

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

Dawne Harper,

Plaintiff,

v.

South Carolina Farm Bureau Insurance
Company,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2026-CP-32-00526

ORDER

RECEIVED

Sep 28 2026

SC Court of Appeals

This matter is before the Court on Defendant South Carolina Farm Bureau Insurance Company's (herein "Farm Bureau") Motion for Entry of Default, Plaintiff's Motion for Relief from Entry of Default, and Plaintiff's Motion for Extension of Time. A hearing was held on June 24, 2026, before the Honorable David Shawn Graham with Mary D. LaFave appearing on behalf of Farm Bureau and Stephen Wukela appearing on behalf of the Plaintiff. Prior to the hearing, both parties provided memoranda in support of their respective positions. Following the hearing, the Court asked both parties to submit further briefings on questions and issues raised at the hearing. After considering the submissions by all parties and the oral arguments of counsel along with the applicable law and rules, the Court makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Plaintiff served the Summons and Complaint on Defendant via the South Carolina Department of Insurance on February 12, 2026;
2. On March 13, 2026, Defendant filed and electronically served its Answer and Counterclaim for Declaratory Judgment within the thirty (30) days required by the South Carolina Rules of Civil Procedure, and specifically Rule 6, Rule 12, and Rule 13;

3. Based on the evidence produced at the hearing, the Counterclaim was clearly and visibly titled in Farm Bureau's filings and was also indicated in the filing email from the Clerk of Court sent to Plaintiff's counsel;
4. Plaintiff was required to file an Answer or otherwise plead to the Counterclaim on or before April 13, 2026;
5. Plaintiff failed to serve a timely Answer or otherwise plead in response to the Counterclaim within the thirty (30) days required under the South Carolina Rules of Civil Procedure, and specifically, Rule 6 and Rule 12;
6. On May 14, 2026, thirty (30) days after the responsive pleading was due from the Plaintiff to the Counterclaim, Defendant Farm Bureau filed a Motion for Entry of Default;
7. Four (4) days later, on May 18, 2026, Plaintiff filed a Motion for Relief from Entry of Default and a Motion for Extension of Time to Answer;
8. Plaintiff explained the untimely response was due to his error caused by several factors including counsel's travel, workload, and a failure to recognize the Counterclaim when he was served with it;
9. Plaintiff further argued that no response was necessary given the nature of the case as a legal question and that the Counterclaim was redundant to the Complaint; and
10. The Court observed at the hearing that the responsive filing of a Counterclaim by Farm Bureau did contain additional allegations that were not addressed in the underlying Complaint rendering a response by the Plaintiff necessary.

CONCLUSIONS OF LAW

Under Rule 12(a) of the SCRCF, a defendant must serve an answer within thirty (30) days after service of the complaint SCRCF Rule 12. When a party fails to plead or otherwise defend as

required, the clerk enters default under Rule 55(a), SCRCF Rule 55. This is a ministerial act, and the clerk has no discretion to refuse to enter default once the prerequisite of an Affidavit is filed into the record. *See Stark Truss Co. v. Superior Const. Corp.*, 360 S.C. 503, 509, 602 S.E.2d 99, 102 (Ct. App. 2004). The Court finds that Plaintiff is in default on the Counterclaim because the Defendant has fulfilled the requirements of showing by Affidavit that the Answer to the Counterclaim was not timely filed.

A court may set aside an entry of default "for good cause shown" under Rule 55(c) SCRCF Rule 55. The question before the Court is whether Plaintiff has made a showing of "good cause" to set aside the entry of default under Rule 55(c). Plaintiff submits that the responsive pleading was not filed because counsel for Plaintiff was travelling internationally, had a heavy workload, and, though conceding that service occurred, did not see that a Counterclaim had been filed.

In evaluating whether good cause exists to set aside an entry of default, South Carolina courts apply the Wham factors: (1) the timing of the defendant's motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted. *See Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462 (1989). These same factors apply under Rule 60(b) when default judgment has been entered but are applied with greater rigor in that context which is not yet applicable in the case at bar. *See Hill v. Dotts*, 345 S.C. 304 (2001).

The foundational principle governing attorney-caused defaults in South Carolina is that the neglect of an attorney is the neglect of the client. In Simon, the South Carolina Supreme Court cited with approval the general rule from other jurisdictions that "the neglect of the attorney is the neglect of the client, and that no mistake, inadvertence or neglect attributable to an attorney can be successfully used as a ground for relief, unless it would have been excusable if attributable to the client". *See Simon v. Flowers*, 231 S.C. 545 (1957). South Carolina courts have consistently

applied this rule to deny relief from default when the fault lies with counsel. *See Richardson v. P.V., Inc.*, 383 S.C. 610 (2009). South Carolina Courts follow this strict approach, even when the default is due to the neglect of counsel or that of the insurance company. *Id.*

In *McEachern v. Poston*, 273 S.C. 122 (1979), the defendant's attorney was occupied with other court obligations during the period the responsive pleading was due. The South Carolina Supreme Court held that this was **not excusable neglect**, reversed the lower court's order permitting a delayed answer, and held that the defendant was not entitled to file a delayed answer.

Similarly, in *Hodges v. Fanning*, 266 S.C. 517 (1976), the court addressed a situation where one attorney's secretary had a family illness and missed several days of work, causing answers to be delayed in transit, and the receiving attorney had left for vacation before the answers arrived and did not return until after default was entered. The court affirmed the denial of the motion to set aside the default. Both *McEachern* and *Hodges* are controlling in the present matter and being a busy attorney or failing to manage deadlines are insufficient to show "good cause".

The South Carolina Supreme Court in *Howard* addressed the issue of whether default due to a missed Answer could be set aside due to the extensive travel schedule of the attorney. The trial court held that this travel was insufficient to show excusable neglect. The Supreme Court affirmed holding that extensive travel did not constitute excusable neglect and there was no abuse of discretion by the trial court. *See Howard v. Holiday Inns, Inc.*, 271 S.C. 238 (1978). The Court finds *Howard* instructive.

Howard is part of a long standing and established line of South Carolina authority rejecting this type of reasoning. However, excusable neglect related to travel has been found but it requires extraordinary, unforeseen, emergent circumstances such as mandatory evacuation for Hurricane Hugo. *See Tolpa v. Bill Jones Realty of Hilton Head, Inc.*, 275 S.C. 262 (1980). That is not the

case at bar and the travel referenced by counsel was an anticipated, foreseeable circumstance, whereas Hurricane Hugo evacuation is certainly distinguishable. Though the Court is sympathetic to the workload of attorneys, there are no extraordinary and emergent circumstances in the present case.

In Mitchell Supply Co., Inc. v. Gaffney, 297 S.C. 160 (1988), the defendant's attorney received two separate complaints — one was a mechanic's lien foreclosure action and the other was a personal judgment action for an open account. The attorney received the documents and, after review, mistakenly believed both complaints were copies of the same suit and only one answer was filed on the mechanic's lien. Default judgment was entered in the open account suit. The Court of Appeals reversed the trial court's order vacating the default judgment, holding that a cursory examination of just the first pages of the two complaints would have revealed two different suits, and that **the attorney had shown neglect but no excuse** for it. Gaffney is instructive to the case at bar where, as here, the attorney received notice suit and failed to thoroughly review documents. Those circumstances established neglect, but the Court found it is insufficient to show “good cause” to overcome default, which is on point with the present matter. While Plaintiff has shown the neglect, the reasoning provided to the Court does not excuse the failure to timely answer the Counterclaim.

Plaintiff further argues that an entry of default is inapplicable to a legal question but this argument has no support in the text of SCRCF Rule 55. The rule is triggered by a failure to plead or otherwise defend — not by the nature of the underlying dispute. The Court of Appeals in Stark Truss Co., Inc. v. Superior Const. Corp., 360 S.C. 503 (2004) held that a plain reading of Rule 55 requires entry of default when a pleading or defense is asserted in a manner noncompliant with the SCRCF, and that to hold otherwise would render the requirements of Rule 12(a) meaningless.

In order to successfully move to set aside the entry of default, the movant must make a “particularized showing” of one of the grounds enumerated in Rule 60(b), SCRCPP, including mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party. *See Sundown Operating Co., v. Intedge Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, 888 (2009).

In *Sundown*, the South Carolina Supreme Court clarified the distinction between the standards governing entries of default under Rule 55(c) and default judgments under Rule 60(b), and established a two-step process for seeking relief from an entry of default: (1) the moving party must first provide a satisfactory explanation for the default and give reasons why vacation would serve the interests of justice; and (2) once that threshold showing is made, the court considers factors including the timing of the motion, whether the defendant has a meritorious defense, and the degree of prejudice to the plaintiff. *See Sundown Operating Co., Inc. v. Intedge Industries, Inc.*, 383 S.C. 601 (2009). These factors were originally articulated in *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462 (1989), which established a three-factor test for evaluating good cause to set aside an entry of default under Rule 55(c) (timing; meritorious defense; and prejudice). *Sundown* is controlling for the two-factor analysis at bar.

Plaintiff’s explanation, though honest and forthright, fails to make a particularized showing of one or more of the grounds provided in Rule 60(b), SCRCPP. *See McEachern v. Poston*, 273 S.C. 122 (1979) (attorney’s obligations are insufficient to overcome entry of default); *Hodges v. Fanning*, 266 S.C. 517 (1976) (scheduling errors are insufficient to overcome default); *Howard v. Holiday Inns, Inc.*, 271 S.C. 238 (1978) (attorney’s travel schedule is not excusable neglect); *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160 (1988) (attorney failure to read is insufficient

to overcome entry of default); and Hill v. Dotts, 345 S.C. 304 (2001) (failure to navigate the legal process after proper service is not good cause).

Plaintiff fails to establish that, under the Sundown two factor test, that default should not be entered; moreover, that default should be set aside. Specifically, Plaintiff cannot show excusable neglect to meet the good cause standard. All of the reasoning of human error, calendaring issues, failure to thoroughly read, misapprehension of the legal process of the counterclaim being filed, travel, etc. have all been rejected by South Carolina Courts and are rejected now as well. The Court finds that the timing of the Defendant's motion is appropriate. Finally, the Court considered the principle whether there is a meritorious defense as part of Plaintiff's argument. However, Plaintiff cannot show a meritorious defense because both the law and the policy plainly reflect that Plaintiff's legal position is unsupported.

WHEREFORE, the Court DENIES Plaintiff's Motion(s) for Relief from Entry of Default and/or Extension of Time and GRANTS Defendant's Motion for Entry of Default.



Lexington Common Pleas

Case Caption: Dawne Harper VS Farm Bureau Insurance
Case Number: 2026CP3200526
Type: Order/Entry of Default

So Ordered

**Judge D. Shawn Graham, Circuit
Court Judge, 11th Judicial Circuit**
