

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014-CP-40-0186

RECEIVED
JUN 05 2015
SC Court of Appeals

Cecily Bell

Yvonne Hammond

PLAINTIFF

DEFENDANT

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other _____
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other _____
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): Affirmed; Reversed; Remanded; Other: This appeal is dismissed because the appeal is moot.

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk:

Defendant's Motion to Set Aside an Entry of Default heard before the Court during the Common Pleas Non-Jury term in Richland County on January 5, 2014 at 11:00 am. Under South Carolina law, a party making a motion under Rule 60(b) has the burden of presenting evidence proving the facts essential to entitle him to relief. *Bowers v. Bowers*, 304 S.C. 65, 67, 403 S.E.2d 127, 129 (Ct.App.1991). In determining whether to set aside a default judgment under Rule 60(b), the trial judge should consider the following relevant factors: (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 v. Deaton*, 380 S.C. 563, 573, 671 S.E.2d 87, 93 (Ct. App. 2008) *aff'd*, 395 S.C. 85, 716 S.E.2d 887 (2011) (*internal citations omitted*). The Court finds that Defendant is not entitled to set aside the entry default to Rule 60, SCRPC. The Court finds that: (1) Defendant did not request this relief in a timely matter, (2) Defendant advanced no explanation or reason why Defendant did not respond to the complaint, (3) Defendant did not make a prima facie showing of a meritorious defense; and (4) prejudice would result to the Plaintiff if the Court granted the relief sought by Defendant. Furthermore, the Court finds that Defendant did not satisfy its burden of proving facts that would entitle him to relief under Rule 60(b), SCRPC, and therefore, Defendant's Motion to Set Aside an Entry of Default is hereby denied. Moreover, the Court heard Defendant's Motion for Jury Trial and Plaintiff's Motion for Damages during this hearing. The Court has taken these matters under advisement. Rule 38, SCRPC, provides that the failure of a party to demand a jury trial within ten days of the service of the last pleading constitutes a waiver of trial by jury. *Rowe Furniture Corp. v. Carolina Wholesale Furniture Co.*, 292 S.C. 575, 576, 357 S.E.2d 725, 725 (Ct. App. 1987) Because Defendant did not submit a request for a jury trial in a timely matter, as required by Rule 38, SCRPC, the Defendant thereby waived his right to a jury trial. Accordingly, the Court denies Defendant's Motion for Jury Trial. Further, the Court grants Plaintiff's Motion for Damages. See attached formal order on Plaintiff's Motion for Damages.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
Cecily Bell	Yvonne Hammond	\$20,000.00

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

MTG

Judge Code 2161

Date

2-6-15

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of _____, 20 ____ and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of _____, 20 ____ to attorneys of record or to parties (when appearing pro se) as follows:

Gerald Eugene Reardon
ATTORNEY FOR THE PLAINTIFF

Jason Phillip Luther
ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Carol Theume

Clerk of Court _____

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

CECILY BELL,

Plaintiff,

-vs-

YVONNE HAMMOND,

Defendant.

IN THE COURT OF COMMON PLEAS

DOCKET NO.: 2014-CP-40-01896

**ORDER AWARDING DAMAGES
AGAINST DEFENDANT**

2015 FEB -9 PM 3:06
FILED
CLERK OF COURT
J. M. MCGRIDE
S.C. CP. & C.S.

This matter was before me for a Damages Hearing on January 5, 2015 subsequent to a Default Judgment entered against Defendant on July 10, 2014. Plaintiff and his counsel were present at the hearing. Counsel for Defendant was present.

After review of the documents entered into evidence and a reflection upon the testimony of the Plaintiff, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. Plaintiff was injured on October 14, 2013 when Defendant failed to yield the right of way and caused the front of her vehicle to collide with Plaintiff's vehicle.
2. Plaintiff struck her left knee on her dashboard and had immediate leg pain after the accident.
3. Mrs. Bell was seen at Palmetto Health Richland on October 15, 2013, where she was evaluated and underwent an x-ray of her left knee.

4. Due to an onset of back and neck pain, Mrs. Bell followed up with Dr. Steven Hamvay with Healthsource Chiropractic Clinic. She was diagnosed with thoracic, lumbar and cervical sprains/strains. Her treatment consisted of a course of therapy including electrical muscle stimulation, heat and ice therapy, spinal manipulation, tens unit, manual therapy and intersegmental traction.

5. Plaintiff incurred medical expenses in the amount of Three Thousand Seven Hundred Twelve and 01/100 Dollars (\$3712.01). Plaintiff also incurred One Hundred Twelve and 00/100 Dollars (\$112.00) in wage loss.

6. Plaintiff testified she sustained injuries and suffered pain, suffering, mental anguish in the accident. She stated she has ongoing problems including restrictions in her physical activities, housework, yard work, walking, lifting, and church activities. She continues to have daily pain and flare ups in her back, legs, and shoulders.

7. I find Plaintiff's testimony was credible and believable.

CONCLUSIONS OF LAW

1. Plaintiff's medical treatment was reasonable, necessary, and proximately related to the injuries she suffered as a result of the accident with Defendant.

2. Plaintiff sustained substantial pain, suffering, and loss of activities as a result of the accident on October 14, 2013 with Defendant.

3. Proper notice of the hearing to determine the damages was given to Defendant.

4. As a direct and proximate result of the injuries and damages sustained in the accident on October 14, 2013, Plaintiff has suffered damages in the amount of twenty-thousand dollars (\$20,000.00). This award reasonably compensates Plaintiff for medical costs, lost wages,

pain and suffering, and mental anguish that she has experienced as a direct and proximate result of the accident in question. Moreover, this award reasonably compensates Plaintiff for any future damages that she will suffer as a direct and proximate result of the injuries and damages sustained in the accident.

Therefore, it is hereby **ORDERED** that Plaintiff Cecily Bell be awarded damages in the amount of twenty-thousand dollars (\$20,000.00) against Defendant Yvonne Hammond.

AND IT IS SO ORDERED.



The Honorable DeAndrea Gist Benjamin
Presiding Judge, Fifth Judicial Circuit

February 9, 2015.
Columbia, South Carolina.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2014CP401896

Cecily Bell

Yvonne Hammond

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : Plaintiff Defendant or Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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 Affirmed; Reversed; Remanded; Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk :

This matter is before the court pursuant to Defendant's motion to ~~Amend~~ or ~~Amend~~ the Court's order of February 6, 2015. In reviewing the Order it appears that while the court mistakenly cited SCRPC 60 (b), the court used the WHAM factors and "Good Cause" standard of SCRPC of 55 (c). The Court finds that the Defendant has not presented "Good Cause" to satisfy setting aside the judgment of default.

Furthermore, the Court finds that pursuant to SCRPC 59(g), the Defendant has failed to serve a copy of the said motion upon the Court within the required ten (10) days.

Therefore the Defendant's motion is dismissed/denied.

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		\$
		\$
		\$

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Circuit Court Judge _____

Judge Code 2161

Date 5-6-15

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Jason P. Luther

Gerald Reardon

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter Debbie McCurdy

Clerk of Court _____

~~RICH ANDERSON
FILED
2015 MAY -8 AM 8:41
JEANETTE W. MCGRIDE
C.C.P. & S.~~