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SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

The Honorable Jane H. Merrill, Circuit Court Judge

Court of Common Pleas Case No. 2021-CP-37-00149
Appellate Court Case No. 2026-000480

Firewalker Hot Sauce Company, LLC,.....Respondent,

v.

American Pharma Machinery, LLC, Dorothy Wells a/k/a Dorothy Aleweny a/k/a Queen Dorothy Amolo a/k/a Dorothy Pierce, and the Estate of Doyle Elton Pierce, Defendants,

of which

Dorothy Pierce is the.....Appellant.

**REPLY TO APPELLANT’S RETURN IN OPPOSITION TO
MOTION TO DISMISS APPEAL**

Pursuant to Rule 240, SCACR, Respondent Firewalker Hot Sauce Company, LLC (“Firewalker” or “Respondent”) submits this reply to the Appellant’s Return in Opposition to Respondent’s Motion to Dismiss Appeal (the “Return”) filed by Appellant Dorothy Pierce (“Appellant”). Appellant’s Notice of Appeal designates a single order: the circuit court’s February 3, 2026 Order for Damages Default Judgment, awarding Firewalker \$87,619.47. That judgment was never once challenged below by the motion *Winesett v. Winesett*, 287 S.C. 332, 338 S.E.2d 340 (1985), requires, i.e., a motion under Rule 60(b), SCRCR. Appellant’s Return does not dispute it. In its place, the Return offers a memorandum filed more than two months

before the Court's November 24, 2025 Form 4 Order finding Appellant to be in default and the decision, *Balloon Plantation, Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990), that does not reach these circumstances. Neither supplies the jurisdiction Appellant needs.

IN REPLY

The record is undisputed and is set out in full in Firewalker's motion. The circuit court entered default against Appellant on November 24, 2025; entered default judgment on liability against Appellant on December 8, 2025; held a damages hearing on January 8, 2026, of which Appellant acknowledged receiving notice by email to the court dated January 6, 2026, but which she did not attend and at which no exhibit offered on her behalf was marked or received; and entered its Order for Damages Default Judgment on February 3, 2026, awarding Firewalker \$87,619.47 against Appellant jointly and severally. That order, unlike the November 24, 2025 order finding Appellant in default, expressly indicates that it "ends" the case and enrolls the full judgment amount on the Judgment Index. Appellant's Notice of Appeal designates only that final order.

At no point in that sequence (not before the November 11, 2025 entry of default, not before the liability default judgment, not before the damages hearing she skipped, and not after the damages judgment was entered) did Appellant move under Rule 60(b), SCRPC, to set aside any part of the default. *Winesett* holds that a party in that position has no status in court which will enable them to appeal from the judgment rendered, *Winesett*, 287 S.C. at 333, 338 S.E.2d at 341, and that the proper—and only—avenue is a Rule 60(b) motion in the circuit court followed by an appeal from its denial. Appellant's Return does not identify a Rule 60(b) motion addressed to any of the three orders that produced the judgment on appeal, because none exists.

Appellant's Return rests on a filing, styled Defendant Dorothy Pierce's Memorandum in Opposition to Plaintiff's Motion for Default Judgment and Request to Dismiss Case Against Defendant Dorothy Pierce, filed September 25, 2025. It is not a Rule 60(b) motion, and by its own terms it is not a motion by Appellant at all. It is a response to Firewalker's motion, and it predates any order Appellant now attacks, including the sole order on appeal: two months before the entry of default, more than two months before the liability default judgment, and more than four months before the damages judgment on appeal. Appellant never renewed the request after any of those orders were entered and did not appear at the January 8, 2026 damages hearing to raise one. A memorandum addressed to a default damages judgment that did not yet exist cannot substitute for a motion challenging them.

Balloon Plantation does not rescue this timing problem. There, the court declined to require a Rule 60(b) motion under *Winesett* because the precise default issue raised on appeal had already been squarely presented to and decided by the circuit court as a discovery sanction under Rule 37, SCRPC. *Balloon Plantation*, 303 S.C. at 157–58, 399 S.E.2d at 442. Nothing comparable happened here. Appellant's September 25, 2025 memorandum addressed only Firewalker's initial motion for default judgment. It could not have addressed the damages judgment entered more than four months later. And even accepting that the circuit court considered and rejected the memorandum's arguments when it entered default, that ruling supplies no record on the damages award Appellant now challenges, the sole order on appeal. The rationale of *Balloon Plantation* therefore does not extend to this appeal.

Appellant's citation to *Stark Truss Co. v. Superior Constr. Corp.* for the proposition that a late-filed Answer constitutes an "appearance" under Rule 55(b)(2), SCRPC, does not change this analysis. Whether Appellant "appeared" for purposes of notice is a distinct question from

whether she challenged the default judgment, the sole order on appeal. It is the latter that *Winesett* requires. Nor does *Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 856 S.E.2d 150 (2021), help her. *Palmetto* held that a party in default can (1) do nothing pending judgment, (2) file a Rule 55(b)(2) appearance, or move under Rule 55(c), and that under any of the three, there is no right of appeal until the circuit court rules and a final judgment is entered. *Id.* at 635-36, 865 S.E.2d at 151. It does not hold that a memorandum filed months before the default judgment it purportedly opposed satisfies that requirement. Indeed, *Palmetto* reinforces the importance of the trial court's having first addressed the issue presented on appeal. *Id.* at 639-40, 856 S.E.2d at 153. Appellant's proper course was, and remains, to move under Rule 60(b) below, not to seek review here in the first instance.

CONCLUSION

For the foregoing reasons, and for the reasons stated in its opening motion, Respondent Firewalker Hot Sauce Company, LLC respectfully requests that this Court dismiss this appeal.

Respectfully submitted,

/s/Bryan P. Kelley

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September 21, 2026
Greenville, South Carolina

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SC Court of Appeals

Via Electronic Mail (ctappfilings@sccourts.org)

Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

Re: *Firewalker Hot Sauce Company, LLC, v. Dorothy Pierce*
Appellate Case No: 2026-000480

Dear Ms. Kitchings:

In connection with the above-referenced case, please find attached our Reply to Appellant's Return in Opposition to Motion to Dismiss Appeal for filing.

Thank you for your attention.

Very truly yours,

ELMORE GOLDSMITH KELLEY & DEHOLL, P.A.



Katharine O. Spooner, CP
Certified Paralegal to Bryan P. Kelley and
H. Drennan Quattlebaum

/kos
Enclosure

cc *Dorothy Pierce (via email dorothypierce84@gmail.com and US Post)*