

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

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2016CP4003728

Neal Truslow

Stephen Bretzinger

PLAINTIFF(S)

Lindsey Holsinger

DEFENDANT(S)

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 _____
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 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:

RECEIVED

ORDER INFORMATION

This order ends does not end the case. Additional Information for the Clerk : _____

NOV 30 2017

INFORMATION FOR THE JUDGMENT INDEX

SC Court of Appeals

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
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

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 _____ Judge Code 2118 Date _____

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 31 day of Oct, 2017 to attorneys of record or to parties (when appearing pro se) as follows:

Harvey M. Watson III

Desa Ballard

Peter Demos Protopoulos

Alexandre Nicolas MacClenahan

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court _____

Jeanette W. ...

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)
)
 Neal Truslow)
)
 Plaintiff,)
)
 v.)
)
 Stephen Bretzinger, Lindsey Holsinger,)
 and Rikard & Protopapas, LLC.)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT

Docket No. 2016-CP-40-03728

ORDER DENYING
 MOTION TO RECONSIDER

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NOV 30 2017

SC Court of Appeals

RICH. AND COUNTY
 2017 OCT 31 AM 11:42
 JEFFREY COOPER

This matter comes before the Court by way of a Rule 59(e), SCRCP motion filed by Defendants to alter or amend this Court's order signed and filed on September 21, 2017. The Motion for Reconsideration was filed with the Clerk of Court on October 2, 2017.

Defendants assert that the Court did not make any rulings on Defendants' Motion to Set Aside Entry of Default. Defendants contend they mistakenly calendared the due date to respond to the Summons and Complaint as November 17, 2016. Further, Defendants argue a Default Judgment should not have been entered against them because at the time Default Judgment was entered on November 18, 2016, Defendants' Motion to Set Aside Entry of Default filed on November 18, 2016 was pending. Defendants also contend they filed an Answer within 24 hours of being told that Plaintiff would not consent to set aside the entry of default. Additionally, Defendants contend they had the right to have their pending Motion to Set Aside Entry of Default heard before the court entered default judgment.

The standard for granting relief from Entry of Default under Rule 55(c) is good cause. Rule 55(c), SCRCP. 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. *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). 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. The trial court need not make specific findings of fact for each factor if there is sufficient evidentiary support on the record for the finding of the lack of good cause. *Id.*; Rule 55(c), SCRCP.


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The time to respond to the Summons and Complaint expired November 7, 2016. On November 14, 2016, Defendants' counsel received a copy of the Affidavit of Default and a Motion for Default Judgment. Defendants sent their Answer to the Summons and Complaint by email to Plaintiff later that same day and asked Plaintiff to set aside the entry of Default, which Plaintiff declined. Defendants mailed their answer on November 15, 2016. Defendants filed their Motion to Set Aside Entry of Default on November 18, 2016. A default judgment was entered against Defendants on that same day. Plaintiff was not obligated to consent to set aside Defendants' entry of default when Defendants failed to timely respond to the Summons and Complaint by responding nine days after the due date.

The Judgment of Default was signed by the Court prior to any knowledge that a Motion to Set Aside Entry of Default had been or was filed. However, this Court in the motion hearing considered both the Motion to Set Aside Entry of Default and the Motion to Set Aside Judgment. Defendants have not put forth a satisfactory explanation to show good cause. Defendants also have not provide this Court with a sufficient reason for why vacation of the entry of default would serve the interests of justice.

Concerning the alleged statutory defect in the Order of Publication, a party may not raise an issue in a motion to reconsider, alter or amend a judgment that could have been presented prior to the judgment. *Kiawah Prop. Owners Grp. v. Pub. Serv. Comm'n of S.C.*, 359 S.C. 105, 113, 597 S.E.2d 145, 149 (2004); *Anderson Mem'l Hosp., Inc. v. Hagen*, 313 S.C. 497, 498, 443 S.E.2d 399, 400 (Ct. App. 1994). Defendants clearly could have raised the matter concerning the alleged statutory defect in the Order of Publication in their Motion to Set Aside the Default Judgment but failed to do so. Accordingly, this issue is not preserved for review. See *McClurg v. Deaton*, 380 S.C. 563, 579-80, 671 S.E.2d 87, 96 (Ct. App. 2008). Accordingly, this Court hereby **DENIES** Defendants' Motion to Alter or Amend the Court's Order to Set Aside Entry of Default. Pursuant to Rule 59(f), oral argument is not necessary.

AND IT IS SO ORDERED.


ALISON RENEE LEE
Presiding Judge

Columbia, South Carolina
October 30, 2017

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