



For Clerk of Court Office Use Only

This judgment was entered on the 27<sup>th</sup> day of Jan., 2015 and a copy mailed first class or placed in the appropriate attorney's box on this 28<sup>th</sup> day of Jan., 2015 to attorneys of record or to parties (when appearing pro se) as follows:

Samuel Darryl Harms III  
33 Market Point Drive Greenville, SC 29607

Robert Eric Davis  
PO Box 5663 Spartanburg, SC 29304

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)  
M. Hope Blackley [Signature]  
CLERK OF COURT DC

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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FEB 23 2015

SC Court of Appeals

FILED  
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SPARTANBURG COUNTY  
2015 JAN 27 AM 9:01  
M. HOPE BLACKLEY

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STATE OF SOUTH CAROLINA )  
COUNTY OF SPARTANBURG )  
Dickie Shults, )  
Plaintiff, )  
vs. )  
Angela G. Miller, )  
Defendant. )

IN THE COURT OF COMMON PLEAS  
(Jury Trial Demanded)

**Order Setting Aside Entry of Default**

C/A#: 2011-CP-42-3951

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SC Court of Appeals

On January 3, 2012, personally appeared before me Samuel Harms for Plaintiff and Robert E. Davis for Defendant on Defendant's Motion to Set Aside the Entry of Default pursuant to Rule 55(c), SCRCP. Based on the evidence presented, arguments of counsel, and the applicable law, hereby grant Defendant's Motion to Set Aside the Entry of Default.

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**Factual Background**

This case involves an automobile accident occurring on July 22, 2009. Defendant and her husband have submitted affidavits that the accident was not Defendant's fault. Specifically, Defendant and her husband state that Defendant had the right-of-way when another vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of Defendant's vehicle. Defendant and her husband state that Seay's insurance company accepted liability and paid their claims. Trooper Chris Mace, who investigated the accident, also signed an affidavit confirming Defendant's version of the accident.

**Procedural Background**

Plaintiff filed suit against Seay in a separate action (CA # 2011-CP-42-03081). Plaintiff also

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filed suit against Defendant. An entry of default was entered against Defendant. Defendant answered within days of when her Answer was due and filed this motion.

**Applicable Law**

Rule 55(c), SCRCF, states that an entry of default can be set aside for "good cause."

This standard requires a party seeking relief from an entry of default under Rule 55(c) to provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice. Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.

Sundown Operating Co. v. Intedege Indus. Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009).

The "good cause" standard for relief under Rule 55(c) "is 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). "Relief granted at this point is within the equitable power of the court and excuses the previous failure to act promptly." James F. Flannagan, South Carolina Civil Procedure 440 ed. 1996).

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**Good Cause In this Case**

Defendant argues that good cause exists to set aside the entry of default. I agree.

I believe that Defendant has adequately satisfied the standard for relief set forth in Sundown. Defendant explained there was some confusion with Seay's insurance accepting liability for the accident and a change of her own insurance companies. Nevertheless, Defendant appeared and answered and moved for relief very shortly after her Answer was due. Defendant has also shown a meritorious defense to the accident. Despite Plaintiff's argument that he would be prejudiced by a jury trial, I do not find this constitutes the type of prejudice expressed in Sundown. Accordingly,



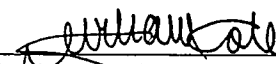
I find that this case should be disposed of on the merits.

IT IS THEREFORE ORDERED that Defendant's Motion for Relief from the Entry of Default is hereby GRANTED;

IT IS FURTHER ORDERED that the Clerk of Court shall accept Defendant's Answer;

IT IS FURTHER ORDERED that this case shall proceed with a jury trial on the merits;

IT IS SO ORDERED.

  
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J. Derham Cole  
Presiding Judge, Seventh Judicial Circuit

\_\_\_\_\_, 2012.

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STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG )

(Jury Trial Demanded)

Dickie Shults, )

Plaintiff, )

Order

vs. )

C/A#: 2011-CP-42-3951

Angela G. Miller, )

Defendant. )

On February 7, 2013, personally appeared before me Samuel Harms for Plaintiff and Robert E. Davis for Defendant on Plaintiff's Motion to Reconsider my previous order granting relief from the entry of default and Defendant's Motion for Summary Judgment. Based on the evidence presented, arguments of counsel, and the applicable law, I hereby deny Plaintiff's Motion to Reconsider and grant Defendant's Motion for Summary Judgment.

Factual Background

This case involves an automobile accident occurring on July 22, 2009. As part of the previous motion heard by me, Defendant and her husband submitted affidavits that the accident was no Defendant's fault. Specifically, Defendant and her husband state that Defendant had the right-of-way when another vehicle driven by Philip Seay disregarded a stop sign and pulled directly in front of Defendant's vehicle. Defendant denied any liability for the accident. Defendant and her husband state that Seay's insurance company accepted liability and paid their claims.

Trooper Chris Mace, who investigated the accident, also signed an affidavit confirming Defendant's version of the accident based on his conversations with the persons involved and his investigation.

Depositions have now been taken of the parties. In her deposition, Defendant continues to state

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that she is not at fault for the accident. She states that she was lawfully in her lane of travel when Seay disregarded a stop sign, failed to yield the right-of-way, and pulled directly in front of her, which caused her to be pushed into Plaintiff. In his deposition, Plaintiff admits that Defendant had the right-of-way on Highway 292. Plaintiff also confirmed that Seay pulled out in front of Defendant when she had the right-of-way..

### Procedural History

Plaintiff filed suit against Seay in a separate action (CA # 2011-CP-42-03081). Plaintiff settled all claims with Seay including underinsured claims.

Plaintiff filed this action against Defendant. Defendant answered the complaint days after it was due. This Court granted Defendant's Motion for Relief from the Entry of Default. Plaintiff asks this Court to reconsider the prior order granting relief from the entry of default. Defendant moves for summary judgment.

### Findings on Motion to Reconsider

Plaintiff argues that the prior order finding good cause for relief was erroneous. I disagree.

Plaintiff's Motion to Reconsider contains no specific grounds for reversing the previous order.

At the hearing, Plaintiff presented an affidavit of Defendant's husband stating that he provided the summons and complaint to his insurer shortly after Defendant was served. Neither this affidavit nor the previous grounds raised by Plaintiff require this Court to reverse its prior decision.

As previously stated in the order granting relief, Rule 55(c), SCRCP, permits an entry of default to be set aside for "good cause." The good cause standard for relief under Rule 55(c) "is 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). "Relief granted at this point is within the equitable power of the court and excuses the previous failure to act promptly." James F. Flannagan, South Carolina Civil Procedure 456 (3d ed. 2010).

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Defendant continues to satisfy the factors that establish good cause as set forth in Sundown Operating Co. v. Intedge Industries Inc., 383 S.C. 601, 607-08, 681 S.E.2d 885, 888 (2009). As stated in the previous order, Defendant explained that following the service of the complaint there was some confusion early on because Seay's insurance company had accepted liability for her claims and because she had changed insurance companies. Nevertheless, Defendant was able to answer very shortly after it was due, establish a meritorious defense, and show no prejudice to Plaintiff.

Accordingly, I find that the decision to grant relief satisfies the legal requirements for good cause and promotes justice. I further believe that this case should be decided on the merits. Therefore, Plaintiff's Motion to Reconsider is denied.

**Findings on Motion for Summary Judgment**

Defendant argues she is entitled to summary judgment because Plaintiff cannot prove she breached any duty that would render her liable for the accident. I agree.

"Summary judgment is appropriate where there is no genuine issue of material fact, and it is clear that the moving party is entitled to judgment as a matter of law." Bank of N.Y. v. Sumter County, 387 S.C. 147, 154-55, 691 S.E.2d 473, 477 (2010); see also Kase v. Ebert, 392 S.C. 57, 707 S.E.2d 456 (Ct. App. 2011).

In a negligence cause of action, such as this, Plaintiff must establish (1) Defendant owed duty of care; (2) Defendant breached the duty by a negligent act or omission; (3) Defendant's breach was the actual and proximate cause of Plaintiff's injury; and (4) Plaintiff suffered an injury or damages. Moore v. Weinberg, 373 S.C. 209, 220-21, 644 S.E.2d 740, 746 (Ct. App. 2007).

Even viewing the evidence in the light most favorable to Plaintiff, which this Court must do, there is no evidence that Defendant negligently breached any duty. The evidence before this Court is that Defendant was lawfully in her lane of travel when Seay disregarded a stop sign, failed to yield the right-of-way to Defendant, and pulled directly in front of her. Defendant presented evidence that she

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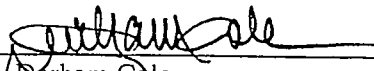
could not avoid Seay and was pushed by Seay across the center line into Plaintiff. In his deposition, Plaintiff does not dispute this version of the accident or offer any testimony establishing negligence on behalf of Defendant. Plaintiff has offered no other form of testimony against Defendant.

The only inference to be drawn from this set of facts is that Seay was the sole contributing cause of the accident. Defendant, therefore, is entitled to judgment as a matter of law. Id.

IT IS THEREFORE ORDERED that Plaintiff's Motion to Reconsider is DENIED;

IT IS FURTHER ORDERED that Defendant's Motion for Summary Judgment is GRANTED;

IT IS SO ORDERED.

  
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J. Derham Cole  
Presiding Judge, Seventh Judicial Circuit

3/15, 2013.

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