THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable R. Lawton McIntosh, Circuit Court Judge

Case No. 2023-CP-37-00232
Appellate Case No. 2025-000490

PlanetONE Packaging, LLC, ...Respondent,

v.

American Pharma Machinery, LLC, and Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo ..... Defendants,

OF WHOM Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo is the .....Appellant.

FINAL BRIEF OF RESPONDENT

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COUNTER-STATEMENT OF ISSUES ON APPEAL[1]

1. Did the circuit court err in finding Appellant in default and in refusing to set aside the default?

2. Did the circuit court err in awarding damages in Respondent's favor against Appellant?

3. Did Appellant preserve any issue other than issues 1 and 2 set forth herein for consideration in this appeal?

4. Does Appellant's refusal to properly serve the notice of appeal or initial brief require dismissal of this appeal?

[1] Appellant sets forth twenty-seven (27) purported issues in her brief. At most, her issue numbers: 1, 2, 3, 4, 15, 16, 17, 19, 20, 21, 22, are all within the general issues set forth herein this Counterstatement of Issues on Appeal; all other purported issues in Appellant's initial brief are mere assertions of fact without evidentiary or record support, much less are they preserved for appeal or at issue now.

STATEMENT OF THE CASE AND FACTS

On March 28, 2023, Respondent PlanetONE Packaging, LLC ("PlanetONE" or "Respondent") filed this action against American Pharma Machinery, LLC ("American Pharma") and Dorothy Pierce a/k/a Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo ("Pierce" or "Appellant") (collectively "Defendants"), asserting claims for breach of contract, fraud, constructive fraud, breach of contract accompanied by a fraudulent act, unjust enrichment, unfair and deceptive trade practices, and alter ego/piercing of the corporate veil connected to the marketing and sale of certain machinery to PlanetONE. (R. at 89-97).

Defendants were served with the Amended Complaint in this matter on May 9, 2023. (R. at 98-99). The deadline to answer or otherwise respond to the Amended Complaint was June 8, 2023. No responsive pleading was submitted to the Court or PlanetONE at that time by either Defendant. On June 9, 2023, PlanetONE moved for an entry of default against Defendants because no responsive pleading had been received. (R. at 104-107). The circuit court entered default against all Defendants via Order of The Honorable R. Scott Sprouse, dated June 20, 2023. (R. at 13-14).

In brief, the following timeline of additional motions and orders is instructive:

- July 21, 2023, Pierce emails the Oconee Clerk of Court, court employees, and PlanetONE's counsel representing that she attempted to mail a Motion to Dismiss to the Clerk and counsel on June 1, 2023 from Uganda. (R. at 350-356). Attached to the email was a .pdf of a document captioned "Motion to Dismiss." (*Id.*). Later the same day, Pierce hand delivered to the clerk of court a different, updated version of her Motion to Dismiss that noted, among other things, her purported June 1 mailing "may have not yet been delivered to the Court until the time of this filing." (R. at 99-103).

- PlanetONE files Motion for Default Judgment as to all Defendants on August 17, 2023. (R. at 251-253).

- A hearing was initially held on Defendant Pierce's Motion to Dismiss and Defendants' Motion to Set Aside Entry of Default on August 21, 2023 before Judge J. Cordell Maddox, Jr. at which Pierce and American Pharma were both represented by counsel. At the hearing, Appellant and American Pharma's then-counsel verbally relied upon the purported June mailing as the basis for setting aside the entry of default but filed no memorandum of law or documentation supporting that position. Likewise, no

evidence of mailing was provided at that hearing. Still, the Court continued the hearing on both motions to allow Defendants an opportunity to submit proof of mailing for the Court's review. (R. at 234).

- Despite the hearing being continued and representations made during it, PlanetONE's counsel never received any proof of mailing from Defendants nor their counsel after the hearing.

- On October 23, 2023, attorney of record for Defendants moved to be relieved as counsel. (R. at 156). On the same day, Pierce emailed the Clerk of Court, several other Court personnel, and PlanetONE's counsel to indicate that while she would be representing herself going forward, she understood American Pharma would need an attorney to represent it. (R. at 358). To date, no attorney has ever made an appearance on behalf of American Pharma since the withdrawal on October 23, 2023 and, thus, American Pharma is not a party to this appeal.

- October 31, 2023 – The Honorable R. Lawton McIntosh held a hearing on the motion to dismiss, motion to set aside default, and PlanetONE's motion for default judgment. (R. at 235). At the hearing, Pierce's motion to dismiss and Defendants' motion to set aside default were denied. (R. at 236-238). Pierce was instructed by the court that she was still in default but that she was being given another opportunity to provide proof that she actually served the documents at issue from Uganda, and prove authenticity of said proof, within 45 days. A Form 4 order was issued to this effect on November 6, 2023. (*Id.*).

- December 5, 2023 – Judge McIntosh entered a formal written order on all motions: (1) denying Pierce's motion to dismiss in full; (2) denying Defendants' motion to set aside default as to American Pharma and Pierce but giving Pierce until December 21, 2023 to prove the authenticity of her documents and service effort; and (3) reserving a ruling on default judgment as to Pierce until a finding on Pierce's motion to set aside default is made (meaning after the December 21, 2023 deadline). (R. at 239-247).

- January 16, 2024 – Judge McIntosh enters an order confirming Pierce is in default given that Pierce failed to comply with the December 5, 2023 order to authenticate her arguments concerning service and mailing, by failing to provide online account access and tracking information as set forth in the order. (R. at 248-250).

- February 2, 2024 – Pierce files a motion to reconsider asking, based on no legal authority, that the January 16, 2024 order should "be vacated." (R. at 118-123).

- February 6, 2024 – Judge McIntosh denies Pierce's motion to reconsider the January 16, 2024 order and the damages hearing is set for a date later that month. (R. at 304-306).

- March 6, 2024 – Pierce files her first notice of appeal, seeking review of the circuit court's February 6, 2024 order. (R. at 411-417). The damages hearing is put on hold in light of the same.

The first appeal (App. Case No. 2024-000334) was ultimately rejected by this Court via Order dated March 28, 2024 (R. at 307-308), and certiorari was denied by the South Carolina Supreme Court. (R. at 309). The same issues regarding service, preservation, and appealability that exist in Appellant's instant appeal also were the crux of her first appeal.

After remittitur of her first appeal, the damages phase of Appellant and American Pharma's default proceedings occurred in the circuit court. During that phase, in short, the following transpired:

- The damages hearing was re-set, to take place on November 14, 2024. (R. at 418).

- A few days before the hearing, Appellant sought a continuance because she was "currently pregnant" among other reasons (R. at 254-256).

- The circuit court granted the continuance request of Appellant, and re-set the damages hearing for January 29, 2025. (R. at 419).

- Prior to the damages hearing, Respondent submitted a memorandum in support and supporting documents concerning all claimed damages. (R. at 257-303).

- At the hearing, Respondent's owner, Karen Davidson, testified regarding the damages set forth in the documentation provided to the court. (R. at 55, 70-78).

- Appellant had an opportunity to cross-examine Ms. Davidson on the damages claimed and did so on the record. (*Id.*).

- Following the hearing, the circuit court issued a Form 4 Order granting all damages sought at the hearing and leaving the issue of attorneys fees to be decided upon receipt of an updated attorneys' fee affidavit. (R. at 310-312).

- Respondent's counsel submitted an attorneys' fee affidavit after the Form 4 Order was issued. (R. at 147-149)

- Ultimately, the circuit court—despite additional motions practice by Appellant and the raising of new issues and complaints not raised at the damages hearing—updated its award of default judgment in Respondent's favor, in the amount of Two-Hundred and

> Sixty-Two Thousand One-Hundred Thirty Dollars and Thirty-Three Cents ($262,130.33). (R. at 10-12).

Appellant then filed another notice of appeal on March 12, 2025. (R. at 6-7). In that notice, Appellant attempted (among other things) to appeal the circuit court's January 31, 2025 order but failed to timely file and serve it per the rules, as it was filed more than "thirty (30) days after receipt of written notice of entry of the order." (*Id.*); *see* Rule 203(b)(1), SCACR. Indeed, Appellant filed her Notice of Appeal on March 12, 2025, well after thirty days had passed from the service of the court's January 31, 2025 order had occurred. (*Id.*) Second, and similarly, any appeal of the circuit court's February 26, 2025 was not served by Appellant on Respondent as required by Rule 203(b), SCACR.

As a threshold issue, Appellant still has not served Respondent with the notice of appeal(s) at issue in this matter as required by the Rules and has indicated that her failure to do so was no oversight, but was instead part of her mistaken belief that as long as she transmitted the notice in some form then she was not bound by the rules regarding proper service. *See* Rule 203(b), SCACR ("A notice of appeal shall be served on all respondents within thirty days after receipt of written notice of entry of the order . . . ."). (R. at 350-410). The Certificate of Service she provided via email to Respondent's counsel, in which she admits that she is only attempting to serve the "Notice of Appeal to the respondent utilizing Electronic Service" speaks for itself. (R. at 416). Reflecting a pattern of failure to appreciate the rules, refusal to abide by them, and ongoing litigation abuse, Appellant fails to accept that – as a pro se litigant – she is not at liberty to serve attorneys licensed in this state via electronic service without their express consent.

STANDARD OF REVIEW

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." *Sundown Operating Co., Inc. v. Intedge Ins., Inc.,*

383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009) (citing *Harbor Island Owners' Ass'n v. Preferred Island Props., Inc.*, 369 S.C. 540, 544, 633 S.E.2d 497, 499 (2006)). "The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion." *Id.* "An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Id.* at 607, S.E.2d at 888.

Pursuant to Rule 55(b), SCRCP, a Court may enter judgment against a defaulting defendant after damages are determined. A defendant in default admits liability but not the damages. . . ." *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014) (internal quotation marks and citation omitted). "The defaulting defendant has conceded liability. However, a defaulting defendant does not concede the [a]mount of liability." *Id.* Therefore, "the plaintiff must prove by competent evidence the amount of his damages, and such proof must be by a preponderance of the evidence." *Palmetto Construction Grp., LLC v. Restoration Specialists, LLC*, 444 S.C. 328, 348-49, 907 S.E.2d 129, 140 (Ct. App. 2024). "The trial judge has considerable discretion regarding the amount of damages, both actual or punitive." *Austin v. Specialty Transp. Servs., Inc.*, 358 S.C. 298, 310, 594 S.E.2d 867, 873 (Ct. App. 2004) (citations omitted). The defaulting defendant's participation at the damages hearing, if any, is limited to cross-examining the plaintiff's witnesses and objecting to evidence. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (1978); *Doe v. S.B.M.*, 327 S.C. 352, 357–58, 488 S.E.2d 878, 881 (Ct. App. 1997); *see also Palmetto Construction*, 444 S.C. at 349, 907 S.E.2d at 140 ("At the damages hearing, the defendant may only participate by cross-examining witnesses and objecting to evidence.").

ARGUMENT

1. The circuit court properly entered default against Appellant and did not abuse its discretion in declining to set the entry of default aside given the factual and legal inconsistencies in Appellant's representations to the court, including Appellant's failure to follow the court's order with respect to proving service of a timely response to Respondent's amended complaint.

Pursuant to Rule 55(c), SCRCP, "[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." "Whether good cause is established is within the sound discretion of the court." *Williams v. Vanvolkenburg*, 312 S.C. 373, 375, 440 S.E.2d 408, 409 (Ct. App. 1994). "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." *Sundown Operating*, 383 S.C. at 607, 681 S.E.2d at 888.

Appellant failed to, or otherwise refused to, comply with the several circuit court orders permitting her to prove that she had not misled the court as to service of her response to the amended complaint and had served – or even attempted to file or serve – her defensive motion to the same to prove her claims of service from Uganda. She failed to do so despite the circuit court having given her multiple opportunities, including the December 5, 2023 Order (R. at 239-247) giving her until December 21, 2023 to submit proof of service. (*Id.*) Appellant provided no response, much less proof of service, prior to this deadline. Appellant failed to comply with the circuit court's orders and, thus, the circuit court properly relied upon her failure to provide a single reason to vacate the entry of default. (*Id.*).

2. The circuit court properly awarded damages in Respondent's favor after the damages hearing and did not base its order on an error of law, fact, or other improper means.

In its filings prior to, and in the testimony set forth by its owner, Karen Davidson, at the January 29, 2025 damages hearing, Respondent provided evidence – both documentary and via testimony – of the amount of its damages and basis for the same. The Respondent's memorandum in support, all exhibits, and the testimony established damages of at least:

- $22,788.00 for the price of the machine not delivered by Appellant and her company;
- $5,000 in interested paid on the financing for that machine;
- Approximately $32,000 in increased labor costs borne by the Respondent due to the missing machine;
- $15,000 in increased cost to purchase a different machine;
- Attorneys' fees and costs.

(R. at 257-303). Appellant cross-examined Ms. Davidson and had every opportunity to present facts to dispute or discredit the claimed damages at the hearing. (R. at 52, 70-78). Ultimately, the Court granted Respondent's damages plus attorneys' fees and interest. Appellant fails to point to a single evidentiary, legal, or factual issue that would assail a portion (much less the entirety) of the circuit court's damages award in Respondent's favor.

3. Any other issue set forth in Appellant's Initial Brief is not preserved for review in this appeal.

Appellant fails to appreciate the purpose and procedure of this appeal, seeking instead this Court's review of twenty-seven (27) purported Issues on Appeal. (App. Br. at pp. 7-9).

An appellant who fails to follow procedural requirements strips the court of appellate jurisdiction. *State v. Brown*, 358 S.C. 382, 387, 596 S.E.2d 39, 41 (2004); *Great Games, Inc. v. S.C. Dep't of Revenue*, 339 S.C. 79, 83 n. 5, 529 S.E.2d 6, 8 n. 5 (2000); *see also* Rule 260(a), SCACR (requiring dismissal of an appeal when an appellant fails to comply with the Appellate Court Rules). As noted in footnote 1, supra, many of the various "issues on appeal" set forth by

Appellant are only mere claims unsupported by facts or the record. All other issues are at best subsets of the issues Respondent has set forth in this brief.

4. The operative notice(s) of appeal in this matter, and the Appellant's Initial Brief itself, have still not been properly served on Respondent.

As Appellant is well aware (given multiple briefings in this matter on the issue before), the South Carolina Supreme Court's May 6, 2022 Order concerning electronic service notes that "A self-represented litigant who is not a lawyer admitted to practice in this state may consent in writing to be served by e-mail and designate a correct e-mail address for service. A lawyer may consent in writing to accept service by e-mail from a self-represented litigant." *See* Order 2022-05-06-04.

To date, Pierce has only emailed her Notice of Appeal in this matter to counsel for PlanetONE. (R. at 421). As of April 30, 2026, service STILL has not been effected or even attempted upon PlanetONE via any proper service method provided under the South Carolina Rules of Civil Procedure. The same goes for nearly every other motion or filing Appellant has made since the currently operative notice of appeal.

Additionally, Pierce has neither sought nor obtained PlanetONE's consent to be served via electronic means. Therefore, service has not been effected and this appeal should be dismissed. Pierce's purported proof of service fails to satisfy the service of process requirements under the rules. *See, e.g.,* Rule 4(g), SCRCP ("If service was by mail, the person serving process shall show in his proof of service the date and place of mailing, and attach a copy of the return receipt or returned envelope when received by him showing whether the mailing was accepted, refused, or otherwise returned.").

CONCLUSION

For the above reasons, this Court should find that the circuit court appropriately entered default, default judgment, and awarded damages in the amount of Two-Hundred and Sixty-Two

Thousand One-Hundred Thirty Dollars and Thirty-Three Cents ($262,130.33), plus interest, against Appellant in Respondent's favor.

Respectfully submitted,

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