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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas
Benjamin H. Culbertson, Circuit Court Judge

Appellate Case No. _____
Lower Court Case No. 2024-CP-26-02774

Julia Nally,

Appellant,

v.

Kim Petrone,

Respondent.

INITIAL BRIEF OF APPELLANT

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Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	iii
STATEMENT OF ISSUES ON APPEAL	1
STATEMENT OF THE CASE.....	1
A. The business dispute and the counterclaim.....	2
B. Nally answers the counterclaim on August 26, 2024.	2
C. The unserved default motion and the hearing Nally never learned of.	3
D. The motion to set aside the entry of default.....	5
E. The damages hearing and the \$157,797.69 judgment.....	5
F. The Rule 60(b) motions and the order on appeal.....	6
STANDARD OF REVIEW	7
SUMMARY OF ARGUMENT	8
ARGUMENT.....	9
I. THE DEFAULT JUDGMENT IS VOID UNDER RULE 60(b)(4) BECAUSE IT WAS ENTERED WITHOUT DUE PROCESS AGAINST A PARTY WHO HAD ANSWERED, ON A MOTION SHE WAS NEVER SERVED, AFTER A HEARING SHE NEVER RECEIVED NOTICE OF.....	9
A. Nally answered the counterclaim on August 26, 2024; the clerk docketed her answer under the wrong title.	10
B. The motion for default judgment was never served on Nally, a party who had appeared.	11
C. The only notice of the default hearing came back unclaimed, and the court's file already showed its mail was not reaching Nally.....	11
D. A judgment entered in these circumstances is void, not merely voidable.....	12
II. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN DENYING RELIEF ON THE GROUND THAT NALLY'S ARGUMENTS "WERE EITHER ARGUED OR WAIVED" AT THE AUGUST 2025 HEARING.	13
A. The voidness grounds were never argued at the August 2025 hearing.....	13
B. Voidness cannot be waived, and an interlocutory order cannot validate a void judgment.....	14
C. Nally's damages challenge did not exist on August 12, 2025.....	14

D.	By resting on waiver, the court never exercised the discretion Rule 60(b) requires.	15
III.	ALTERNATIVELY, NALLY ESTABLISHED THE GROUNDS FOR RELIEF UNDER RULE 60(b)(1) AND GREEN.	15
A.	Nally showed a meritorious defense to the amount of damages.	16
B.	The remaining factors favor relief.	18
CONCLUSION.....		19
CERTIFICATE OF SERVICE		21

TABLE OF AUTHORITIES

Cases

<i>Ateyeh v. United of Omaha Life Ins. Co.</i> , 293 S.C. 436, 361 S.E.2d 340 (Ct. App. 1987)	7
<i>BB & T v. Taylor</i> , 369 S.C. 548, 633 S.E.2d 501 (2006).....	7, 13
<i>Brown v. S.C. Ins. Co.</i> , 284 S.C. 47, 324 S.E.2d 641 (Ct. App. 1984)	17
<i>Dixon v. Besco Eng'g, Inc.</i> , 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995)	19
<i>Drews Co. v. Ledwith-Wolfe Assocs., Inc.</i> , 296 S.C. 207, 371 S.E.2d 532 (1988)	17
<i>Floyd v. Country Squire Mobile Homes, Inc.</i> , 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985)	18
<i>Fontaine v. Peitz</i> , 291 S.C. 536, 354 S.E.2d 565 (1987)	8, 15
<i>Freeman Dodge, Inc. v. MCC Fin. Servs., Inc.</i> , 272 S.C. 164, 249 S.E.2d 897 (1978)	17
<i>Green v. Johnson</i> , 446 S.C. 326, 919 S.E.2d 894 (2025)	<i>passim</i>
<i>Howard v. Holiday Inns, Inc.</i> , 271 S.C. 238, 246 S.E.2d 880 (1978).....	14, 17, 19
<i>Janasik v. Fairway Oaks Villas Horizontal Prop. Regime</i> , 307 S.C. 339, 415 S.E.2d 384 (1992).....	14
<i>Lister v. NationsBank of Del., N.A.</i> , 329 S.C. 133, 494 S.E.2d 449 (Ct. App. 1997).....	17
<i>McClurg v. Deaton</i> , 380 S.C. 563, 671 S.E.2d 87 (Ct. App. 2008), <i>aff'd</i> , 395 S.C. 85, 716 S.E.2d 887 (2011)	15, 16
<i>McDaniel v. U.S. Fid. & Guar. Co.</i> , 324 S.C. 639, 478 S.E.2d 868 (Ct. App. 1996)	9, 12
<i>Mitchell Supply Co. v. Gaffney</i> , 297 S.C. 160, 375 S.E.2d 321 (Ct. App. 1988)	15
<i>Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC</i> , 432 S.C. 633, 856 S.E.2d 150 (2021)	7, 14
<i>S.C. Fin. Corp. v. W. Side Fin. Co.</i> , 236 S.C. 109, 113 S.E.2d 329 (1960).....	17
<i>State v. Smith</i> , 276 S.C. 494, 280 S.E.2d 200 (1981)	15
<i>Sundown Operating Co. v. Intedge Indus., Inc.</i> , 383 S.C. 601, 681 S.E.2d 885 (2009).....	14
<i>Thomas & Howard Co. v. T.W. Graham & Co.</i> , 318 S.C. 286, 457 S.E.2d 340 (1995) .8, 9, 12, 14	
<i>Tri-County Ice & Fuel Co. v. Palmetto Ice Co.</i> , 303 S.C. 237, 399 S.E.2d 779 (1990).....	15
<i>Tryon Fed. Sav. & Loan Ass'n v. Phelps</i> , 307 S.C. 361, 415 S.E.2d 397 (1992)	9, 12
<i>Universal Benefits, Inc. v. McKinney</i> , 349 S.C. 179, 561 S.E.2d 659 (Ct. App. 2002).....	10, 12
<i>Wilder Corp. v. Wilke</i> , 330 S.C. 71, 497 S.E.2d 731 (1998)	13

Statutes

S.C. Code Ann. § 14-3-330 (2017)	7
--	---

Rules

Rule 5(a), SCRCP	8, 11
Rule 8(f), SCRCP.....	10
Rule 52(a), SCRCP	18
Rule 54(b), SCRCP	14
Rule 54(c), SCRCP	18
Rule 55(a), SCRCP	10
Rule 55(b)(2), SCRCP	8, 11
Rule 55(c), SCRCP	14
Rule 55(d), SCRCP	18
Rule 60(b), SCRCP	<i>passim</i>
Rule 211(b), SCACR	1

STATEMENT OF ISSUES ON APPEAL

- I. Is the default judgment void under Rule 60(b)(4), SCRCP, where Appellant had filed a written answer disputing the counterclaim that the clerk docketed under the wrong title; the motion for default judgment was never served on her although she had appeared; and the only notice of the default hearing was returned unclaimed?
- II. Did the circuit court commit an error of law by denying Appellant's Rule 60(b) motions on the sole ground that her arguments "were either argued or waived" at an August 2025 hearing on a different motion, when the voidness grounds were never raised at that hearing, voidness cannot be waived, and her damages challenge did not yet exist?
- III. Alternatively, did Appellant establish entitlement to relief under Rule 60(b)(1), SCRCP, including a meritorious defense to the amount of the \$157,797.69 award under *Green v. Johnson*, 446 S.C. 326, 919 S.E.2d 894 (2025)?

STATEMENT OF THE CASE

This appeal arises from a dispute over the sale of a small dog-training business for \$30,000. It ended in a \$157,797.69 default judgment against Appellant Julia Nally, a self-represented litigant. The court held her in default "for failure to answer" a counterclaim, but she had answered it. Her written answer sat in the court's file, docketed under the wrong title. The motion for default was never served on her, and the clerk's notice of the default hearing came back unclaimed. When Nally moved to vacate the judgment as void, the circuit court did not

reach the question. It ruled that her arguments "were either argued or waived" at an earlier hearing on a different motion.¹

A. The business dispute and the counterclaim.

In 2023, Nally agreed to buy Carolina Canine College, a dog-training business owned by Respondent Kim Petrone, for \$30,000, and paid Petrone a \$10,000 deposit. (Compl. (Apr. 22, 2024); Answer & Countercl. ¶ 3 (May 14, 2024) (admitting the agreement to sell, the price, and the deposit).) Two versions of the parties' written "Temporary Partnership" agreement appear in the record. Only one, the version Petrone relies on, states that Nally "will forfeit the deposit" if she does not execute a final sales contract. (Exs. to Mot. for Relief (Jan. 5, 2026).) In April 2024, Petrone locked Nally out of the premises and kept the deposit. (Mot. for Relief from J. ¶ 12 (Oct. 27, 2025).)

Nally sued Petrone, pro se, on April 22, 2024. (Compl.) Petrone, also pro se, answered and counterclaimed on May 14, 2024. (Answer & Countercl.) The counterclaim alleged that Nally "did not adhere to the specifications set forth in the Temporary Partnership contract." (*Id.* ¶ 19.) It listed acts such as damage to flooring, control of the business's social-media accounts, and removing merchandise and documents. (*Id.* ¶¶ 20–27.) It demanded "actual and punitive damages" but stated no amount. (*Id.* at Prayer ¶ (d).) Petrone's process server served the counterclaim, with discovery requests, on June 4, 2024. (Aff. of Default ¶ 5 & Ex. 4, attached to Mot. for Default J. (Nov. 21, 2024).)

¹Record citations identify each filing by title and circuit-court filing date. Page references to the Record on Appeal will be conformed in Appellant's final brief. *See* Rule 211(b), SCACR.

B. Nally answers the counterclaim on August 26, 2024.

Petrone moved for entry of default on June 15, 2024. (Mot. for Entry of Default (June 15, 2024).) On August 26, 2024, the court declined to sign Petrone's proposed default order. (Docket entry, "Decline to Sign: Order/Default" (Aug. 26, 2024).) The same day, the clerk filed a written response from Nally to the counterclaim. (Nally Answer to Countercl. (filed Aug. 26, 2024).)

That filing is an answer in everything but its label. It is addressed to the court ("Your dear honor"), signed by Nally, notarized on August 23, 2024, and file-stamped with the case number. (*Id.*) It responds to the counterclaim on the merits. Nally states she is "unable to answer Kim Petrone request due to falsified documents." She denies that the contract Petrone sued on is the agreement she signed, calling it "a falsified contract" that misspells her name. She sets out her own account of the agreement, the \$10,000 deposit, the lockout, and Petrone's retention of her equipment. (*Id.*) It attaches the agreement Nally contends is the true contract. (*Id.*) The clerk, however, docketed it as a "Response to Interrogatories." (Docket entry (Aug. 26, 2024).)²

On October 8, 2024, both parties appeared pro se before Judge Salvini. At Nally's request, the court dismissed her complaint without prejudice, and Petrone's counterclaim remained pending. (Form 4 Order (Oct. 9, 2024) (dismissal).) The court denied Petrone's motion for entry of default and gave Nally thirty days to respond to the counterclaim. (Form 4 Order (Oct. 9, 2024) (default).) Nally's answer had been in the court's file since August 26.³

²The clerk docketed the August 26, 2024 answer as "Response to Interrogatories" and the November 15, 2024 interrogatory responses as "Answer/Answer." The captions of the documents themselves show the labels are reversed. The November 15 filing is captioned "Cross Defendant's Response to Rule 33 General Interrogatories." (Cross Def.'s Resp. to Rule 33 Interrogs. (Nov. 15, 2024).)

³The clerk filed a second document from Nally on August 26, 2024: an email stating that, because of "a head injury and medical health conditions," she was "no longer going to continue this court case" and was "canceling this hearing." (Nally Letter Requesting Dismissal (filed Aug. 26, 2024).) That email concerned Nally's own complaint, which the court dismissed at her request on October 8, 2024. (Form 4 Order (Oct. 9, 2024) (dismissal).) It did not withdraw her answer to the counterclaim. She continued to defend against

C. The unserved default motion and the hearing Nally never learned of.

On November 12, 2024, Petrone filed an affidavit swearing that Nally "failed to plead or otherwise defend in said action." (Aff. of Default ¶ 8 (filed Nov. 12, 2024).) On November 15, 2024, Nally filed her responses to Petrone's interrogatories. The clerk docketed them as an "Answer." (Cross Def.'s Resp. to Rule 33 Interrogs. (Nov. 15, 2024).)⁴ On November 21, 2024, Petrone moved for default judgment. (Mot. for Default J. (Nov. 21, 2024).) The motion contains no certificate of service. The only proof of service in it is the June 2024 process-server affidavit for the counterclaim. (*Id.*)

The court's mail was not reaching Nally, and the court's file showed it. A clerk's mailing to Nally's address of record was returned "unclaimed" and "unable to forward" and filed on December 30, 2024. (Returned Mail (filed Dec. 30, 2024).) On December 19, 2024, the clerk issued notice setting Petrone's motion for hearing on January 28, 2025. (Notice of Mot. Scheduling (Dec. 19, 2024).) The envelope mailed to Nally on December 20, 2024 came back marked "unclaimed" and was filed on February 3, 2025, after the hearing. (Returned Mail (filed Feb. 3, 2025).)

Only Petrone appeared on January 28, 2025. (Tr. of Jan. 28, 2025 Hr'g (filed Apr. 27, 2026).) The court observed, "I see where Ms. Nally filed an answer on November 15th." (*Id.* at 6:3–4.) Petrone had just told the court that Nally "didn't file an answer," and she responded that the November 15 filing addressed only her interrogatories. (*Id.* at 5:13–15, 6:5–8.) No one

the counterclaim: she appeared on October 8, filed her interrogatory responses on November 15, and moved to set aside the default in June 2025.

⁴Counsel's April 2026 memorandum described the November 15, 2024 interrogatory responses as Nally's attempted answer and conceded that filing "did not constitute a proper answer." (Mem. in Supp. of Pl.'s Mot. for Relief from J. at 3 (Apr. 27, 2026).) That concession is accurate as to the November 15 filing, which is all it addresses. It does not concern the August 26, 2024 answer, which the memorandum does not mention.

mentioned the August 26 answer, service of the motion, or Nally's absence. (*See id.* at 4–7.) The court granted the motion "to the extent that the plaintiff is held in default for failure to answer the defendant's counterclaim" and directed that a damages hearing be scheduled. (Form 4 Order (Jan. 29, 2025).)

D. The motion to set aside the entry of default.

Nally, still pro se, moved in June 2025 to set aside the January 29, 2025 order. (Mot. to Set Aside Default J. & Consolidate Claims (June 9, 2025).) The motion argued that she never received the October 2024 order, that her neglect was excusable, and that Petrone relied on a forged contract. (*Id.* ¶¶ 3–6.) It did not mention the August 26, 2024 answer, the non-service of the default motion, or the returned hearing notice. It asked for leave to file an answer. (*Id.* at Prayer.) By Form 4 order filed August 12, 2025, the court denied the motion without explanation. The order states that it "does not end the case." (Form 4 Order (Aug. 12, 2025).) The next day, the Supreme Court decided *Green v. Johnson*, holding that a defaulting party may satisfy the meritorious-defense requirement "by showing he has a meritorious defense as to the amount of damages or proximate cause." Op. No. 28296, slip op. at 9 (S.C. filed Aug. 13, 2025).

E. The damages hearing and the \$157,797.69 judgment.

The clerk's two notices setting the damages hearing for September 22, 2025 were returned "vacant" and "unable to forward." (Returned Mail (filed Sept. 8, 2025).) Nally learned of the hearing anyway. She filed a memorandum arguing that Petrone bore the burden of proving damages with competent, non-speculative evidence and that punitive damages are not recoverable for breach of contract absent an independent fraudulent act. (Mem. in Supp. of J. for Nominal or Zero Damages (Sept. 22, 2025).) She attended the hearing, objected to Petrone's

exhibits, and cross-examined her. (Tr. of Sept. 22, 2025 Hr'g at 4:3–5, 11:19–12:9, 17:10–42:7 (filed Apr. 27, 2026).)

Petrone was the only witness. She sought \$150,000 for business files and training materials she said Nally removed, and she explained how she reached that figure: "30 years of work at \$5,000.00 per year, and that's what I assessed." (*Id.* at 8:5–17.) She acknowledged that she still had copies of the material from "the last five years." (*Id.* at 8:13–15.) She also claimed \$12,701.37 for the training-room floor, \$1,350 for an interior wall, \$23,000 for "failure to complete the sale," \$3,700 in paralegal fees, and a list of smaller items, and she asked for punitive damages. (*Id.* at 6:23–11:10, 15:5–6, 17:6–9.) The court admitted her three exhibits over Nally's objection. (*Id.* at 11:15–13:23.)

The court ruled from the bench. It reasoned that by canceling the sale Petrone had "basically, rescinded the contract, so everybody goes back to square one." (*Id.* at 42:22–24.) It therefore subtracted the \$23,000 sale-price claim, the \$10,000 deposit Nally had paid, and the paralegal fees from the \$194,497 Petrone requested, and it awarded the balance, \$157,797.69, "for everything reflected on Plaintiff's Exhibit 2, except for those three items." (*Id.* at 42:15–43:9.) It made no finding on any item, valuation, or theory of liability. Two days later it entered a Form 4 judgment for \$157,797.69, again with no findings. (Form 4 J. (Sept. 24, 2025).) The award is more than five times the \$30,000 price of the entire business. Ninety-five percent of it is the \$150,000 Petrone assigned to her own files.

F. The Rule 60(b) motions and the order on appeal.

On October 27 and 29, 2025, Nally moved pro se for relief from the judgment under Rule 60(b)(1) and (4).⁵ (Mot. for Relief from J. (Oct. 27, 2025); Mot. for Relief from J. (Oct. 29, 2025).) She argued that she had filed a written response to the counterclaim in August 2024, yet the court "entered default against Nally, finding that no answer had been filed." (*Id.* ¶¶ 2–3, 15–17.) She argued that the default was judicial mistake and that the judgment is void because she was denied the opportunity to defend despite her response. (*Id.* ¶¶ 22–25, 30–35.) She asked the court to "accept her August 23, 2024 response as her answer." (*Id.* at Prayer ¶ D.) Relying on *Green*, she also asserted a meritorious defense to the amount of damages. (*Id.* ¶¶ 36–40.)

Nally later retained counsel. (Notice of Appearance (Feb. 11, 2026).) Counsel's memorandum argued that the judgment is void under Rule 60(b)(4) because the default motion was never served as Rule 5 requires, depriving Nally of notice and an opportunity to be heard. (Mem. in Supp. of Pl.'s Mot. for Relief from J. at 5–9.) Counsel filed the transcript of the January 28, 2025 hearing and a proposed answer. (Filing (Apr. 27, 2026).) The record contains no written opposition by Petrone.

By Form 4 filed August 11, 2026, the court denied both motions. The order's entire reasoning is one sentence:

Plaintiff's arguments in support of this motion were either argued or waived at the hearing of plaintiff's motion to set aside default on 8/12/2025.

⁵The two motions are identical in substance. Appellant mailed the motion on October 24, 2025, and, out of caution, filed it in person at the courthouse on October 27, 2025. (Letter to Clerk of Court (Oct. 31, 2025).)

(Form 4 Order (Aug. 11, 2026).) The order does not address voidness, service, notice, the August 26 answer, or the Rule 60(b)(1) factors. It does not mention *Green*. Nally timely served and filed her notice of appeal. (Notice of Appeal (Sept. 2026).)⁶

STANDARD OF REVIEW

Relief under Rule 60(b) ordinarily lies within the trial court's discretion, and "[a]n abuse of discretion arises where the judge issuing the order was controlled by an error of law or where the order is based on factual conclusions that are without evidentiary support." *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006); *see Green*, slip op. at 6–7. Whether a judgment is void is a different question. A void judgment "is one that, from its inception, is a complete nullity and is without legal effect." *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995). A trial court has no discretion to give such a judgment effect, so whether the judgment is void presents a question of law. Finally, "[w]hen the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." *Fontaine v. Peitz*, 291 S.C. 536, 538, 354 S.E.2d 565, 566–67 (1987).

SUMMARY OF ARGUMENT

The judgment is void. Rule 55 permits default only against a party who "has failed to plead or otherwise defend." Nally did both. Her answer disputing the counterclaim was filed on August 26, 2024, before the court even set a deadline. The clerk docketed it under the wrong

⁶The Form 4 order marks the box stating that it "does not end the case." That notation does not defeat appellate jurisdiction. The order finally disposes of Appellant's motions for relief from the September 24, 2025 judgment, which the court marked as one that "ends" the case. An order denying relief from a final default judgment is appealable. *See Ateyeh v. United of Omaha Life Ins. Co.*, 293 S.C. 436, 437, 361 S.E.2d 340, 340 (Ct. App. 1987); S.C. Code Ann. § 14-3-330(1), (2) (2017); *cf. Palmetto Constr. Grp., LLC v. Restoration Specialists, LLC*, 432 S.C. 633, 639, 856 S.E.2d 150, 153 (2021) (an order refusing to set aside an entry of default is interlocutory and reviewable after final judgment).

title, and every ruling that followed rested on that mistake. Petrone swore Nally had not pleaded, and the court held her in default "for failure to answer." Nally, a party who had appeared, was never served with the default motion as Rules 5(a) and 55(b)(2) require. The clerk's notice of the hearing came back unclaimed, and the court's file already showed that its mail was not reaching her. A judgment entered without notice against a party who had answered is not a mere irregularity. It is a judgment entered without due process, and it is void.

The circuit court never reached that question. Its only stated reason, that Nally's arguments "were either argued or waived" at the August 2025 hearing, is wrong as a matter of law. That hearing concerned Nally's pro se motion to set aside the interlocutory entry of default. That motion never mentioned the August 26 answer, the unserved default motion, or the returned hearing notice. Those grounds could not have been "argued" there. Voidness cannot be waived, and an unappealable interlocutory order cannot validate a void judgment. Nally's damages challenge did not even exist on August 12, 2025: there was no damages award, and *Green* was decided the next day.

Alternatively, Nally was entitled to relief under Rule 60(b)(1). She moved promptly. Her default resulted from a clerk's mislabeling, an unserved motion, and notices that never reached her. Under *Green*, she showed a meritorious defense to an award more than five times the price of the entire business. Ninety-five percent of that award is a \$150,000 figure Petrone assigned to her own files at "\$5,000.00 per year" for thirty years, and the court adopted it, along with nearly every other item she claimed, without a single finding. This Court should reverse, hold the judgment void, and remand. At a minimum, it should remand for a ruling on the merits under the correct standard.

ARGUMENT

I. THE DEFAULT JUDGMENT IS VOID UNDER RULE 60(b)(4) BECAUSE IT WAS ENTERED WITHOUT DUE PROCESS AGAINST A PARTY WHO HAD ANSWERED, ON A MOTION SHE WAS NEVER SERVED, AFTER A HEARING SHE NEVER RECEIVED NOTICE OF.

Rule 60(b)(4) authorizes relief when "the judgment is void." A void judgment "is one that, from its inception, is a complete nullity and is without legal effect." *Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343. Voidness is not limited to want of jurisdiction. "The definition of 'void' under the rule only encompasses judgments from courts which failed to provide proper due process" or lacked jurisdiction. *McDaniel v. U.S. Fid. & Guar. Co.*, 324 S.C. 639, 644, 478 S.E.2d 868, 871 (Ct. App. 1996). The Supreme Court has long held that "no judgment or order affecting the rights of a party to the cause shall be made or rendered without notice." *Tryon Fed. Sav. & Loan Ass'n v. Phelps*, 307 S.C. 361, 362, 415 S.E.2d 397, 398 (1992). The requirements of due process "not only include notice, but also include an opportunity to be heard." *Universal Benefits, Inc. v. McKinney*, 349 S.C. 179, 183, 561 S.E.2d 659, ___ (Ct. App. 2002). Each requirement failed here.

A. Nally answered the counterclaim on August 26, 2024; the clerk docketed her answer under the wrong title.

Default is permitted only "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend." Rule 55(a), SCRCF. Nally did both. Her August 26, 2024 filing is addressed to the court, signed, notarized, and file-stamped in this case. It responds to the counterclaim on the merits. It denies that the agreement Petrone sued on is the contract Nally signed, calling it "a falsified contract." It sets out Nally's account of the transaction, the deposit, the lockout, and Petrone's retention of her property. (Nally Answer to

Countercl. (filed Aug. 26, 2024).) That is a denial of the counterclaim's material allegations and an assertion of defenses.

The clerk's label does not change what the document is. "All pleadings shall be so construed as to do substantial justice." Rule 8(f), SCRCp. The clerk's docket entry is a ministerial description, not an adjudication of what a party filed. The record confirms the labels were transposed. The document the clerk called an "Answer" on November 15, 2024 is captioned "Cross Defendant's Response to Rule 33 General Interrogatories." The document the clerk called a "Response to Interrogatories" is the answer. (*Compare* Cross Def.'s Resp. to Rule 33 Interrogs. (Nov. 15, 2024), *with* Nally Answer to Countercl. (filed Aug. 26, 2024).)

The answer was timely. When Nally filed it, the court had just declined to sign Petrone's default order. (Docket entry (Aug. 26, 2024).) On October 9, 2024, the court denied default outright and gave Nally thirty days to respond. (Form 4 Order (Oct. 9, 2024) (default).) An answer already on file when the court extends the time to respond is necessarily within the extended time. Nothing in the October 9 order struck or disregarded the August 26 filing.

Every ruling that followed rests on the opposite premise. Petrone swore that Nally "failed to plead or otherwise defend." (Aff. of Default ¶ 8.) The court held her in default "for failure to answer the defendant's counterclaim." (Form 4 Order (Jan. 29, 2025).) At the hearing, the only filing discussed was the November 15 interrogatory responses. (Tr. of Jan. 28, 2025 Hr'g at 6:3–8.) The court's own file disproved the default's sole basis.

B. The motion for default judgment was never served on Nally, a party who had appeared.

Rule 5(a), SCRCp, requires that written motions be served on each party. Rule 55(b)(2) adds a specific protection for the party facing default: "If the party against whom judgment by default is sought has appeared in the action, he . . . shall be served with written notice of the

application for judgment at least 3 days prior to the hearing on such application." Nally had appeared. She was the plaintiff, she had filed an answer, and she had attended the October 8, 2024 hearing, as Petrone's own affidavit states. (Aff. of Default ¶ 6.)

Petrone's November 21, 2024 motion contains no certificate of service. Its only proof of service is the June 2024 process-server affidavit for the counterclaim, served five months before the motion existed. (Mot. for Default J. & Ex. 4 (Nov. 21, 2024).) Nothing in the record shows that Petrone served the motion on Nally. Petrone knew where to find her: Petrone's process server had personally served Nally at 1450 Turkey Ridge Road in June 2024. (*Id.* Ex. 4.)

C. The only notice of the default hearing came back unclaimed, and the court's file already showed its mail was not reaching Nally.

The clerk's December 19, 2024 notice set the motion for January 28, 2025. (Notice of Mot. Scheduling (Dec. 19, 2024).) The envelope mailed to Nally on December 20 was returned "unclaimed" and filed February 3, 2025, five days after the court entered default. (Returned Mail (filed Feb. 3, 2025).) Before the hearing, another clerk's mailing to the same address had already come back "unclaimed" and "unable to forward" and was filed on December 30, 2024. (Returned Mail (filed Dec. 30, 2024).) The pattern continued: the notices of the damages hearing came back "vacant." (Returned Mail (filed Sept. 8, 2025).) Nally learned of that hearing on her own and attended it. (Tr. of Sept. 22, 2025 Hr'g at 4:3–5.) She had no comparable opportunity before the default was entered.

The court therefore entered default in Nally's absence, on an unserved motion, with returned mail already in its file. No one at the hearing addressed whether Nally had notice. (Tr. of Jan. 28, 2025 Hr'g at 4–7.)

D. A judgment entered in these circumstances is void, not merely voidable.

Not every procedural misstep voids a judgment. "Irregularities which do not involve jurisdiction do not render a judgment void." *Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343. But this judgment does not rest on an irregularity. It was entered against a party who had answered, on a motion she was never served, after a hearing whose only notice she never received, by a court whose file showed both the answer and the failed mail. That is the absence of the notice and opportunity to be heard that due process requires. *Tryon*, 307 S.C. at 362, 415 S.E.2d at 398; *McDaniel*, 324 S.C. at 644, 478 S.E.2d at 871. The resulting default is void.⁷

The damages judgment falls with it. The September 24, 2025 judgment exists only because of the January 29, 2025 default. A judgment built on a nullity can be no more valid than its foundation. The Court should hold the judgment void and remand with instructions to vacate the default and the judgment and permit Nally to defend the counterclaim on the merits.

The issue is preserved. Nally's October 2025 motion argued that she had filed a response to the counterclaim, that the court nonetheless found "no answer had been filed," and that the judgment is void under Rule 60(b)(4). (Mot. for Relief from J. ¶¶ 2–3, 15–17, 30–35.) Counsel's memorandum separately argued that non-service of the default motion rendered the judgment void. (Mem. in Supp. of Pl.'s Mot. for Relief from J. at 5–9.) The circuit court ruled on both motions. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, ____ (1998).

⁷*Universal Benefits* illustrates the distinction. There, the party received the order dismissing its action and could have sought relief from it, so its failure to act was "a result of its own inaction and not a denial of due process." 349 S.C. at 184, 561 S.E.2d at _____. Here, the default rests on a premise the court's own file disproves, and it was entered on a motion Nally was never served after a hearing whose only notice never reached her.

II. THE CIRCUIT COURT ERRED AS A MATTER OF LAW IN DENYING RELIEF ON THE GROUND THAT NALLY'S ARGUMENTS "WERE EITHER ARGUED OR WAIVED" AT THE AUGUST 2025 HEARING.

The order gives one reason for denying relief. A ruling "controlled by an error of law" is an abuse of discretion. *BB & T*, 369 S.C. at 551, 633 S.E.2d at 503. The court's reason fails for four independent reasons.

A. The voidness grounds were never argued at the August 2025 hearing.

The August 2025 hearing was on Nally's pro se June 2025 motion. That motion argued that she never received the October 2024 order, that her neglect was excusable, and that Petrone's contract was forged. (Mot. to Set Aside Default J. & Consolidate Claims ¶¶ 3–6.) It never mentioned the August 26, 2024 answer, the non-service of the default motion, or the returned hearing notice. It asked for leave to file an answer, confirming that no one, including Nally, yet recognized that her answer was already on file under the wrong label. (*Id.* at Prayer.) The August 12, 2025 order is a single sentence denying the motion, with no findings. (Form 4 Order (Aug. 12, 2025).) Nothing in the record supports the conclusion that the grounds later raised were "argued" then.

B. Voidness cannot be waived, and an interlocutory order cannot validate a void judgment.

A void judgment is "a complete nullity" and "without legal effect." *Thomas & Howard Co.*, 318 S.C. at 291, 457 S.E.2d at 343. No conduct of a party can supply the notice that due process required, and no earlier ruling can give legal effect to a nullity. Waiver, moreover, "is a voluntary and intentional abandonment or relinquishment of a known right." *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, ____ (1992). A pro se litigant who did not know her answer had been mislabeled could not knowingly relinquish an argument built on that fact.

The August 12, 2025 order also could not have preclusive effect. It denied a motion to set aside an entry of default before final judgment, and it states that it "does not end the case." Such an order "was not immediately appealable." *Palmetto*, 432 S.C. at 639, 856 S.E.2d at 153. Under Rule 54(b), SCRCF, an interlocutory order "is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties." An order that no one could appeal, and that the court could revise at any time, cannot insulate a later void judgment from Rule 60(b)(4).

C. Nally's damages challenge did not exist on August 12, 2025.

The August 2025 hearing concerned the interlocutory entry of default on liability, governed by Rule 55(c)'s "good cause" standard. "Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCF." *Sundown Operating Co. v. Intedgen Indus., Inc.*, 383 S.C. 601, 608, 681 S.E.2d 885, ____ (2009). The final judgment fixing damages was entered six weeks later. A defaulting party "does not concede the amount of liability." *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 242, 246 S.E.2d 880, 882 (1978). Nally's challenge to the amount, the categories, and the proof of the award depended on evidence Petrone did not offer until September 22, 2025. It also depended on an award the court did not make until September 24. She could not have argued, much less knowingly abandoned, a challenge to an award that did not exist. And *Green*, the authority on which her damages defense rests, was decided on August 13, 2025, the day after the order the circuit court relied on.⁸

⁸Before *Green*, the question was open. In *McClurg v. Deaton*, the Court of Appeals declined to reach it on preservation grounds, and the Supreme Court affirmed that preservation ruling without deciding it. *Green*, slip op. at 8 (discussing *McClurg v. Deaton*, 380 S.C. 563, 576, 671 S.E.2d 87, 94 (Ct. App. 2008), *aff'd*, 395 S.C. 85, 87, 716 S.E.2d 887, 888 (2011)).

D. By resting on waiver, the court never exercised the discretion Rule 60(b) requires.

A Rule 60(b)(1) motion calls for the court to weigh "(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties." *McClurg*, 380 S.C. at 573, 671 S.E.2d at 92–93; *see Green*, slip op. at 7–8 (citing *Tri-County Ice & Fuel Co. v. Palmetto Ice Co.*, 303 S.C. 237, 242, 399 S.E.2d 779, 782 (1990) (citing *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 163, 375 S.E.2d 321, 323 (Ct. App. 1988))). The order addresses none of these factors. "When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred." *Fontaine*, 291 S.C. at 538, 354 S.E.2d at 566–67; *see State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981) ("It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted.").

III. ALTERNATIVELY, NALLY ESTABLISHED THE GROUNDS FOR RELIEF UNDER RULE 60(b)(1) AND GREEN.

If the Court does not hold the judgment void, Nally was still entitled to relief under Rule 60(b)(1). That requires a showing of "mistake, inadvertence, surprise, or excusable neglect," and the movant "must also show he has a meritorious defense." *Green*, slip op. at 7–8. The meritorious-defense showing need only be prima facie. *McClurg*, 380 S.C. at 574, 671 S.E.2d at 93. Each factor favored Nally.

A. Nally showed a meritorious defense to the amount of damages.

Green holds that a defaulting party satisfies the meritorious-defense requirement "by showing he has a meritorious defense as to the amount of damages." Slip op. at 9. The Court warned:

Also, the fact that a defendant is in default does not, by itself, inflate the "value" of the case. A default damages hearing is not a lottery opportunity.

Id. at 4 n.3. In *Green*, the Court reinstated the reduction of an award "egregiously out of proportion to the evidence presented at the default damages hearing." *Id.* at 10. The disproportion here is greater.

First, the award is untethered to the transaction. The counterclaim pleads breach of a "Temporary Partnership contract" for a business priced at \$30,000. (Answer & Countercl. ¶¶ 3, 18–19.) The judgment is more than five times that price. (Form 4 J. (Sept. 24, 2025).)

Second, ninety-five percent of the award rests on a number Petrone assigned to her own files. She asked for \$150,000 for business files and "proprietary" training materials she said Nally removed, and she explained how she arrived at it: "30 years of work at \$5,000.00 per year, and that's what I assessed." (Tr. of Sept. 22, 2025 Hr'g at 8:5–17.) That is not evidence of what the files were worth. It values the effort that went into them at a rate Petrone chose, with no evidence of what the files would sell for, what income they produced, or what Petrone lost while Nally allegedly held them. Petrone conceded she still had copies of the most recent five years of material. (*Id.* at 8:13–15.) South Carolina does not permit recovery on conjecture. Lost profits, for example, must be "established with reasonable certainty, for recovery cannot be had for profits that are conjectural or speculative." *Drews Co. v. Ledwith-Wolfe Assocs., Inc.*, 296 S.C. 207, 213, 371 S.E.2d 532, ____ (1988) (quoting *S.C. Fin. Corp. v. W. Side Fin. Co.*, 236 S.C. 109, 122, 113 S.E.2d 329, 336 (1960)). A thirty-year multiplier applied to a self-selected annual figure is conjecture. Yet the court awarded every dollar of it, with no explanation. (*Id.* at 43:7–9.)

Nally's motion identified this defect: Petrone's case consisted of her own testimony and estimates, with no documentary or expert support. (Mot. for Relief from J. ¶¶ 18, 39.)⁹

Third, the bench ruling is internally inconsistent. The court held that Petrone had "rescinded the contract, so everybody goes back to square one." On that basis it denied her claim for the \$23,000 balance of the sale price and credited Nally's \$10,000 deposit. (Tr. of Sept. 22, 2025 Hr'g at 42:17–43:7.) Yet it also awarded Petrone every other loss she attributed to Nally's occupancy of the business under that same agreement: the floor, the interior wall, a lost facility-rental contract, merchandise, equipment, and the files. (*Id.* at 6:23–11:10, 43:7–9.) Returning the parties to square one cannot be squared with that. The court did not explain how a rescinded contract still supported those damages, or under what other theory each item was owed. Nor did it say whether any part of the award was punitive, although Petrone asked for punitive damages. (*Id.* at 15:5–6, 17:6–9.) If any part was, it cannot stand. "Mere breach of contract does not justify an award of punitive damages." *Freeman Dodge, Inc. v. MCC Fin. Servs., Inc.*, 272 S.C. 164, 166, 249 S.E.2d 897, ____ (1978); see *Brown v. S.C. Ins. Co.*, 284 S.C. 47, 56, 324 S.E.2d 641, ____ (Ct. App. 1984). "It is the accompanying fraudulent act that allows recovery for punitive damages." *Lister v. NationsBank of Del., N.A.*, 329 S.C. 133, 142, 494 S.E.2d 449, ____ (Ct. App. 1997) (applying *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985)). The counterclaim alleges no fraud, and the court found none.

⁹Appellant does not contend that she was entitled to present affirmative evidence at the damages hearing. A defaulting party's participation is limited to cross-examination and objection. *Howard*, 271 S.C. at 241, 246 S.E.2d at _____. Nally exercised both rights at the hearing. (Tr. of Sept. 22, 2025 Hr'g at 11:19–12:9, 17:10–42:7.) That limitation is why a defaulting party's protection lies in the requirement that the claimant prove damages by competent evidence, and in Rule 60(b) review of an award that is not so supported.

Fourth, the counterclaim demanded no sum, and "[a] judgment by default shall not be different in kind from or exceed in amount that prayed for in the demand for judgment." Rule 54(c), SCRCP; *see* Rule 55(d), SCRCP ("In all cases a judgment by default is subject to the limitations of Rule 54(c)."). Nally raised these limits before judgment. (Mem. in Supp. of J. for Nominal or Zero Damages.) The judgment's silence compounds the problem. In a proceeding tried without a jury, Rule 52(a), SCRCP, requires the court to find the facts specially and state its conclusions of law separately. The September 24, 2025 Form 4 contains no findings at all, and the bench ruling simply adopted the total of Petrone's own exhibit, less three items, without a finding on any of the rest. (Tr. of Sept. 22, 2025 Hr'g at 42:15–43:9.) A judgment that does not identify its components cannot be checked against the kind or amount of relief prayed for, or against the evidence. That absence is itself strong *prima facie* support for Nally's defense to the amount.

Nally also has a defense on liability. Only Petrone's version of the agreement contains a forfeiture clause, and Nally contends Petrone kept both the deposit and Nally's equipment. (Exs. to Mot. for Relief (Jan. 5, 2026); Nally Answer to Countercl. (filed Aug. 26, 2024).) Under *Green*, however, the damages defense alone suffices.

B. The remaining factors favor relief.

Promptness. Nally moved thirty-three days after the judgment, far inside the one-year limit of Rule 60(b). She had been trying to reach the merits since March 2025.

Reasons for the default. The default resulted from a clerk's mislabeling of her answer, a motion never served on her, and a hearing notice that never reached her. (Parts I.A–C, *supra*.) Those are classic instances of mistake, inadvertence, and surprise. Nally was also hospitalized with a head and spinal injury in December 2024, between the default motion and the hearing.

(Pl.'s Br. in Supp. of Mot. to Reinstate ¶ 5 (Mar. 26, 2025).) A party's health "may, depending on relevant facts, establish a satisfactory explanation." *Green*, slip op. at 8.

Prejudice. The record reflects none. Petrone filed no written opposition. Her execution was returned unsatisfied, so nothing has been collected. (Sheriff's Return (Feb. 12, 2026).) Setting the judgment aside would require Petrone only to prove her claim, which the law required of her in the first place. *Howard*, 271 S.C. at 240, 246 S.E.2d at _____. The rules governing relief from default are "liberally construed to promote justice and dispose of cases on the merits." *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 178, 463 S.E.2d 636, 638 (Ct. App. 1995).

CONCLUSION

Nally answered the counterclaim. The clerk filed her answer under the wrong title. The court then held her in default for not answering, on a motion she was never served, after a hearing whose notice came back unclaimed, and entered a \$157,797.69 judgment on that foundation. The judgment is void. The circuit court refused to say so only because it believed Nally's arguments had been "argued or waived" at a hearing where they were never raised, and before the judgment and *Green* existed. Appellant respectfully requests that this Court reverse the order of August 11, 2026 and hold the default and the September 24, 2025 judgment void. She asks the Court to remand with instructions to vacate both and permit her to defend the counterclaim on the merits. In the alternative, she asks the Court to vacate the judgment and remand for consideration of her Rule 60(b) motions on their merits, or for a new hearing on damages.

Respectfully submitted,

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October 9, 2026