default against Candelabra. (Order of Reference; R. __.) After all, Rule 53 requires either consent or a default. Rule 53(b), SCRCP. If that judgment is void or vacated, the supplemental proceedings premised on it cannot stand. *Momani v. Van Surdam*, 296 S.C. 409, 410, 373 S.E.2d 691, 692 (Ct. App. 1988) ("When a defendant is not properly served, the Court has no jurisdiction of the defendant, and all proceedings based on the pretended service are void." (quotation omitted)). Recognizing that consequence is not abandonment. It is simply an acknowledgment that the Order of Reference cannot stand on its own. Candelabra and Moore argued as much in their opening brief. (Appellants' Br. at 8.)

Even if the Court considers the Order of Reference separately from the default judgment, the order cannot stand in its current form. Without holding a hearing or waiting the required ten days, the circuit court referred the entire case to the Master-in-Equity, sweeping in claims against Moore despite her non-defaulting status. This was improper under Rule 53, which requires Moore to have consented to reference. Rule 53(b), SCRCP. So too was it improper under Rule 6 as Moore was not given the required ten days to respond to the motion or otherwise be heard before losing her right to a jury trial for the claims pending against her. Rule 53 does not permit such a blanket reference of all issues in light of the five pending claims against Moore (and the four other claims pending against Candelabra).

Conclusion

For the reasons stated above and in Appellants' Brief, this Court should reverse the default judgment against Candelabra, reverse the dismissal of Moore's counterclaims, vacate the Order of Reference, and remand for further proceedings on the merits.

[Signature on following page.]

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