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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

The Honorable Charles B. Simmons, Jr., Master-in-Equity

Circuit Court Case No. 2024-CP-23-07423
Appellate Case No. 2026-001984

New Silver Lending LLC,..... Plaintiff,
v.
Key-Line Capital Investment Group, LLC; Kia Keyton;
Linden Park Property Owners Association, Inc.; BFS Operations, LLC
d/b/a Builders FirstSource; and Alvin Keyton,..... Defendants,
of whom
Key-Line Capital Investment Group, LLC;
Kia Keyton; and Alvin Keyton are Appellants,
and
New Silver Lending LLC is theRespondent.

INITIAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

1. Whether the court abused its discretion under Rule 60(b)(1), SCRCF, by rejecting the asserted accounting defense without adequately distinguishing admitted loan defaults from the calculation of the indebtedness.
2. Whether the court properly evaluated the asserted mistake or inadvertence, the reasons for delay, and prejudice in light of the pre-judgment filings, the evidence submitted with the Rule 60 motion, and the limited relief requested.

STATEMENT OF THE CASE

This appeal concerns the September 2, 2026 order denying relief under Rule 60(b), SCRCF, in a mortgage-foreclosure action concerning 304 Weddington Lane, Simpsonville, South Carolina. Appellants seek review of that denial and a limited remand concerning the amount of indebtedness. They do not seek direct review of the July 8 foreclosure judgment through this appeal. (Sept. 2 Order pp. 1–5 Rec. ____).

New Silver Lending LLC filed its complaint on December 24, 2024. The complaint alleged a \$405,000 loan to Key-Line Capital Investment Group, LLC, secured by a mortgage and guaranteed by Kia Keyton. Alvin Keyton was joined because the deed conveying the property to Key-Line was recorded after the mortgage. (Compl. pp. 3-5, ¶¶ 6-19; Rec. ____). Appellants dispute the amount of indebtedness claimed and owed.

The Note states an 11.5% annual interest rate, calculated on a 360-day year consisting of twelve 30-day months. The complaint sought 24% interest from August 1, 2024. (Feb. 11 Summary Judgment Motion, Ex. A p. 1 Rec. ____, §§ 2-3; Compl. p. 6, ¶ 24, Rec. ____).

Respondent's February 11, 2026 motion relied on an affidavit listing \$405,000 principal, \$124,260 interest through December 4, 2025, \$1,552.52 late charges, \$2,646.75 forced-placed

insurance, and a \$274,062 credit for unused rehabilitation reserves. The affidavit's total was \$259,397.27 before additional attorney's fees and costs; the motion sought \$267,412.60 plus \$270 daily interest. (Feb. 11 Motion pp. 4-5, Ex. E p. 1, Rec. ____).

Following the March 17 hearing, the Master entered a March 26 order denying summary judgment. The order distinguished the validity of the Note and Mortgage and the existence of default from disputed material facts concerning the amount owed, finding summary judgment inappropriate at that time. On April 1, the Master amended that ruling to hold the decision in abeyance for discovery concerning the accuracy of the debt affidavit, allowing thirty days for discovery followed by further argument about the balance. (Apr. 1 Amended Order pp. 1–2, Rec. ____).

On June 26, Appellants filed a motion to continue identifying disputes about the loan accounting, payments and credits, reserve and disbursement history, insurance charges, attorney's fees, and HOA/title-claim materials. They asserted that discovery remained deficient and that representation issues and overlapping proceedings required additional time. These were Appellants' assertions; Respondent disputed them. (June 26 Motion to Continue and Consolidate pp. 1-3, ¶¶ 2-18, Rec. ____).

At the June 29 hearing on the motions, the court recalled that execution of the Note and Mortgage was not contested and that the earlier issue concerned what was due. Counsel withdrew his motion to withdraw, explained that communications with his clients had affected preparation, and described a signed affidavit that Appellants proposed to furnish. (June 29 Tr. passim, Rec. ____).

The court questioned counsel about unanswered requests for admission and referred to the documents and amounts due as deemed admitted. Counsel acknowledged that responses had not been provided due to lack of response from Appellants to their counsel. Respondent maintained

that it had produced its complete file, that objections were late, and that further delay would cause carrying costs. The court granted summary judgment, referring to the discovery deadlines, the unanswered requests, and the court's view that the issues being advanced had not previously been raised to which Appellants objected. (June 29 Tr. passim, Rec. ____).

The July 8 judgment fixed the total debt through June 29 at \$331,126.28: \$405,000 principal; \$180,150 interest; \$1,552.52 late charges; \$7,785.39 advances; a \$274,062 unused-reserves credit; and \$10,700.37 attorney's fees and costs. It added \$270 per day to judgment and provided for 24% post-judgment interest. (July 8 Order pp. 3-4, ¶ 27, Rec. ____).

Appellants thereafter moved for Rule 60 relief on August 14, 2026. The motion invoked mistake, inadvertence, or excusable neglect under subsection (1), and newly discovered evidence under subsection (2). The court described the grounds as an incomplete evidentiary record and discovery materials concerning the HOA litigation and title claim and that the information had bearing on the total indebtedness as well as the good faith of the lender in the case. Following the August 27 hearing, it denied relief on September 2, finding delay, no meritorious defense, prejudice, and no newly discovered evidence. (Aug. 14 Motion for Relief pp. 1-5, Rec. __; Sept. 2 Order pp. 1-5, ¶¶ 12-26, Rec. ____). Appellants filed their notice of appeal on September 3, 2026.

STANDARD OF REVIEW

A ruling on a Rule 60(b) motion is reviewed for abuse of discretion. An abuse occurs when the ruling is controlled by an error of law or rests on factual conclusions without evidentiary support. *BB&T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 502–03 (2006). The movant bears the burden of proving the facts essential to relief. *Id.* at 552, 633 S.E.2d at 503. Under subsection (1), a qualifying ground for relief and a meritorious defense must be established; disagreement

with the judgment is insufficient. *Thompson v. Hammond*, 299 S.C. 116, 119–20, 382 S.E.2d 900, 903 (1989).

Rule 60(b)(1) permits relief for mistake, inadvertence, surprise, or excusable neglect. Relevant considerations include promptness, the reasons for failing to act promptly, a meritorious defense, and prejudice to the opposing party. *Micronics, Inc. v. S.C. Dep’t of Revenue*, 345 S.C. 506, 510–11, 548 S.E.2d 223, 226 (Ct. App. 2001). A meritorious defense need not guarantee success; it must present a substantial legal question or a real factual controversy warranting judicial inquiry. *Thompson*, 299 S.C. at 120, 382 S.E.2d at 903. That showing does not independently excuse neglect.

The denial of Rule 60 relief is separately appealable, but the motion cannot extend the time to appeal the underlying judgment. *Sadisco of Greenville, Inc. v. Greenville Cnty. Bd. of Zoning Appeals*, 340 S.C. 57, 59, 530 S.E.2d 383, 384 (2000). The accounting submissions are relevant here to the grounds presented for Rule 60 relief, not as an invitation to conduct a new summary-judgment review.

ARGUMENT

I. The distinction between default and the amount due required a separate evaluation of Appellants’ asserted meritorious defense.

For purposes of this appeal, Appellants do not contend that no default occurred. Their request is narrower: the Rule 60 court should have separately evaluated whether the asserted factual accounting mistake presented a meritorious defense to the amount of the judgment. A default may establish a right to enforce the loan without conclusively determining every item recoverable in the resulting judgment.

Rule 71(a), SCRCF, requires a foreclosure court to compute the indebtedness and identify principal, applicable interest rates and amounts, escrow credits or charges, collection costs,

allowable attorney's fees, and pre- and post-judgment interest. The July 8 order contains a component-by-component table. Appellants therefore do not argue that the court omitted an accounting altogether; they challenge the conclusion that the table's components were beyond a meritorious factual dispute. (July 8 Order pp. 3-4, ¶ 27, Rec. ____).

The March 26 order expressly found disputed material facts about the amount owed even though the Note, Mortgage, and default were not at issue. The April 1 amended order recast the disposition as an abeyance for discovery and further argument about the balance. This history confirms that the accounting dispute preceded the Rule 60 motion and was distinct from denial of default. Appellants' June 26 continuance motion again identified the accounting subjects they contended remained unresolved. (Mar. 26 Order p. 1, Rec. ____; Apr. 1 Amended Order pp. 1-2, Rec. ____; June 26 Motion to Continue pp. 1-2, ¶¶ 2-9, Rec. ____; June 29 Tr. p. 2, ll. 17-23, Rec. ____).

The March 26 finding did not permanently establish a defense or prevent a later judgment on a developed record. The lender produced discovery, supplemented its motion, and relied on the unanswered admissions before the June hearing. Appellants' narrower point is that the accounting issue the Master initially recognized required evaluation against that later evidence; the occurrence of default alone could not resolve it. (May 8 Supplement pp. 1-2, Rec. ____; Aug. 20 Opposition, Ex. A, Rec. ____; Sept. 2 Order pp. 2-4, ¶¶ 6-19, rec. ____).

Thompson distinguishes a defense worthy of judicial inquiry from proof that the movant will ultimately prevail. Thompson, 299 S.C. at 120, 382 S.E.2d at 903. Appellants submit that their admitted defaults did not foreclose a meritorious challenge to the calculation of interest. The September 2 order grouped default, non-cure, and the amount due together, relying on the lender's affidavits, exhibits, supplemental submissions, and the earlier hearings. The challenged conclusion

is that this showing disposed of the asserted accounting mistake, not that the court relied exclusively on admissions. (Sept. 2 Order p. 4, ¶ 19, Rec. __).

This distinction does not dispense with Rule 60(b)(1)'s other requirements. Appellants rely on the asserted omission of material accounting evidence through mistake or inadvertence, considered with the circumstances addressed below. Rule 71(a) explains why the disputed facts mattered; it is not offered as an independent route to reopen an otherwise final judgment.

The September 2 order quoted McClurg's requirement of a prima facie meritorious defense to obtain relief from a default judgment, while acknowledging that this judgment was not a default judgment. *McClurg v. Deaton*, 380 S.C. 563, 574, 671 S.E.2d 87, 93 (Ct. App. 2008). That default-judgment formulation does not establish that a borrower must defeat all liability to obtain limited relief from a mistaken debt computation. Appellants submit that the court's analysis failed to give independent effect to their asserted defense to the amount.

Green v. Johnson now expressly holds that a defense to the amount of damages can satisfy the meritorious-defense requirement under Rules 55(c) and 60(b)(1), with any reopened defense limited accordingly. *Green v. Johnson*, 446 S.C. 326, 919 S.E.2d 894 (2025). *Green* explains that *McClurg* left that question unresolved on preservation grounds. *Id.* Although *Green* involved a default judgment, its holding defeats the premise that a meritorious defense necessarily must negate all liability. Here, the asserted accounting defense concerns the amount of indebtedness. *Green* does not eliminate the separate requirement of mistake, inadvertence, surprise, or excusable neglect: it affirmed the denial of Rule 60(b)(1) relief because the movant failed to establish that ground. *Id.* Appellants therefore seek consideration of their accounting defense together with their asserted subsection (1) ground, not relief based on a disputed amount alone.

Nelson v. Nelson applied the Rule 60(b)(1) factors to a contested judgment involving omitted mortgage evidence. Nelson v. Nelson, 428 S.C. 152, 833 S.E.2d 432 (Ct. App. 2019). Accordingly, the error asserted here is not the mere use of those factors outside a default case. It is treating established defaults and the prior adjudication of the debt as sufficient to foreclose judicial inquiry into the asserted accounting mistake, despite Thompson’s distinction between a meritorious defense and proof of ultimate success. The remaining Rule 60 requirements still must be satisfied. Thompson, 299 S.C. at 120–21, 382 S.E.2d at 903.

II. The lender’s filed records require evaluation of the asserted interest-calculation mistake.

The August 14 motion specifically distinguished default at maturity from the amount due and identified interest, payment application, reserves, draws, and charges as subjects of the alleged accounting mistake. Its December 28, 2024 email exhibit lists a December 29 maturity date and describes “Default Interest” as 11.50%. The email is evidence of the lender’s communication regarding the interest rate to the borrower and is clear communication concerning debt. (Aug. 14 Motion for Relief, *passim*, Rec. __).

The complaint sought 24% interest from August 1, 2024. Yet Respondent’s own Exhibit G includes a September 13, 2024 statement showing an 11.5% rate and a \$3,881.25 regular monthly payment. The October 2 delinquency calculation then lists 24% and \$8,100 for each of the September and October installments. Respondent’s motion states that an October 1 payment was applied to the August installment. (Compl. p. 6, ¶ 24, rec. __; Feb. 11 Motion p. 8, Ex. G pp. 1, 3-4, Rec. __).

Respondent’s March 31 answer to Interrogatory 2 identifies September 1, 2024 nonpayment and December 29 maturity, while Answers 3–4 calculate default interest beginning August 1, 2024. Answer 4 expressly uses Actual/360; the Note specifies a 360-day year consisting

of twelve 30-day months. These entries make the period, payment application, and calculation method pertinent to the accounting issue raised in the motion and indicate a discrepancy. (Aug. 20 Opposition, Ex. A pp. 3–4, Answers 2–5; Feb. 11 Motion, Ex. A p. 1, § 2 Rec. __; Aug. 14 Motion for Relief p. 3, ¶¶ 11–14; p. 7, ¶¶ 42–45, Rec. __). Appellants assert that the rate should have been 11.5% as stated by the lender in their own communications.

The reserve calculation is supplied in the filed discovery responses. From the \$385,000 rehabilitation reserve, the lender subtracts \$110,450.50 in net draws and \$487.50 in draw fees, leaving \$274,062. The judgment credits that amount. The closing statement and opposition also explain the remaining \$20,000 of the \$405,000 loan as a disbursement toward closing. Appellants do not contend that the unused reserve was omitted or that these figures fail to add up. (Aug. 20 Opposition pp. 6–7, Ex. A pp. 4–5, Answers 6, 8, Ex. B; July 8 Order p. 3, ¶ 27, Rec. __).

The Note provides for interest commencing when funds are placed in escrow and on the full unpaid principal even while the lender holds cash or other collateral. Thus, the retained reserve does not, by itself, prove an improper interest base. The Construction Loan Agreement also conditions further disbursements on the absence of default. Alvin Keyton’s affidavit describes approximately \$30,000 in completed work awaiting reimbursement and a draw that was denied by New Silver as well as discussions concerning construction, refinancing, and that they would not seek foreclosure but an allegation by Keyton that New Silver allowed the foreclosure. (Feb. 11 Motion, Ex. A p. 1, § 2; Aug. 20 Opposition, Ex. C p. 5, § 2.8.4.3; Alvin Keyton Aff., filed Aug. 14, pp. 1–2, ¶¶ 5–6, Rec. __).

Appellants do not ask the Court to adopt an unsupported alternative balance however Appellants assert the applicable interest rate should have been 11.5% and the court should have allowed an inquiry into the date applicable and amount.

III. The actual requests for admission do not admit the aggregate judgment balance or all of its component calculations.

Appellants acknowledge the binding effect of the unanswered requests. Counsel acknowledged the lack of responses due to Appellants lack of communication regarding the requests, and the court expressly asked how Appellants could contest the documents and amounts it understood to be admitted. Rule 36(b), SCRPC, makes an admitted matter conclusive unless the court permits withdrawal or amendment. Appellants do not seek to treat the requests as answered, withdrawn, or superseded by promised testimony. (June 29 Tr., passim, Rec. ____).

Scott v. Greenville Housing Authority confirms that unanswered requests bind the party as to the admitted matters absent permitted withdrawal or amendment. Scott v. Greenville Housing Authority, 353 S.C. 639, 650, 579 S.E.2d 151, 157 (Ct. App. 2003). But admissions do not necessarily resolve every issue. In Hatchell v. Jackson, the court reversed summary judgment because the matters deemed admitted left a material fraud defense unresolved. Hatchell v. Jackson, 290 S.C. 256, 349 S.E.2d 407 (Ct. App. 1986); see also Scott, 353 S.C. at 646–47, 579 S.E.2d at 154–55. In this case, if the interest rate and calculation are incorrect, then the court and New Silver must correct them to reflect the actual debt owed and not allow an incorrect figure to be used.

The scope of the actual requests remains important. Requests 1-5 address execution of the \$405,000 Note, Mortgage, Balloon Rider, and Guaranty, and the maturity date. Requests 6-8 address nonpayment and insurance. Requests 9-11 identify three particular draw disbursements and fees. Requests 12-15 address licensure and instructions concerning payment of the HOA liens. (May 8 Supplement, Ex. B, Requests to Admit pp. 1–3, Nos. 1–15, Rec. ____).

No request asks Appellants to admit that the total debt is \$331,126.28, that \$180,150 in interest was correctly calculated through June 29, 2026, that advances total \$7,785.39, or that \$10,700.37 in attorney’s fees and costs is reasonable and recoverable. Nor does a request specify

the date the lender exercised an alleged option to increase interest. The admissions establish important underlying facts and the executed terms but they do not supply every subsequent accounting calculation.

The absence of an admission to the aggregate balance therefore means that a meritorious accounting defense must be evaluated against the supporting evidence, rather than rejected on the premise that all of the calculations were conclusively admitted and this makes a genuine issue of material fact that should not have been granted on summary judgment and would have also been proper to grant Rule 60 relief.

Appellants request that the matter be sent back for further inquiry; the proper inquiry being which matters were admitted, which matters depended on the lender's evidence, and whether Appellants demonstrated a qualifying factual mistake or inadvertent omission concerning the debt and or interest rate applicable an from which time the interest rate should have applied, all under Rule 60(b)(1) analysis.

IV. Promptness, the reasons for the omissions, and prejudice required consideration of the actual procedural history.

The September 2, 2026 order made adverse findings about delay and prejudice, not merely the existence of a meritorious defense. (Sept. 2 Order pp. 3-4, ¶¶ 17-20, Rec. ____). While Rule 60(b)(1) requires a supported ground for relief, and South Carolina courts have required consideration of both the reasons for failing to act and the effects of reopening the judgment when considering a matter, Appellant asserts that the alleged accounting discrepancies were timely identified and raised and the timing of the Rule 60 motion was appropriate. See, *Micronics, Inc. v. S.C. Dep't of Revenue*, 345 S.C. 506, 548 S.E.2d 223(Ct. App. 2001).

The June 26 continuance motion preceded judgment and identified the alleged accounting and discovery deficiencies. At the June 29 hearing, counsel explained communication difficulties,

withdrew his request to withdraw as counsel, and described an affidavit Appellant proposed to furnish. The affidavit was later filed with the August 14 motion and described the borrower's dealings about draws, the HOA dispute, and refinancing. That filing supplies sworn assertions for the Rule 60 request; it does not establish that the affidavit was admitted at the June hearing or excuse the missed discovery deadlines by itself. (June 26 Motion to Continue pp. 1–3; June 29 Tr. pp. 3–4; Alvin Keyton Aff., filed Aug. 14, pp. 1–2, Rec. ____).

The court found that Respondent produced its file on March 31, that Appellants failed to respond to discovery, and that they gave no logical reason for waiting until shortly before the June 29 hearing to claim deficiencies. Those adverse findings must be addressed. Appellants' explanation is the communication and preparation difficulty counsel described, coupled with the June 26 effort to present the accounting issues before judgment. Appellants submit that those circumstances should be evaluated as the asserted mistake or inadvertence in presenting the accounting evidence and did not create undue burden or delay. (Sept. 2 Order p. 3, ¶ 18; June 26 Motion to Continue; June 29 Tr. pp. 3–4; Aug. 14 Motion for Relief pp. 7–8, Rec. ____).

The HOA materials also have role in that evaluation. The January 23, 2025 cancellation of *lis pendens* states that the HOA foreclosure claim was resolved, but that other causes of action continued. Old Republic notified New Silver on January 24 that the title claim would be closed. New Silver's January 28 internal communication likewise distinguished the resolved HOA foreclosure issue from the remaining construction-related litigation. (June 26 Motion and Exhibits C p. 1, D p. 1, F p. 1, Rec. ____).

Those documents support a chronology of the HOA claim and the context in which Appellants requested additional time. The Rule 60 order itself concluded that the lender had resolved the title issue while other loan defaults remained uncured. (Sept. 2 Order pp. 4-5, ¶¶

22-25, Rec. ____). Appellants assert that these communications support a finding that there was misunderstanding concerning the loan repayment, construction draws, the HOA case and dispute with the HOA, all of which created an inconsistency off communication and misunderstanding that were not able to be presented and were raised by the Appellants timely and through the Rule 60 motion.

V. The appropriate relief is a limited remand concerning the denial of Rule 60(b)(1) relief.

Appellants request reversal of the September 2 order and remand for reconsideration under Rule 60(b)(1). The court should evaluate the asserted factual mistake or inadvertence together with the accounting defense, reasons for delay, and prejudice. Here, the prejudice is to the Appellants as they are the ones likely to be relieved of their property. Relief under Rule 60(b)(1) is appropriate when an order is based upon “factual conclusions...without evidentiary support.” *Thompson v. Hammond*, 299 S.C. 116, 382 S.E.2d 900 (1989). Here, the evidence supports a different interest calculation and Appellants ask that the court reverse the court’s prior order as error and remand for further inquiry.

CONCLUSION

For the foregoing reasons, Appellants respectfully request that this Court reverse the September 2, 2026 order denying their motion for relief and remand for reconsideration under Rule 60(b)(1), SCRCF, and such limited further proceedings concerning the indebtedness as the court determines are warranted.

Respectfully submitted,

(Signature Page to Follow)

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