

**COPY**

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
CASE NO.: 2010-CP-32-2038

Oliver Grady Query, and the Estate of )  
Grady W. Query, by its Personal )  
Representative, Oliver Grady Query, )  
 )  
Plaintiffs, )

v. )

Ladislao Castrejon, Alberto Lozano, )  
and Jesus Brito, )  
 )  
Defendants. )

**RECEIVED**

SEP 10 2014

**SC Court of Appeals**

**BRITO ORDER**

Plaintiff sued all three defendants for breach of the same real estate contract. The complaint pled and alleged all matters as Plaintiff/Seller and Defendants/Buyers. The parties tried the case before this Court on November 21, 2013. This court ruled Plaintiff failed to prove either liability or damages.

Thereafter, Plaintiff held a damages hearing on July 8, 2014 against the third defendant, Brito. Plaintiff argues that notwithstanding the court's earlier ruling, Brito is liable in damages to Plaintiff since Brito defaulted and did not appear at the damages hearing to contest damages. Plaintiff cites Rule 55 SCRPC and relevant case law (citations omitted) that hold if a party fails to plead, then the party is deemed to have admitted the truth of the allegations and concedes liability.

For ease of discussion, the following fact pattern is assumed:

1. Plaintiff Query sued Defendants Castrejon and Brito.

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2. Castrejon answered and denied liability.
3. Brito defaults.
4. At trial Plaintiff failed to prove his case for breach of contract or damages.
5. The court requested Plaintiff to provide authority that would allow Plaintiff to recover damages against Brito since Brito defaulted, even though default relates to same facts Plaintiff failed to prove at trial.

Plaintiff argues: (1) The plain letter of the law and underlying policy of Rule 55 dictate that a party loses if a party fails to answer. Further, since the damages were not liquidated, Brito had the opportunity to appear at the damages hearing and contest damages. Despite notice, Brito did not attend. (2) Case law allows inconsistent results against multiple defendants. Fred Chenoweth Equipment Co. v Oculus Corp., 328 S.E. 2d 539 (1985). This court held that even while the default judgment did not reach the merits of the contract claim, the failure to answer dictates default and judgment against the defaulting party.

This view is not universal. See *Imposition of Default Judgment against Co-Defendants—Modern Treatment*. 102 A.L. R. 5<sup>th</sup> 647. (2002) Harlow v Voyager Communications V, 348 N.C. 568, 501 S.E.2d 72, 102 A.L.R. 5<sup>th</sup> 783 (1998). This North Carolina case held that “The court recognized that when a plaintiff alleges joint liability against multiple defendants of which only one defaults, a default judgment may not be entered against the defaulting defendant until after the court adjudicates the liability of the non-defaulting defendants.”


Brito's underlying liability and damages are based on the same allegations, contract, arguments, set of facts and damages argued at trial. Plaintiff did not present persuasive evidence at either the November trial or the damages hearing to indicate that there was a separate basis for either liability or damages against Brito.

Two policy functions are at seemingly at odd – the rigid application of Rule 55 that prevents a defaulting party from failing to answer and then appearing at trial and contesting liability and the underlying concept that the purpose of trial is to arrive at the truth. Brito did not fail to answer and then get another chance to plead his case. Brito is in default for facts that were alleged, but not proven. Admitting a false statement does not make the false statement true; therefore Brito cannot be liable since this court has already ruled that there is no liability under the contract.

### CONCLUSION

For the foregoing reasons, Plaintiffs claims against Brito are denied and dismissed with prejudice.

AND IT IS SO ORDERED this 27 th day of August, 2014.

  
JAMES O. SPENCE  
Master-In-Equity  
Lexington County

Lexington, South Carolina.

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