

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Komonick Sinclair,

Plaintiff,

vs.

Allen's Food Basket, Inc., Gabriel's
Breakfast and Grill at Allen's Food
Basket, LLC d/b/a Gabriel's Grill,
Allen's Food Basket a/k/a Allen's Food
Basket Grill, Wesley Allen a/k/a J.
Wesley Allen, Patricia A. Blanton, J.
Wesley Allen Revocable Living Trust, J
Wesley Allen TR, Patricia A Blanton TR,
Gabe Jackson a/k/a Gabriel Jackson,
James D. Lewis, and Shirley A. Lewis

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Docket No.: 2023-CP-26-03658

**ORDER GRANTING RELIEF FROM
DEFAULT JUDGMENT AS TO
DEFENDANTS JAMES D. LEWIS AND
SHIRLEY A. LEWIS ONLY**

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SC Court of Appeals

For the reasons set forth below, the motion to set aside the default judgment AS TO JAMES D. LEWIS AND SHIRLEY A. LEWIS is GRANTED, pursuant to South Carolina Rule of Civil Procedure 60(b)(4), subject to the conditions set forth below.

Justice demands this motion be granted. In Edwards v Ferguson, 254 S.C. 278 (1970), the South Carolina Supreme Court held in that case that "[t]he justice of the case required that the judgment be set aside with leave to the defendant to answer and the issues be tried on the merits." The Court in Edwards also noted that Rule 60(b) "should be liberally construed to see that justice is promoted and to strive for disposition of cases on their merits." citing Gaskins v California Ins Co, 195 S.C. 376 (1940). Finally, Edwards is cited for the principle that "it would

an egregious injustice to allow this default judgment to stand against the defendants. Therefore, using equitable principles of law, the court rules that the judgment is void under rule 60(b)(4).”

The decision of whether to grant or deny a Rule 60(b) motion is within the sound discretion of the trial court. Perry v Heirs at Law of Gadsen, 357 S.C. 42 (S.C App 2003).

Having carefully reviewed the motions, memoranda, exhibits and arguments of counsel, as well as the existing body of law, the Special Referee finds that to hold otherwise would result in a miscarriage of justice, denying the Lewises a chance at meritorious determination of the issues.

UNDERLYING FACTS

The underlying facts leading to this motion are not in dispute. The lawsuit arises out of a shooting incident inside at Allen’s Food Basket in Horry County on Highway 501 resulting in grievous injuries to the Plaintiff. The shooting involved individuals with no connection to the Lewises. The Lewises were living in North Carolina at the time of this incident. The Lewises presented evidence that they own the adjoining property which perhaps has a common wall and a perhaps shares a common parking lot with Allen’s Food Basket, where the Lewises either run or have tenants who operate 501 Furniture, a home goods business. The evidence presented further suggests that there is a business, Hair Boutique, between 501 Furniture and Allen’s Food Basket. Throughout the course of the litigation, the Lewises have several times communicated that they have no involvement with the incidents alleged in the Complaint.

The Lewises were served with the Complaint in this matter on July 6, 2023 and failed to file an answer. Evidence was presented that upon receipt of the pleadings Mrs. Lewis contacted Patricia Blanton, another defendant, who, according to Mrs. Lewis said she would “take care of it, that we had nothing to do with it.” Mrs. Lewis was left with the mistaken impression that Mrs.

Blanton or her insurer would take care of the Lewises' defense in the case. Evidence was also presented that Mrs. Lewis contacted the Plaintiff's attorney's office on August 29, 2023 to explain that the incident referenced in the Complaint was on an adjoining piece of property and did not involve them. Plaintiff's attorney's office told Mrs. Lewis to contact an attorney. Later, prior to the default damages hearing Mrs. Lewis on December 28, 2023 again contacted Plaintiff's attorney's office to say she should not be receiving a notice of damages hearing for the same reasons stated earlier.

On January 24, 2024, a Default Judgment was entered against James D. Lewis and Shirley A. Lewis, jointly and severally, in the amount of \$6,130.239.98. In late 2024, the Lewises found out about the judgment and retained counsel who filed these motions for Relief from Entry of Default and to Set Aside the Default Judgment.

RULING

With regard to the Motion to Set Aside Entry of Default that motion must be made prior to the judgment for default and therefore is denied. Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRPC. Sundown Operating Co. v Intedge Industries. 383 S.C. 885 383 S.C. 608 (2009).

The Motion to Set Aside Default Judgment under Rule 60 was filed on January 21, 2025. South Carolina rule of Civil Procedure 60(b)(5) requires that any motion seeking relief from an order of judgment under 60 (b)(1), (2), or (3) must be filed "not more than one year after the judgment was entered." The Lewises motion was filed more than one year after the default judgment was entered and thus by rule, the motion to the extent it seeks relief under Rule 60 (1), (2), and (3) must be denied. No legal argument was made indicating any exception to that rule.

However, given the circumstances of this case, there are compelling reasons to set the default judgment aside under Rule 60(b)(4), which does not have a one year time limit.

The Lewises have a strong meritorious defense and questionable liability to Plaintiff. Also, once the judgment was brought to the attention of the Lewises, this motion was filed within 60 days, which the Special Referee finds to be within a reasonable time. Manning v Ramp, 4:23:cv-01803 (D.S.C. 2024), citing cases that found seventeen days, twenty-one days and thirty-two days were reasonable amounts of time to make such a motion.

While plaintiffs clearly should have taken more vigorous efforts to protect their rights, it does appear they communicated with a codefendant and were left with the impression that the matter was being handled and further communicated with Plaintiff's counsel's office and told them "they do not own the building where this occurred and she doesn't understand why we sued them and they are not involved at all." Plaintiff's counsel's office appropriately encouraged Mrs. Lewis to seek counsel and told her there were consequences for failing to appear. While this was not an answer it did provide notice that the Lewises may not have been proper defendants. The Lewis wrongly believed a codefendant was taking care of the case and wrongly believed that contacting Plaintiff's counsel's office was sufficient. These beliefs were obviously incorrect and misguided.

The Special Referee finds that clearly the Lewises failed to understand the nature of the proceedings and the Special Referee finds that the failure amounts equitably as a lack of notice that the Lewises were subject to a multimillion-dollar liability exposure. Therefore, the judgment is void under Rule 60(b)(4). The order entering it was void since it amounts to the court issuing the order without the required notice. Superscope, Inc. v Benjamin Company, Inc. 276 S.C. 231 (1981) (case decided before the adoption of the South Carolina Rules of Civil Procedure wherein

the Supreme Court held that an "order of default, issued without notice, [is] ... void and should [be] set aside upon ... motion.")

The overriding equitable factor is the size of the judgment rendered against the defaulting defendants who appear to have a valid meritorious defense. Because the exposure is so large, and good cause exists, and a culmination of unfortunate factors led the Lewises (including per their affidavits, age and health issues), justice dictates that the default judgment is void for lack of due process and that the Lewises be allowed to answer and defend in this case and it is so ordered, subject to the conditions below.

Plaintiff incurred substantial attorney's fees, costs and expenses in obtaining a default judgment and pursuing its collection due to the actions of the Lewises. To rectify this prejudice to Plaintiff, the Special Referee further orders that Plaintiff is entitled to reimbursement of all legal fees (attorney and paralegal) and all costs and expenses in preparing and pursuing the default judgment, collection efforts and the costs of preparing and defending this motion. The application of this Order is conditioned on payment by the defaulting defendants of these attorney's fees and costs. Counsel for Plaintiff to submit for court review an application for fees and costs as expeditiously as possible and Plaintiffs have 30 days from the approval of any such fee and cost application to make payment to Plaintiff. Upon payment of said fees and costs, plaintiff is allowed to file an answer within 15 days from the date of payment. Failure to make payment as prescribed will result in the Default Judgment remaining in force and nullifying this Order.

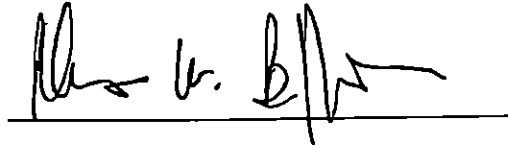
Therefore, it is ordered that:

The default judgment of \$6,130,239.98 entered on January 24, 2024 is hereby declared void against James D. Lewis and Shirley A. Lewis under SC Rule of Civil Procedure 60 (b)(4),

CONDITIONED on payment by plaintiff of the fees and costs as set forth above.

It is so ordered.

June 27, 2025

A handwritten signature in black ink, appearing to read "Robt W. Buffington", is written over a horizontal line.

Robert W. Buffington, Special Referee