

AB

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHESTERFIELD )  
 )  
 Cora Lea Nichols, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Cardinal Logistics Management )  
 Corporation and Ronnie Lee Clark, )  
 )  
 Defendants. )  
 )

IN THE COURT OF COMMON PLEAS  
 FOURTH JUDICIAL CIRCUIT  
 2014-CP-13-574

RECEIVED

JUN 30 2016

SC Court of Appeals

*Handwritten signature: P. Sellers*  
 ORDER and JUDGMENT  
 AGAINST DEFENDANTS  
 COURT OF COMMON PLEAS  
 CHESTERFIELD COUNTY, S.C.

2015 FEB 6 PM 3 18  
 EYE L. SELLERS  
 CLERK OF COURT  
 CHESTERFIELD COUNTY, S.C.

This matter came before me for a hearing on the damages on November, 6, 2014, with the Plaintiff requesting money damages on her injuries she sustained in a traffic accident involving the Defendants. This matter was referred to my office for a damages hearing pursuant to Rule 55 of the South Carolina Rules of Civil Procedure. Plaintiff was present with her Attorney, M. W. Cockrell, III. Counsel for the Defendants, P. Jason Reynolds, was present as well.

This matter concerns causes of action for negligence, negligence per se, and negligent entrustment brought against the Defendants. This action was commenced with the filing of a Summons and Complaint on August 27, 2014 which was served upon both Cardinal Logistics Management and Ronnie Lee Clark as Defendants. Defendants did not, and have not, timely served Answers to Plaintiff's Complaint. Accordingly, an Order of Default Judgment was executed by the Honorable Paul M. Burch and filed with the Chesterfield County Clerk of Court on October 31, 2014. This hearing was scheduled for November 6, 2014, and I find that notice of this hearing and the service thereof is proper.

EXHIBIT  
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 A

AB

I further find that the Plaintiff is the "prevailing party" on all causes of action.

A. ACTUAL DAMAGES

Based upon testimony offered by the Plaintiff and Mr. Antonio Hough, I find that Defendant Ronnie Lee Clark was both negligent and negligent *per se* in causing damage to the Plaintiff's person and is liable to the Plaintiff for such damage. I also find that Defendant Cardinal Logistics Management was both negligent and negligent *per se* in causing damage to the Plaintiff's person and is, therefore, both jointly and severally liable for the injuries Plaintiff sustained.

The Plaintiff testified that she has outstanding medical bills at CMC Union in Monroe, North Carolina, Beaver Chiropractic Center in Cheraw, South Carolina, and other related necessary medical expenses in excess of seven thousand dollars (\$7,000.00) as the direct and proximate result of Defendants' negligence. Plaintiff further testified that she has been unable to work for an extensive period of time since the accident. Plaintiff and her father testified, that she was unable to complete her studies at USC Lancaster as a result of her injuries and the treatments necessary for her recovery. The same has resulted in her college graduation being delayed in excess of one (1) full year.

It is clear that the Plaintiff sustained significant injuries, was rendered unable to work as result of this accident, and as a result, has been prevented her from graduating college as scheduled. Plaintiff suffered substantial bodily injuries from this accident, has incurred significant medical bills as a result, has been prevented from engaging in gainful employment and had and her career and educational plans and goals have been delayed in excess of 1 year.

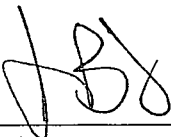
Accordingly, in light of the severity of the injuries Plaintiff sustained, Plaintiff's loss of gainful employment and Plaintiff's delayed and otherwise diminished career and educational

goals, I find that a judgment for the Plaintiff in the amount of two hundred thousand dollars and 0/100 (\$200,000.00) for compensation of lost income, loss of gainful employment and Plaintiff's delayed and otherwise diminished career and educational goals, as well as, for compensation of Plaintiff's medical bills, pain and suffering, loss of enjoyment of life, and mental anguish, is appropriate.

Furthermore, I find that the actions of the Defendants in their operation of a motor carrier in violation of numerous statutory and commonlaw safeguards associated with operation of vehicles of such size and weight warrant an additional award of one hundred thousand and 0/100 (\$100,000.00) in punitive damages to the Plaintiff.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Court awards judgment, both jointly and severally, for actual damages in the amount of \$200,000.00 against the defaulting Defendants, Cardinal Logistics Management Corporation and Ronnie Lee Clark and judgment, both jointly and severally, for punitive damages in the amount of \$100,000.00 against the defaulting Defendants, Cardinal Logistics Management Corporation and Ronnie Lee Clark; for a total judgment of \$300,000.00 for the Plaintiff.

**AND IT IS SO ORDERED!**

  
\_\_\_\_\_  
Franklin B. Joyner, Jr.  
Special Referee  
Chesterfield County

Cheraw, South Carolina

2-5-, 2015

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF CHESTERFIELD ) THE FOURTH JUDICIAL CIRCUIT

Cora Lea Nichols, ) Civil Action No.: 2014-CP-13-574  
 )  
 )

Plaintiff, )  
 )

v. )

ORDER DENYING DEFENDANTS'  
RULE 59(e) MOTION  
TO ALTER OR AMEND JUDGMENT

Cardinal Logistics Management )  
Corporation and Ronnie Lee Clark, )  
 )

Defendants. )  
\_\_\_\_\_ )

This matter came before me on Defendants' Motion to Alter or Amend the Order and Judgment Against Defendants filed on February 6, 2015. For the reasons outlined in the order, Defendants' motion is hereby denied.

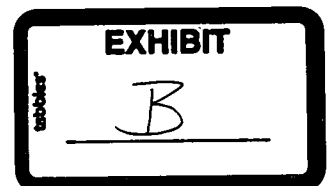
**AND IT IS SO ORDERED.**



\_\_\_\_\_  
Franklin B. Joyner, Jr.  
Special Referee  
Chesterfield County

Cheraw, South Carolina

June 23, 2016



STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHESTERFIELD )

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT  
2014-CP-13-574

Cora Lea Nichols,

2014 OCT 31 PM 4 05

FAYE L. SELLERS  
Plaintiff, CLERK OF COURT  
CHESTERFIELD COUNTY, S.C.

**ENTRY OF DEFAULT AND  
ORDER OF REFERENCE**

vs. )  
)

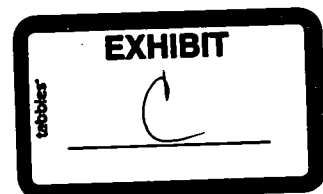
Cardinal Logistics Management )  
Corporation and Ronnie Lee Clark. )

Defendants. )  
\_\_\_\_\_ )

It appears from Plaintiff's Affidavit of Default and the Affidavit and Certificate of Service filed with the Chesterfield County Clerk of Court that the Summons and Complaint and Summons on Amended Complaint and Amended Complaint were served upon the Defendants pursuant to the South Carolina Rules of Civil Procedure and that more than thirty (30) days transpired after the service thereof without an Answer or other responsive pleading having been filed and served by said Defendants. Counsel for the Plaintiff is seeking entry of default and the above entitled action to be referred to a Special Referee.

It appears that Case Number 2014-CP-13-574, filed in the Office of the Clerk of Court of Chesterfield County, is an action involving unliquidated damages pending in the County of Chesterfield, State of South Carolina, and that this matter should properly be referred to Franklin B Joyner, Jr., Esquire as Special Referee.

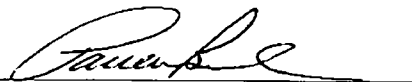
**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED** that the Defendants above are in default.



It is further ordered, that a hearing shall be set to determine the damages awarded to Plaintiff as it appears from the Complaint that all of the damages claimed therein are not liquidated.

It is additionally ordered that this action is hereby referred to Franklin B Joyner Jr, Esquire, as Special Referee for Chesterfield County, for the purpose of hearing any and all motions, taking the testimony offered, and reporting his findings of fact and conclusions of law together with any special matters, and with the authority to enter the final ruling herein upon all motions necessary to dispose of this matter. Further, any appeal from the Special Referee's Order shall be to the South Carolina Supreme Court.

**AND IT IS SO ORDERED!**

  
The Honorable Paul M. Burch  
Chief Judge for Administrative Purposes  
Fourth Judicial Circuit

AT CHAMBERS

October 30th, 2014

STATE OF SOUTH CAROLINA  
COUNTY OF CHESTERFIELD

IN THE COURT OF COMMON PLEAS  
FOURTH JUDICIAL CIRCUIT

Civil Action No.: 2014-CP-13-574

Cora Lea Nichols,

Plaintiff,

vs.

Cardinal Logistics Management Corporation  
and Ronnie Lee Clark,

Defendants.

ORDER

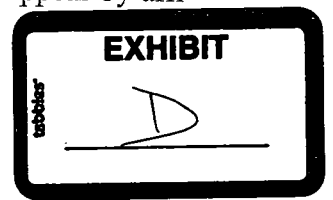
FAYE L. SELLERS  
CLERK OF COURT  
CHESTERFIELD COUNTY, SC  
2015 JUN 1 PM 3 40  
CLERK OF COURT C.P. & G.S.  
CHESTERFIELD COUNTY, SC

A True Copy, Attest  
*Faye L. Sellers*

The motions of the Defendants to Set Aside the Entry of Default came for hearing before me on March 23, 2015. M.W. Cockrell, III appeared for the Plaintiff and P. Jason Reynolds appeared for the Defendants. After full consideration of the arguments of counsel for the parties, it appears and I find that Defendants have failed to present the essential evidence necessary to grant relief from the Entry of Default in this matter. Accordingly, Defendants' Motion to Set Aside the Entry of Default is denied.

The facts governing this decision are undisputed. The action involves an auto accident in Chesterfield County, South Carolina. Suit commenced with the filing of a Summons and Complaint on August 27, 2014; the Defendant, Ronnie Lee Clark, was personally served on September 18, 2014, and Defendant, Cardinal Logistics Management Corporation ("CLMC") was served via their registered agent on September 18, 2014. The Affidavit of Personal Service on Defendant Clark was filed with the Clerk of Court on October 2, 2014. The registered mail receipt of service on the registered agent for CLMC was filed with the Clerk of Court on October 29, 2014. From the record, the Defendants' Answers were due on October 18, 2014 (Clark) and October 19, 2014 (CLMC). This matter was referred to my office by Order of Reference of Circuit Judge Paul M. Burch, on October 31, 2014. The Defendants appeared at the hearing scheduled, by and through their attorney. Additionally, the Defendants filed an Answer to the Complaint on November 7, 2014. Finally, on November 15, 2014, Defendants filed this Motion to Set Aside the Entry of Default.

The Defendants were properly served and failed to file a timely Answer. This fact was presented to the Court and Entry of Default was required per Rule 55(a), SCRPC. Rule 55(a), SCRPC provides that when a defendant fails to answer "and that fact is made to appear by affi-



davit or otherwise, the clerk shall enter his default upon the calendar (file book).” Rule 55(a) mandates the clerk (not the judge) make the entry of default. The plain language of the rule shows that entry of default is a mandatory ministerial function to be performed by the Clerk of Court. Regardless of how the Court is notified, whether by Plaintiff’s “affidavit or otherwise,” the Clerk of Court must make the entry of default. Accordingly, the Court cannot enlarge the time allowed for Defendants to answer.

An entry of default may be set aside "for good cause shown." Rule 55(c), SCRCF. This rule squarely puts the burden of showing good cause on the moving party, in this case, Defendants Clark and CLMC. If the Defendants fail to show good cause why they were unable to answer the Complaint, the court's refusal to set aside an entry of default will be upheld as supported by the evidence. *Williams v. Vanvolkenburg*, 312 S.C. 373, 440 S.E.2d 408 (Ct. App.1994); *Wham v. Sheraton Lehman Brox., Inc.*, 298 S.C. 462, 465, 381 S.E.2d 499, 501 (Ct. App.1989).

Defendants assert that their counsel’s letter of September 10, 2014, informing Plaintiff’s Counsel that Defendants had retained the firm of Sweeny, Wingate & Barrow, P.A. and requesting that said counsel be notified once service was accomplished on Defendants, constituted an appearance of counsel. Accordingly, Defendants reason that all further communication with Defendants should have been through said counsel. It is contradictory to the point of defense counsel, who makes this letter out to be a demand for all lines of communications afforded a represented litigant be made through his firm, but simultaneously asserts he, as Defendant’s counsel, is without authority to accept service on behalf of Defendants. Through this letter to Plaintiff’s counsel, counsel for Defendants demands the courtesy of being notified once Plaintiff effectuates personal service on the party defendants. This forces Plaintiff’s counsel to communicate with the party Defendants in the most direct manner, through personal service. Then, without ever making a formal appearance with the Court and without accepting service on behalf of Defendants, counsel cries foul when Plaintiff continues to communicate with the Defendants directly. Rule 5(b) SCRCF, states in pertinent part “whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court.” Defense counsel’s request that he be informed once service was achieved lends strongly towards a presumption that for procedural purposes, he had not made a formal appearance. Further, the South Carolina Court of Appeals has held that a letter asserting an attorney client relationship, on its own, is not enough to consti-

tute an appearance. *Boland v. South Carolina Public Service Authority*, 315 S.E.2d 143, 281 S.C. 293 (S.C. App., 1984).

Defendants were served with the Summons and Complaint on September 18, 2014. More than thirty days elapsed after service without Defendants having served any sort of responsive pleading. On October 31, 2014, Plaintiff filed her Affidavit of Default and Motion for Entry of Default and Order of Reference. Defendants were found to be in default and the matter was referred to this Court. Defendants cite no reason for their default other than Plaintiff's counsel's failure to inform defense counsel once service had been effected. Plaintiff was under no duty to do so. Accordingly, I find that Defendants have failed to show good cause warranting the vacation of the default entered. Rule 55(c), SCRPC.

Defendants produced no affidavits in support of their motion. It is not clear as to what delayed the pleadings being delivered to counsel for the Defendants. However, as a matter of law, "the negligence of an attorney or insurance company is imputable to a defaulting litigant." *Roberts v. Peterson*, 292 S.C. 149, 151, 355 S.E.2d 281 (Ct. App. 1987).

The question remains whether Defendants have shown good cause as to why this Court should set aside the default. In making this determination, the Court should consider the following factors: (1) the timing of Defendants' motion for relief; (2) whether Defendants have a meritorious defense; and (3) the degree of prejudice to the Plaintiff if relief is granted. *Wham v. Shearson Lehman Bros., Inc.*, 298 S.C. 462, 381 S.E.2d 499 (Ct. App. 1989). Although the standard for setting aside a default judgment and an entry of default differ under the SCRPC, as a practical matter, the Court must consider the same factors for both. *New Hampshire Ins. Co. v. Bey Corp.*, 312 S.C. 47, 435 S.E.2d 377 (Ct. App. 1993).

Defendants' attorney acted with some promptness in filing this Motion. However, the fact remains that Defendants have simply failed to present a valid reason for the failure to timely file an Answer, thereby failing to make a *prima facie* case as to good cause to set aside the default. See *Dixon v. Besco Engineering, Inc.*, 320 S.C. 174, 463 S.E.2d 636 (Ct. App. 1995).

Losing or misplacing a lawsuit does not constitute good cause to set aside entry of default as a matter of law. *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995) ("Losing a summons and complaint within the corporation is not a ground to set aside a default judgment"); *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987) (leaving the suit papers in the trunk of defendant's car would not, alone meet the requisite showing for good

cause) and *Ammons v. Hood*, 288 S.C. 278, 341 S.E.2d 816 (Ct. App. 1986) (default upheld where court rejected man's claim that he did not know default would be taken against him if he failed to answer).

It would be an abuse of discretion for this Court to set aside the entry of default in this case because the Defendants have failed to show good cause for the failure to timely answer the Summons and Complaint. This Court has duly weighed the *Wham* factors and finds there is not any evidence to overcome the simple fact that Defendants simply did not timely respond when the suit papers were properly served upon them. Producing no evidence of any excuse for failing to answer a Summons and Complaint is not good cause as a matter of law, for this Court to set aside the entry of default. Therefore, Defendants' Motion to Set Aside the Entry of Default is denied.

IT IS THEREFORE ORDERED that Defendants are adjudged to be in default;

IT IS FURTHER ORDERED that the Motion to Set Aside Any Entry of Default is denied; and

AND IT IS SO ORDERED.



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Franklin B. Joyner  
Special Referee  
Chesterfield County

Cheraw, South Carolina  
5-26, 2016