

IN THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2017-000674

RECEIVED
DEC 13 2017
SC Court of Appeals

Lahitsha Hampton,

Respondent,

v.

George Edward Willoughby, Richard
Mann & William Sherman,

Defendants.

Of Whom
William Sherman is the

Appellant.

RECORD ON APPEAL

Matthew C. LaFave
Crowe LaFave, LLC
P.O. Box 1149
Columbia, SC 29202
(803) 724-5727
Attorney for Appellant

Brian T. Smith
Law Office of Brian T. Smith
714 Pettigru Street
Greenville, SC 29601
(864) 239-2007
Attorney for Respondent

IN THE STATE OF SOUTH CAROLINA
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Attorney for Respondent

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FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2307297

ELECTRONICALLY FILED - 2016 Jun 28 3:31 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2307297

Lahitsha Hampton	George Edward Willoughby William Sherman	Richard Mann
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PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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. See Page 2 for additional information.
- 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: _____

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:
 Defendant's Motion for Relief is hereby denied. While Defense counsel presented a thorough argument, there was sufficient evidence produced to show that Defendant was properly served. However, the Court notes that Defense counsel acted timely after receiving notice from his client, and the failure to timely respond was solely due to the client's delay in notifying his attorney.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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	2162	7/28/2016
	Judge Code	Date
For Clerk of Court Office Use Only		

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

Brian T. Smith 714 Pettigru St Greenville, SC 29601-3190

Matthew Clark LaFave PO Box 1149 Columbia, SC 29202
John Austin Hood 1612 Marion Street Suite 200 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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.

ELECTRONICALLY FILED - 2016 Jul 28 3:31 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2307297



Greenville Common Pleas

Case Caption: Lahitsha Hampton vs. George Edward Willoughby , defendant, et al
Case Number: 2015CP2307297
Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-07-28 14:26:34 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2307297

ELECTRONICALLY FILED - 2016 Nov 09 9:00 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2307297

Lahitsha Hampton	George Edward Willoughby William Sherman
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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: Court denies Defendant's Motion To Stay Enforcement Of A Judgment.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT 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.		
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Circuit Court Judge	2162	11/8/2016
	Judge Code	Date

CPFORM4Cm
 SCCA SCRPC Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

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

Brian T. Smith 714 Pettigru St Greenville, SC 29601-3190

ATTORNEY(S) FOR THE PLAINTIFF(S)

Matthew Clark LaFave PO Box 1149 Columbia, SC 29202
Michael T. Coulter PO Box 6728 Greenville, SC 29606

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of
Court - Clerk of Court

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

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ELECTRONICALLY FILED - 2016 Nov 09 9:00 AM - GREENVILLE - COMMON PLEAS - CASE#2015CP2307297



Greenville Common Pleas

Case Caption: Lahitsha Hampton vs. George Edward Willoughby , defendant, et al
Case Number: 2015CP2307297
Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-11-08 15:34:30 page 3 of 3

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2307297

ELECTRONICALLY FILED - 2017 Feb 17 10:56 AM - GREENVILLE - COMMON PLEAS - CASE# 2015CP2307297

Lahitsha Hampton	George E. Willoughby, Richard Mann, and William Sherman
PLAINTIFF(S)	DEFENDANT(S)

Submitted by:	Attorney for: <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> 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.
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 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: _____

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: The Court received this Motion For Reconsideration on November 17, 2016. Since that time, the Court carefully reviewed the present Motion For Reconsideration submitted by Defendant Sherman, as well as previously submitted documents in this case. The Court considered that Defendant Sherman asserted defenses already ruled foreclosed to him in an order by Judge Stilwell, as well as the injury that would occur to Plaintiff if not allowed to seek enforcement of the judgment against Defendant Sherman. As discussed in an order by Judge Miller, there is little case law in South Carolina regarding a stay in the proceedings in a situation like this. Thus, the Court also looked to public policy, which weighs in favor of the Plaintiff. Hence, the Court denies Defendant Sherman's Motion For Reconsideration, permitting Plaintiff to seek enforcement of the judgement against Defendant Sherman.

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT 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.		
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	2162	2/17/2017
Circuit Court Judge	Judge Code	Date
For Clerk of Court Office Use Only		

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

Brian T. Smith 714 Pettigru St Greenville, SC 29601-3190

Matthew Clark LaFave PO Box 1149 Columbia, SC 29202

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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

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Greenville Common Pleas

Case Caption: Lahitsha Hampton vs. George Edward Willoughby , defendant, et al
Case Number: 2015CP2307297
Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2017-02-17 07:34:14 page 4 of 4

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Lahitsha Hampton,

Plaintiff,

vs.

George Edward Willoughby, Richard Mann
and William Sherman

Defendant.

IN THE COURT OF COMMON PLEAS
FOR THE THIRTEENTH JUDICIAL
CIRCUIT

Civil Action No. 2015-CP-23-7297

**DEFENDANT'S MOTION TO
PREVENT ENTRY OF DEFAULT OR,
IN THE ALTERNATIVE, FOR RELIEF
FROM ENTRY OF DEFAULT
PURSUANT TO SCRPC 55**

COMES NOW THE DEFENDANT, by and through undersigned counsel, who hereby moves this Court to abstain from granting Plaintiff's requested Entry of Default pursuant to Rule 55 of the SCRPC or, in the alternative, to grant relief from any Entry of Default. As set forth below, good cause exists to abstain from entering default or to set aside any Entry of Default because Defendant was never served with the Summons and Complaint, Defendant's Answer has been filed contemporaneous herewith, the case was just recently instituted, and there has been and will be no prejudice to the Plaintiff as a result of allowing the case to proceed.

1. On November 30, 2015, Plaintiff filed the Summons and Complaint in this matter in the Court of Common Pleas, Greenville County.
2. On December 15, 2015, Plaintiff alleges via an Affidavit of Service that the Defendant was personally served by leaving a copy of the Summons and Complaint with "him" William Sherman at 36 Lisa Drive, Greenville, South Carolina.
3. On March 22, 2016, attorney for Plaintiff Brian T. Smith filed an Affidavit of Default based solely and exclusively on the Affidavit of Service referenced in Paragraph 2 above stating that Defendant failed to timely Answer following personal service.

4. On March 22, 2016, the presiding judge in Greenville County signed an Order of Default as to Defendant.
5. On March 24, 2016, the aforementioned Order of Default was filed by Paul Wickensimer.
6. No copy of the Summons and Complaint was provided to or received by Direct General Auto Insurance by or through counsel for Plaintiff until after the Order of Default was obtained.
7. Defendant William Sherman was never served with the Summons and Complaint. *Affidavit to be supplemented.*
8. Defendant submits good cause exists to preclude any entry of default or, in the alternative, set aside any entry of default since the Defendant was not and personally served with the Summons and Complaint at 36 Lisa Drive, Greenville, South Carolina on December 14, 2015.
9. Further, Plaintiff cannot show she will suffer any prejudice should the Court grant the relief requested given the recent filing of this action, the timeliness of this motion, and the fact service, of yet, has not been perfected on Defendant George Edward Willoughby. *See Exhibit B, Affidavit of Brian Smith attached hereto and incorporated herein.*

WHEREFORE, Defendant respectfully requests that the Court grant the following relief:

- a) Abstain from granting Plaintiff's request for Entry of Default; or
- b) In the alternative, enter an Order setting aside any Entry of Default, based upon a finding of good cause;
- c) Allow Defendant's Proposed Answer filed contemporaneous herewith to stand;
- d) Schedule an expedited hearing to allow Defendants to be heard on this motion if the Court sees fit and/or necessary; and

e) Such other and further relief as the nature of the Defendant's cause may require.

RESPECTFULLY SUBMITTED,

s/ Matthew C. LaFave
Matthew C. LaFave, Esq. SC Bar #75365
CROWE LAFAVE, LLC
Post Office Box 1149
Columbia, South Carolina 29202
Phone: 803.724.5727
matt@crowelafave.com
ATTORNEY FOR THE DEFENDANT

This 1st Day of June 2016
Columbia, South Carolina

detailed below, Judge Verdin denied Defendant Sherman's motion. At Defendant's request, and with Plaintiff's consent, Judge Verdin continued the damages hearing set for July 28, 2016, in order to provide Defendant with time to discuss settlement of the matter. Instead of contacting Plaintiff with regards to settlement, Defendant Sherman filed the motion before the court on September 15, 2016, seeking to further delay his responsibility for Plaintiff's damages.

ARGUMENT

Defendant Sherman's participation in the case, as a defaulting party, is limited to only "cross-examination and objection to Plaintiff's evidence" in presenting damages. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (S.C. 1978). Thus, this Court should deny Defendant Sherman's motion as an attempt to end-run Judge Verdin's ruling denying his motion to for relief from default.¹ Since receipt of the order July 28, 2016, Defendant Sherman has not filed a Motion for Reconsideration or questioned the finality of the order. Instead, Defendant Sherman has come before this Court with an unfair tactic wherein he seeks to prejudice the Plaintiff from moving her case forward against him. Plaintiff has waited long enough, especially in light of the record, where Defendant Sherman requested time prior to a damages hearing to work on settlement and instead waited until the last minute to file the motion before the Court in an attempt to end run Judge Verdin's ruling and have a second chance to argue his default hearing.

¹ Judge Verdin ruled as such during a hearing wherein she found that Defendant Sherman was personally served, and called the Plaintiff's Attorney's office and was told to contact his insurance company, but failed to do so.

I. Defendant Sherman's motion should be denied as he is trying to circumvent Judge Verdin's Order keeping him in default.

Defendant Sherman's motion, and its purported grounds, are an attempt to have a second bite at the apple in arguing their case. Judge Verdin's Order is clear, Defendant Sherman could not present "good cause" to be let out of default; thus, she denied his motion. There has been no request for reconsideration filed, making said order an unappealed order of the court and the law of the case. *Jones v. Lott*, 692 S.E.2d 900, 903 (S.C. 2010). Thus, Defendant does not have grounds for presenting this motion, as the unappealed ruling on the default is the law of the case, and cannot be undone absent appeal. Additionally, in presenting the current motion before the court, Defendant Sherman is in violation of his own continuance request and order: the continuance was requested to work on settlement and was agreed to go forward on October 3, 2016, if no agreement could otherwise be reached. However, Defendant Sherman never attempted to engage in good faith negotiations to settle the claim. Thus, as the Motion to Stay by Defendant Sherman is an attempt, via underhanded tactics, to undermine the order set forth by Judge Verdin, it should be denied.

II. Defendant's Motion should be denied as a defaulting party has conceded liability.

As Defendant Sherman has been held in default, and kept in default, his motion should be denied as his only participation going forward is with regards to damages, **not liability**. A defaulting party is considered to have conceded liability. *See Howard*, 271 S.C. at 241-42, 246 S.E.2d at 882 (finding that a "defaulting defendant has conceded liability" just not the amount of liability). Defendant Sherman, in his motion, however, seeks to argue liability, asserting that his only claims are derivative to finding Defendant Willoughby negligent. Defendant Sherman, however, in defaulting, has forfeited his right to answer or otherwise plead to the complaint,

including the right to present defenses to his own liability, which he now puts before the court.² See *Howard*, 271 S.C. at 241–42, 246 S.E.2d at 882. *Res Judicata* now applies: the ruling on liability is final and Defendant Sherman had the opportunity to fully argue his position in support of his motion to set aside and was unsuccessful. He does not get to make his same arguments again, under a different guise and motion, to prevent Plaintiff from moving her case forward. The Court in *Limehouse* was clear: “to allow a defaulting defendant to fully participate in a post-default hearing, we believe there would be no consequence of default.” *Limehouse v. Hulsey*, 404 S.C. 93, 115–16, 744 S.E.2d 566, 578–79 (S.C. 2013) (citing *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (S.C. 1998)). Therefore, Plaintiff would request that Defendant’s improper, dilatory motion be denied so that the damages hearing can go forward.

CONCLUSION

In light of the unfair, dilatory, motion before the Court, Plaintiff would request costs and attorney’s fees for having to prepare and defend the motion. Additionally, Plaintiff would request sanctions as Defendant Sherman failed to abide with his Rule 11 duty to confer with Plaintiff before filing a motion with the court or to plead that it would be futile in his motion. As such, Plaintiff should be able to recover the costs and fees for the time spent preparing and defending such an improper motion.

² Plaintiff has plead multiple causes of action against Defendant Sherman, which include direct theories of liability. In essence, Plaintiff plead, and Defendant, via default has admitted, to acting negligently in turning over his keys to Defendant Willoughby. As a tortfeasor, jointly and severally liable for the injuries Plaintiff suffered on March 30, 2015, Defendant Sherman is responsible for Plaintiff’s damages. By defaulting, Defendant Sherman is “deemed to have admitted the truth of the plaintiff’s allegations and to have conceded liability”. See *Roche v. Young Bros., Inc., of Florence*, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (S.C. 1998); *Limehouse v. Hulsey*, 404 S.C. 93, 113–17, 744 S.E.2d 566, 577–79 (S.C. 2013).

Thus, for the reasons set forth more fully above, and any to be presented at a hearing on this matter, the Plaintiff would ask this Honorable Court deny Defendant Sherman's Motion to Stay Default Proceedings so that her damages hearing can go forward.

Respectfully Submitted,

s/ Brian T. Smith
Brian T. Smith
Attorney for the Plaintiff
714 Pettigru Street
Greenville, SC 29601
Telephone: (864) 239-2007
Facsimile: (864) 239-2039
SC Bar No.: 70232

Exhibit A

Order from Judge Verdin

FORM 4

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

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2015CP2307297

Lahitsha Hampton

George Edward Willoughby
 William Sherman

Richard Mann

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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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:
 Defendant's Motion for Relief is hereby denied. While Defense counsel presented a thorough argument, there was sufficient evidence produced to show that Defendant was properly served. However, the Court notes that Defense counsel acted timely after receiving notice from his client, and the failure to timely respond was solely due to the client's delay in notifying his attorney.

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THE ELECTRONICALLY FILED 2015-06-29 10:50:23 AM GREENVILLE COUNTY COMMON PLEAS COURT #2015CP2307297

may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge 2162 7/28/2016
Judge Code **Date**
For Clerk of Court Office Use Only

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

Brian T. Smith 714 Pettigru St Greenville, SC 29601-3190

Matthew Clark LaFave PO Box 1149 Columbia, SC 29202
John Austin Hood 1612 Marion Street Suite 200 Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

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.

EELECTRONICALLY FILED 20066640 28 303437PM GREENVILLE, SC JUDICIAL DEPARTMENT CASE#20050922002897



Greenville Common Pleas

Case Caption: Lahitsha Hampton vs. George Edward Willoughby , defendant, et al
Case Number: 2015CP2307297
Type: Order/Form 4

So Ordered

s/Letitia H. Verdin, SC Judge 2162

Electronically signed on 2016-07-28 14:26:34 page 3 of 3

EEEDCTH80NDUALMFEHIEDD 220066&#p 28 303497RM GREENWILL EE COMMNDNPEEAS CAS#2015092307297

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	C.A. No.: 2015- CP-23-07297
)	
Lahitsha Hampton,)	
)	
Plaintiff,	)	MEMORANDUM OF LAW IN
	)	OPPOSITION TO DEFENDANT
vs.	)	SHERMAN’S MOTION TO STAY
	)	ENFORCEMENT OF JUDGMENT
)	
George Edward Willoughby, Richard Mann,)	
William Sherman,)	
)	
Defendants,)	
)	

COMES NOW the Plaintiff, by and through her undersigned counsel, and responds in opposition to Defendant Sherman’s Motion to Stay Enforcement of Judgment as follows:

INTRODUCTION

Plaintiff’s Complaint in the case at bar was filed following a sequence of events to be described more fully below, but that included a group of occurrences whereby Plaintiff was injured in a collision jointly and severally caused by, as detailed in her Complaint, the Defendants. Plaintiff now submits this Brief in opposition to Defendant Sherman’s Motion to Stay Enforcement of a Judgment.

PROCEDURAL HISTORY & FACTS

Plaintiff filed the current action on December 11, 2015. The facts underlying the case at bar involve a complex collision that took place on March 30, 2015. Plaintiff has alleged in her well-plead Complaint that she was injured in said collision by the Defendants, jointly and severally. Service was accomplished on Defendant Sherman and Mann on December 15, 2015. Defendants Sherman and Mann were held in default in an order signed March 22, 2016, and filed March 24, 2016. Defendant Sherman then filed a Motion for Relief from Default on June 1, 2016, with a hearing set before Judge Verdin on July 28, 2016. During the hearing, Judge Verdin denied

Defendant Sherman's motion. At Defendant's request, and with Plaintiff's consent, Judge Verdin continued the damages hearing set for July 28, 2016, in order to provide Defendant with time to discuss settlement of the matter. Instead of contacting Plaintiff with regards to settlement, Defendant Sherman filed a motion to stay default proceedings before the court on September 15, 2016, seeking to further delay his responsibility for Plaintiff's damages. On October 3, 2016, Judge Stillwell denied Defendant's motion, noting that Defendant Sherman was presenting defenses that were foreclosed to him by way of his default and allowed Plaintiff to proceed to assess damages as to Defendant Sherman.¹ See Exhibit A, Order Denying Motion to Stay. Additionally, Judge Stillwell's Order granting damages specifically designates the judgment as applying to only Defendant Sherman and his culpability for the collision giving rise to Plaintiff's Complaint. The Order provided for a Judgment as to Defendant Sherman for actual damages in the amount of \$30,000.00. A subsequently filed Motion for Reconsideration with regards to said order was denied by Judge Stillwell on October 19, 2016. On October 8, 2016, Defendant Sherman filed another Motion, this time seeking to stay enforcement of the judgment. Plaintiff responds as follows in opposition to Defendant Sherman's Motion.

ARGUMENT

Defendant Sherman's Motion should be denied as he is only attempting to delay Plaintiff from collecting from Defendant Sherman by asserting defenses already ruled foreclosed to him. Defendant Sherman already presented these same arguments in attempting to stay default proceedings, and Judge Stillwell denied his motion as a defaulting party could not assert defenses to liability. Defendant Sherman suggests that his motion be filed because the claims are derivative. This matter has already been determined by the Court, and the record is clear, Defendant Sherman,

¹ Judge Stillwell did grant Defendant Mann's Motion to Be Let out of Default. Plaintiff's Motion for Reconsideration as to said Motion is still pending.

as a defaulting party, may no longer argue defenses as to liability. The doctrine of *res judicata* is clear, a party cannot get a new ruling just by virtue of filing an additional motion before the court. South Carolina Rules of Civil Procedure Rule 62(h) is designed as a way to prevent enforcement of a judgment when there may be other claims or parties still before the Court. That is not the facts in the case at bar. Defendant Sherman's negligence, as has been well established in the record, involved negligent actions in turning over his keys to Defendant Willoughby. Thus, the remaining open claims as to Defendants Willoughby and Mann involve separate claims and facts from those concerning Defendant Sherman. Additionally, the damages award specifies Plaintiff's actual damages as to Defendant Sherman, and does not quantify punitive damages which may be applicable to Defendants Mann and Willoughby.²

There is little case law on point in South Carolina with regards to stays of execution of a judgment. Judge Miller, in an Order signed March 27, 2014, acknowledged this and referenced the Federal Law as providing insight into when such a stay should be granted. *See Exhibit B, Order.*³ Upon examining Federal Law, the factors set forth by the United States Supreme Court favor the Plaintiff in this action. Plaintiff will be indeed further injured by a stay in the damage done to her credit due to her outstanding property damage, along with her medical bills and other expenses that have been sent into collections. Further, the public interest weighs in Plaintiff's favor as it protects the public to make tortfeasors responsible for the damages caused by their actions, along with the consequences (including judgments) arising therefrom.

² Said Defendants have the remedy of set-off if so plead to prevent double collection by Plaintiff for damages.

³ The Order sets forth four factors, drawn from Federal Law, in determining whether a stay may be appropriate: likelihood of success on the merits; extent of movant's injury absent a stay; extent of injury to non-movants if a stay is granted; and public interest. These factors weigh heavily in Plaintiff's favor, and her interests will not be protected by a bond.

Thus, Plaintiff should be able to move forward in executing the previously received judgment as to Defendant Sherman as it has no effect upon the remaining claims against Defendants Mann and Willoughby. Thus, Defendant Sherman has failed to present proper cause for delaying execution of the judgment Plaintiff validly obtained.

CONCLUSION

Therefore, for the reasons set forth more fully above, and any to be presented at a hearing on this matter, the Plaintiff would ask this Honorable Court deny Defendant Sherman's Motion to Stay Enforcement of the Judgment so that Plaintiff may seek enforcement of the validly obtained judgment against Defendant Sherman.

Additionally, in light of the dilatory nature of this motion, requiring an additional hearing in this matter, Plaintiff would request costs and attorney's fees for having to prepare and defend the motion. Additionally, Plaintiff would request sanctions as, *for the second time*, Defendant Sherman has failed to abide with his Rule 11 duty to confer with Plaintiff before filing a motion with the court or to plead that it would be futile in his motion. As such, per South Carolina Rules of Civil Procedure Rule 11, Plaintiff should be able to recover attorney fees for the time spent preparing and defending said motion.

Respectfully Submitted,

s/ Brian T. Smith
Brian T. Smith
Attorney for the Plaintiff
714 Pettigru Street
Greenville, SC 29601
Telephone: (864) 239-2007
Facsimile: (864) 239-2039
SC Bar No.: 70232

Greenville, South Carolina
October 31, 2016

Exhibit A

Order Denying Motion to Stay Default Proceedings & Order Granting Damages

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Lahitsha Hampton,)
)
Plaintiff,)
)
vs.)
)
George Edward Willoughby, Richard Mann,)
William Sherman,)
)
Defendants,)
)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2015- CP-23-07297

**ORDER DENYING DEFENDANT SHERMAN'S
MOTION TO STAY DEFAULT
PROCEEDINGS**

This matter came before the Court on Monday, October 3, 2016, on Motion of Defendant Sherman for a hearing to determine if default proceedings should be stayed.

FACTS

The Plaintiff, through her attorney Brian T. Smith, presented the following facts. Plaintiff personally served Defendant Sherman and held him in default in an order signed March 22, 2016, and filed March 24, 2016. Defendant Sherman filed a motion to be relieved from default that was denied by Judge Verdin on July 28, 2016. Defendant Sherman then filed a motion to stay, seeking to assert additional defenses that were foreclosed to him by way of the default.

FINDINGS OF FACT

After careful consideration and study of all the evidence, the following findings of fact are accordingly made:

1. Judge Verdin denied Defendant Sherman's Motion to be relieved from default on July 28, 2016.
2. Defendant Sherman is a defaulting party that has conceded liability with regards to the collision occurring on March 30, 2015.

3. Defendant Sherman cannot argue defenses he would have raised if not held in default.

LAW

A defaulting party's participation in a case is limited to "cross-examination and objection to Plaintiff's evidence" in presenting damages. *Howard v. Holiday Inns, Inc.*, 271 S.C. 238, 241, 246 S.E.2d 880, 882 (S.C. 1978). As such, Defendant Sherman may not argue liability, or defenses that may have been available to him if he were not in default. A defaulting party has conceded liability. See *Howard*, 271 S.C. at 241-42, 246 S.E.2d at 882 (finding that a "defaulting defendant has conceded liability" just not the amount of liability). I find that Defendant Sherman, a defaulting party, cannot now argue liability as to Defendant Sherman.

ORDER

Based on the record before me, I find that Defendant Sherman, as a defaulting party, cannot argue defenses based on liability; therefore, I am denying Defendant Sherman's motion, and the damages hearing shall go forward as to Defendant Sherman.

IT IS SO ORDERED.

Judge Robin B. Stilwell

October __, 2016

FILED IN ELECTRONICALLY FILED - 2016 OCT 07 12:07 PM - GREENWICH - COMMONWEALTH COURTS - CASE # 2016CP2307297



Greenville Common Pleas

Case Caption: Lahitsha Hampton vs. George Edward Willoughby , defendant, et al
Case Number: 2015CP2307297
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2016-10-07 11:45:55 page 3 of 3

FILED ELECTRONICALLY FILED -- 2016 OCT 07 12:05 PM -- GREENVILLE -- COMMON PLEAS -- CASE# 2015CP2307297

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Lahitsha Hampton,)
)
Plaintiff,)
)
vs.)
)
George Edward Willoughby, Richard Mann,)
William Sherman,)
)
Defendants,)
)

IN THE COURT OF COMMON PLEAS
C.A. No.: 2015- CP-23-07297

ORDER
GRANTING DAMAGES TO PLAINTIFF
ASTO DEFENDANT SHERMAN

This matter came before the Court on Monday, October 3, 2016, on Motion of the Plaintiff for a hearing to determine damages in the above-referenced case, as Defendant William Sherman was in default. The Defendant was personally served and found to be in default by and Order signed March 22, 2016, and filed March 24, 2016. Defendant Sherman made a motion to be let out of default, which was denied on July 28, 2016. The damages hearing was set for sixty days from that date and Defendant Sherman was represented by Matthew Lafave at the hearing.

FACTS

The Plaintiff, through her attorney Brian T. Smith, presented the following facts via testimony and in the pleadings that were filed with this court. On March 30, 2015, the Plaintiff was traveling Northbound on East Stone Avenue near Spartanburg Street, when her vehicle was struck by Defendant Sherman's vehicle, being driven by Defendant Willoughby at the time. Plaintiff lost consciousness as a result of the collision, and had to be transported via EMS to the hospital for treatment. Due to injuries sustained in the collision, the Plaintiff underwent medical treatment, including for pain resulting from a concussion along with headaches, low back pain, and pain and swelling in her left leg and knee. This included wearing a sling on her left arm and feeling like she could not go out on the roads by herself. The Plaintiff testified that as a result of

Defendant Sherman. I do not find that Plaintiff presented evidence as to Defendant Sherman to warrant recovery of punitive damages.

A. Actual (Compensatory) Damages

Compensatory damages are appropriate in this case. The Plaintiff has presented evidence that her injuries were proximately caused by Defendant Sherman's negligent acts. These damages include monetary injuries, pain and suffering, mental anguish, loss of enjoyment of life, and losses actually sustained. See *Bedenbaugh v. Southern Railroad Co.*, 69 S.C. 1, 6-7, 48 S.E. 53, 54 (S.C. 1904) (defining the purpose of compensatory damages as returning the injured party to the place he or she occupied prior to the collision). In the case at bar, the Plaintiff has presented evidence of her injuries, both physical and emotional, as well as medical bills, and property damage information. In consideration of the testimony from the Plaintiff, and her medical bills as presented to this Court, I am awarding the Plaintiff with thirty thousand dollars (\$30,000.00) in compensatory damages as to Defendant Sherman.

ORDER

Based on the record before me, the greater weight of the evidence supports the Plaintiff's assertions; therefore, I award the Plaintiff \$30,000.00 in actual (compensatory) damages against Defendant William Sherman.

IT IS SO ORDERED.

Judge Robin B. Stilwell

October __, 2016



Greenville Common Pleas

Case Caption: Lahitsha Hampton vs. George Edward Willoughby , defendant, et al
Case Number: 2015CP2307297
Type: Order/Other

So Ordered

s/ Robin B. Stilwell 2158

Electronically signed on 2016-10-14 10:27:57 page 4 of 4

FILED ELECTRONICALLY FILED - 2016 OCT 14 10:27 AM - GREENVILLE - COMMON PLEAS - CASE # 2015CP2307297

Exhibit B

Order from Judge Miller

FILED-CLERK OF COURT
GREENVILLE CO. SC
STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
PAUL E. WICKENSIMER
COUNTY OF GREENVILLE FOR THE THIRTEENTH JUDICIAL CIRCUIT
2014 MAR 27 PM 4 49

Andrew P. (Andy) Ballard,
Plaintiff,

vs.

Tim Roberson, Rick Thoennes, Rick
Thoennes III, and Warpath Development,
Inc.,
Defendants.

Case Number: 2008-CP-23-5739

**ORDER DENYING DEFENDANTS'
MOTION TO STAY EXECUTION**

This matter is before the Court on Defendants' Motion to Stay Execution. For the reasons stated herein, the Court denies the motion.

This is a shareholder oppression case, filed by the plaintiff in July 2008. On May 4, 2010, following a trial, this Court entered an Order finding that the defendants had committed oppression of the plaintiff and ordering defendants to buy out the plaintiff's shares at fair value. The defendants appealed, and the Supreme Court affirmed. On remand, this Court held an evidentiary hearing to determine the fair value of the plaintiff's shares. On October 3, 2013, the Court issued an order (i) valuing Warpath at \$7,178,594, and (ii) directing Defendants to pay 50% of that value (\$3,589,297) to Plaintiff to buy out his ownership. The Court gave the defendants a 90-day grace period to arrange for payment of the judgment.

Defendants filed a notice of appeal from that judgment on December 20, 2013. On January 7, 2014, defendants filed the motion to stay. In it, defendants ask the Court to stay execution of the judgment for the duration of defendants' second appeal, and submit that the Court should not require a bond as a condition of staying execution.

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eu

ENTERED COMPUTER

Under Rule 62(d), SCRCR, and Rule 241, SCACR, the Court has the discretion to grant or deny the motion to stay. See *Stearns Bank Nat. Ass'n v. Glenwood Falls, LP*, 375 S.C. 423, 426, 653 S.E.2d 274, 276 (2007) (“Whether to grant such a stay rests in the court’s discretion ‘on such conditions for the security of the [creditor] as are proper’”). No South Carolina state court has provided assistance on exercising this discretion. Accordingly, the Court may look to federal cases interpreting similar federal rules for guidance. See *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 330, 404 S.E.2d 200, 201 (1991) (“Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure.”); see also Comments to Rule 62, SCACR (noting that “rule 62 is drawn from the Federal Rule”).¹

In interpreting Rule 62(d), FRCP, the United States Supreme Court has laid out four factors that courts should examine when determining whether or not to grant a motion to stay execution. Under this framework courts should examine the following:

- (i) movant’s likelihood of success on the merits,
- (ii) the extent of movant’s injury absent a stay,
- (iii) the extent of injury to non-movants if a stay is granted, and
- (iv) the public interest.

Hilton v. Braunskill, 481 U.S. 770, 776, 107 S. Ct. 2113, 2119, 95 L. Ed. 2d 724 (1987).

Applying the *Hilton* standard, the Court finds that defendants have failed to carry their burden that the balance of the four factors supports a stay of execution. In particular, defendants have not made a showing of likelihood of success on the merits, injury to them if a stay is denied that outweighs plaintiff’s injury if a stay is granted, or that the public interest is better served if

¹ Rule 62(d), SCRCR, states that “when an appeal is taken, a party, by giving a supersedeas bond, may obtain a stay.” Rule 62(d), FRCP, states that “if an appeal is taken, the appellant may obtain a stay by supersedeas bond.”

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21

execution is stayed. The plaintiff, on the other hand, makes a persuasive showing that all of these factors favor the denial of a stay.

Furthermore, the defendants have not presented any evidence or argument as to why a bond should not be required as security for plaintiff's judgment should it be affirmed on appeal. At oral argument, defendants' counsel offered to put up defendants' shares in Warpath as security for the judgment, but defendants' continued majority ownership and control of Warpath gives them the ability to render its shares worthless while the appeal takes its course, and therefore this proffer of security is inadequate if not illusory. In light of (a) the fact that the defendants' liability has already been determined and affirmed by the Supreme Court on appeal, (b) defendants' concession at the valuation hearing that a fair price for plaintiff's is at least \$873,000 to \$1,000,000, and (c) defendants' failure to demonstrate likelihood of reversal of the judgment on appeal, there is no reason that a bond to secure the full amount of the judgment should not be required.

At the conclusion of argument on defendants' motion, the Court indicated that it would deny the stay unless the defendants posted a bond for 125% of the amount of the judgment, which is the minimum amount set forth in the local rules of the U.S. District Court for the District of South Carolina, and gave the defendants a week to obtain and post such a bond. See Rule 62.01(A), DSC Local Civil Rules. Defense counsel contended at the motion hearing that South Carolina Code section 18-9-130 caps the amount of any bond this Court may require at \$1,000,000. Plaintiff's counsel contends that this statutory ceiling is not applicable here, given the particular facts and procedural history of this case, the fact that defendants have already appealed liability and lost, and the fact that the judgment also requires the delivery of personal property and thus implicates South Carolina Code section 18-9-150, which does not contain any

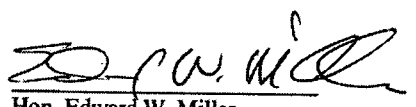
3
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cap on the amount of a supersedeas bond. While the Court finds plaintiff's argument persuasive, it is not necessary to reach this issue, as the defendants have not offered to post a bond for the \$1,000,000 amount set forth in section 18-9-130.

Accordingly, defendants' motion for a stay of execution is denied.

It is so ordered.

Dated: 3/27, 2014
Greenville, SC


Hon. Edward W. Miller
Judge, South Carolina Circuit Court

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2008CP2305739

Andrew P Andy Ballard

Warpath Development Inc
PAUL B. WICKENSIMER

Tim Roberson
Rick Thoennes III

Rick Thoennes
Warpath Development
Inc

2014 MAR 27 PM 4 49

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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 decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):
 - Rule 12(b), SCRPC;
 - Rule 41(a), SCRPC (Vol. Non-Suit);
 - 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: _____

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: _____

INFORMATION FOR THE JUDGMENT 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 (List amount(s) below)

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.

3/27/2014

Circuit Court Judge

Judge Code

Date

ELECTRONICALLY FILED - 2016 Oct 30 4:01 PM - GREENVILLE - COMMON PLEAS - CASE#2016CP0007297

For Clerk of Court Office Use Only

This judgment was entered on 27th day of March, 2014, and a copy mailed first class or placed in the appropriate attorney's box on 27th day of March, 2014, to attorneys of record or to parties (when appearing pro se) as follows:

Wallace K. Lightsey Wyche P.A. 44 East Camperdown Way
Greenville, SC 29601
William Marvin Wilson III Wyche, P.A. P.O. Box 728
Greenville, SC 29602-0728
Amos A. Workman Wyche, P.A. P.O. Box 728 Greenville,
SC 29602-0728

Joshua L. Howard Haynsworth Sinkler Boyd, P.A. P.O. Box
2048 Greenville, SC 29602

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Paul B. Wickensimer Greenville County Clerk
Court - Clerk of Court

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.

ELECTRONICALLY FILED - 2016 Oct 31 4:01 PM - GREENVILLE - COMMON PLEAS - CASE#2015CP2307297

FACTS

On or about March 30, 2015 Plaintiff was driving a 2007 Ford northbound on East Stone Avenue near the intersection of Spartanburg Street. Defendant, Richard Mann, was traveling southbound on East Stone Avenue in a 2006 Mini Cooper near the aforementioned intersection of Spartanburg Street. Defendant, George Edward Willoughby was also traveling southbound on East Stone Avenue in a 1973 Chevy, which was owned by Defendant. Mr. Willoughby was slowing to make a left turn onto Spartanburg Street when his vehicle was struck from behind causing his vehicle to enter the northbound lane of East Stone Avenue colliding with Plaintiff's vehicle.

Plaintiff contends that she sustained numerous injuries including a concussion, which necessitated medical treatment.

Plaintiff alleges Defendant was negligent under the numerous theories including, family purpose doctrine, negligent entrustment, bailor/bailee, lessor/lessee, employer/employee, master/servant, principal/agent; including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family and/or other relationships including business relationships.

PROCEDURAL POSTURE

This action was initiated when Plaintiff filed a Summons and Complaint on November 30, 2015 alleging negligence as to Mr. Mann and Mr. Willoughby with the aforementioned claim against Defendant. Specifically as to Defendant, Plaintiff alleges, that he owned the vehicle being driven by Mr. Willoughby and "should be liable through the family purpose doctrine, through an entrustment, or through the respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship, including any ostensible

or apparent agency relationships, contractual relationships, corporate relationships, family, and/or other relationships.” See ¶ 34 of Plaintiff’s Complaint. Plaintiff further alleged Defendant provided Mr. Willoughby the 1973 Chevy “and pursuant to the above theories of liability, is jointly and severally liable for Defendant Willoughby’s actions.” See ¶ of Plaintiff’s Complaint. Finally, Plaintiff contends, “as a proximate result of the negligent, careless, gross negligent, reckless, willful and wanton actions of Defendant ... the Plaintiff ... suffered personal injury, anxiety, pain and suffering, the expense of medical treatment, and other losses.” See ¶ 36 of Plaintiff’s Complaint.

An Affidavit of Service was filed with the Court indicating that Defendant was personally served with the Summons and Complaint on December 14, 2015. Plaintiff then moved for an Entry of Default as to Defendant, which was filed by the Court on March 24, 2016. Defendant filed a Motion to Set-Aside the Entry of Default on June 1, 2016 with a hearing on the matter occurring on July 28, 2016. The Court, after reviewing the matter entered an Order denying Defendant’s motion. Following the Court’s ruling the damages hearing was rescheduled for October 3, 2016. In advance of the damages hearing the Court heard and summarily denied Defendant’s Motion to Stay the default proceedings. The Court proceeded with the damages hearing ultimately leading to the entry of a default judgment in the amount of \$30,000.00. Defendant filed a subsequent Motion for Reconsideration as well as a Motion to Stay Enforcement of the Judgment on October 17, 2016 with the Motion for Reconsideration being denied without a hearing. The Motion to Stay Enforcement of the Judgment was heard on November 1, 2016 with Judge Verdin having filed a Form 4 Order having been filed on November 9, 2016. The Form 4 simply indicated “[t]he issues have been tried or heard and a decision rendered.” It was also stated that “Court denies Defendant’s Motion to Stay

Enforcement of a Judgment.” There was no explanation or justification provided by the Court so as to establish the basis for the foregoing ruling.

STANDARD OF REVIEW

“It is proper to view a Rule 59(e) motion as not only a vehicle to request the trial court to ‘alter or amend the judgment,’ but also as a vehicle to seek ‘reconsideration’ of issues and arguments.” *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 692 S.E.2d 772 (2004). “A motion under Rule 59(e) long has been viewed as a ‘motion for reconsideration’ despite the absence of those words from the rule. Consequently, a party usually is allowed to ask the court to reconsider its decision even if it means rehashing all or part of an argument previously presented.” *Id.* (citing *Arnold v. State*, 309 S.C. 157, 420 S.E.2d 834 (1992)).

There are two situations in which a party should consider pursuing a Rule 59(e) motion. First, if a party believes the court misunderstood, did not fully consider, or possibly did not rule on an argument or issue such a motion is proper. Secondly, so as to preserve an issue for appeal a Rule 59(e) motion must be filed as to any issues or arguments raised but not ruled upon.

ISSUES TO BE DETERMINED

- I. Whether Defendant is entitled to a stay as to the enforcement of the judgment pending resolution of the claim against George Edward Willoughby?

ARGUMENT

- I. **Defendant is entitled to a stay as to the enforcement of the judgment pending the resolution of the suit continuing against George Edward Willoughby.**

There is no dispute that Defendant was deemed to have been a defaulting party as to the above captioned litigation and as such he has admitted factual allegations made relative to him and conceded his own liability. However, this case is one wherein William Sherman’s

responsibility for damages is contingent upon a finding of negligence on the part of the operator of his automobile, George Edward Willoughby, which has been denied and is presently being litigated. It is undisputed that the litigation against Mr. Willoughby and Mr. Mann is continuing at the present time and is in the rather early stages with little to no discovery having been conducted.

Rule 54(b) of the South Carolina Rules of Civil Procedure provides an avenue for the handling of a scenario, as is the case in the instant litigation, where “more than one claim for relief is presented in an action” permitting entry of a judgment against “one or more but fewer than all of the claims or parties.” In matters relating to Rule 54(b) fewer than all claims are adjudicated and “the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.” Rule 62(b) expressly contemplates the scenario that exists in this case stating “[w]hen a court has ordered a final judgment under the conditions stated in Rule 54(b), the court may stay the enforcement of that judgment until the entering of a subsequent judgment or judgments.” Plaintiff has not, and cannot, contend that litigation is proceeding forward in this case on other causes of action against other parties. Furthermore, the entry of the default judgment against Mr. Sherman satisfies the other requirement of Rule 62(h) in that it is a final judgment against this Defendant.

Defendant submits that there has been a final judgment under the conditions stated in Rule 54(b) entered in this case as to this defendant and that under Rule 62(b) said judgment should be stayed until the entering of a judgment or judgments in the tort proceedings against the remaining parties.

Plaintiff, relied, in opposition of this motion, on a Circuit Court Order filed on March 27, 2014, which references *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S. Ct. 2113, 2119, 95 L. Ed.

2d 724 (1987) in support of her position that the motion should be denied. First and foremost the case relied upon was a matter between one plaintiff and one defendant whereas the instant case, consistent with Rule 54(b), SCRCF involves multiple claims and multiple parties. Furthermore, *Hilton*, established the four factors relied upon in the Circuit Court order included as Exhibit B to Plaintiff's Memorandum in Opposition incorrectly states the following factors: (1) movant's likelihood of success of on the merits, (2) extent of movant's injury absent a stay, (3) extent of injury to non-movant if a stay is granted, and (4) the public interest were established interpreting Rule 62(b), FCRCF. *Id.* The Court established the foregoing factors while analyzing Fed. Rule Civ. Proc. 62(c), which relate to the court's ability to stay proceedings to enforce a judgment pending an appeal, which is inapplicable to this case.

CONCLUSION

This case is unquestionably not one where a stay has been sought pursuant to Rule 62(c) as there is no appeal pending thus to the extent that the Court relied upon any of the four aforementioned factors in adjudicating the motion argued on November 1, 2016 it is required that the previous ruling be reconsidered. Defendant has satisfied all of the elements of Rule 54(b) of the South Carolina Rules of Civil Procedure and as such the Court has the authority, and should, stay enforcement of the judgment entered in connection with the October 3, 2016 damages hearing as it is not a full adjudication of all claims against all parties but is a final judgment as to one defendant, Mr. William Sherman. Furthermore, Defendant maintains that the risk of an inconsistent outcome, should Defendant Willoughby be found to not have been negligent, leads to public policy favoring the stay of the execution of this judgment pending full adjudication of all claims against all defendants. Furthermore, the potential injury to Defendant

for the mere fact that his vehicle was involved in a collision but did not contribute to it is far to great to not stay enforcement of this judgment.

Alternatively, Defendant submits the Court needs to provide sufficient findings of facts and conclusions of law to establish the basis of their prior ruling as none were provided in the November 9, 2016 Form 4 Order.

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave
Matthew C. LaFave
Crowe LaFave, LLC
Post Office Box 1149
Columbia, South Carolina 29202
(P) 803.724-5727
matt@crowelafave.com
ATTORNEY FOR THE DEFENDANT

This 17th day of November 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THE THIRTEENTH JUDICIAL CIRCUIT

LAHITSHA HAMPTON,

Civil Action Number: 2015-CP-23-07297

Plaintiff,

vs.

GEORGE EDWARD WILLOUGHBY,
RICHARD MANN, and WILLIAM
SHERMAN

**MEMORANDUM IN SUPPORT OF
DEFENDANT, WILLIAM
SHERMAN'S MOTION TO STAY
ENFORCEMENT OF A JUDGMENT**

Defendants.

Pursuant to Rule 67 of the South Carolina Rules of Civil Procedure, Defendant, William Sherman (hereinafter "Defendant") by and through his undersigned attorney, hereby moves this honorable Court for an Order permitting him to deposit the judgment amount of Thirty-Thousand and NO/100 (\$30,000.00) Dollars into the Court.

FACTS

On or about March 30, 2015 Plaintiff was driving a 2007 Ford northbound on East Stone Avenue near the intersection of Spartanburg Street. Defendant, Richard Mann, was traveling southbound on East Stone Avenue in a 2006 Mini Cooper near the aforementioned intersection of Spartanburg Street. Defendant, George Edward Willoughby was also traveling southbound on East Stone Avenue in a 1973 Chevy, which was owned by Defendant. Mr. Willoughby was slowing to make a left turn onto Spartanburg Street when his vehicle was struck from behind causing his vehicle to enter the northbound lane of East Stone Avenue colliding with Plaintiff's vehicle.

Plaintiff contends that she sustained numerous injuries including a concussion, which necessitated medical treatment.

Plaintiff alleges Defendant was negligent under the numerous theories including, family purpose doctrine, negligent entrustment, bailor/bailee, lessor/lessee, employer/employee, master/servant, principal/agent; including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family and/or other relationships including business relationships.

PROCEDURAL POSTURE

This action was initiated when Plaintiff filed a Summons and Complaint on November 30, 2015 alleging negligence as to Mr. Mann and Mr. Willoughby with the aforementioned claim against Defendant. Specifically as to Defendant, Plaintiff alleges, that he owned the vehicle being driven by Mr. Willoughby and “should be liable through the family purpose doctrine, through an entrustment, or through the respective bailor/bailee, lessor/lessee, employee/employer, master/servant, and/or principal/agent relationship, including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family, and/or other relationships.” *See* ¶ 34 of Plaintiff’s Complaint. Plaintiff further alleged Defendant provided Mr. Willoughby the 1973 Chevy “and pursuant to the above theories of liability, is jointly and severally liable for Defendant Willoughby’s actions.” *See* ¶ of Plaintiff’s Complaint. Finally, Plaintiff contends, “as a proximate result of the negligent, careless, gross negligent, reckless, willful and wanton actions of Defendant ... the Plaintiff ... suffered personal injury, anxiety, pain and suffering, the expense of medical treatment, and other losses.” *See* ¶ 36 of Plaintiff’s Complaint.

An Affidavit of Service was filed with the Court indicating that Defendant was personally served with the Summons and Complaint on December 14, 2015. Plaintiff then moved for an Entry of Default as to Defendant, which was filed by the Court on March 24, 2016. Defendant filed a Motion to Set-Aside the Entry of Default on June 1, 2016 with a hearing on the matter occurring on July 28, 2016. The Court, after reviewing the matter entered an Order denying Defendant's motion. Following the Court's ruling the damages hearing was rescheduled for October 3, 2016. Shortly before the damages hearing the Court heard a motion filed by this Defendant to stay the default proceedings, which was denied; thereafter, the Court moved forward with the damages hearing. Upon presentation of the evidence the Court ruled Plaintiff was entitled to a Default Judgment against this Defendant in the amount of \$30,000.00 entered on October 17, 2016. Following the entry of the foregoing judgment Defendant filed a corresponding Motion to Stay the Enforcement of the Judgment on October 28, 2016, which was summarily denied on November 9, 2016. Defendant promptly filed its Motion for Reconsideration of the denial of his Motion to Stay the Enforcement with the Court not ruling until February 17, 2017.

Defendant filed his Notice of Appeal on March 13, 2017 with the instant Motion to Allow Funds to be Deposited being filed May 11, 2017.

ISSUES TO BE DETERMINED

- I. Whether Defendant is entitled to deposit funds with the Court pursuant to Rule 67?

ARGUMENT

I. **Rule 67 SCRPC provides for relief sought by Defendant during the pendency of his appeal.**

There is no dispute that a Default Judgment was entered against Defendant in the amount of Thirty Thousand and NO/100 (\$30,000.00) Dollars as a result of default proceedings due to his failure to timely file an Answer to Plaintiff's Complaint. Based upon the prevailing laws of this state, specifically, S.C. Code Ann. § 34-31-20 Plaintiff can be entitled to post-judgment interest on an award as has been entered in this case. However, Rule 67, SCRPC provides as follows:

In any action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing.

Defendant avers that over the course of the underlying proceedings culminating with the award of the aforementioned judgment there have been several errors of law that have occurred leading to a genuine dispute as to his responsibility for the judgment. Specifically, Defendant has appealed the Court's refusal to set-aside the entry of default and denial of the Motion to Stay the Enforcement of the Judgment. There are numerous cases addressing Rule 67, SCRPC and the issue of depositing funds with the Court have been addressed including *Renaissance Enterprises, Inc. v. Ocean Resorts, Inc.* wherein it was held that "a judgment debtor's deposit of funds into court pursuant to Rule 67 pending his own appeal stops the accrual of interest on the judgment." 334 S.C. 324, 326, 513 S.E.2d 617, 618 (1998); (*See also Russo v. Sutton*, 317 S.C. 441, 454 S.E.2d 895 (1995); *See also Small v. Pioneer Machinery, Inc.*, 330 S.C. 62, 496 S.E.2d 884 (Ct.App. 1998)). It was further noted by the Court that permitting such action "encourages the

debtor to pay the judgment and assures the judgment creditor the funds will be available.” *Id.*; (*quoting Russo v. Sutton*, 317 S.C. at 442, 454 S.E.2d at 896)).

In the instant case Defendant is seeking to exercise his constitutional right to appeal a ruling he believes to be rendered against him in error. In *Sears v. Fowler* the Court notes that the most commonly referenced purpose for the assessment of post-judgment interest is to “penalize non-payment of a judgment by a judgment debtor.” 293 S.C. 43, 45, 358 S.E.2d 574 (1987). However, the Court further expounded on this by citing to a Missouri Court of Appeals case noting that the requirement to pay interest on the judgment is to assess compensation for the debtors “further retention and use of the judgment creditor’s money.” *Id.* 293 S.C. at 45-46; (*quoting State ex rel. Southern Real Estate & Financial Company v. City of St. Louis*, 234 Mo.App. 209, 213, 115 S.W2d 513, 515 (1938)). However, in the instant case, as would be consistent with an Order granting this motion the Defendant would relinquish the funds associated with the judgment thereby depriving them of their use as well. Moreover, this is not an instance where a judgment debtor is simply refusing to pay a judgment but rather is an occasion where he is simply exercising his constitutional right to an appeal of rulings he believes to be in error.

Defendant submits that there is a genuine dispute that exists surrounding the judgment that has been entered against him and errors at law that are worthy of and rightfully on appeal. Therefore, Defendant submits that Rule 67, SCRCP would be appropriately applied in the instant case permitting Defendant’s funds to be deposited with the Court thereby terminating the continued accrual of post-judgment interest.

CONCLUSION

It is explicitly clear that this case involves a scenario where S.C. Code Ann. § 34-31-20 would apply thereby permitting, at the current rate set by the South Carolina Supreme Court of

7.75%, the accrual of post-judgment interest. However, based upon the existence of a genuine issue supporting the appeal undertaken by Defendant Rule 67, SCRCP is appropriate and as such Defendant should be permitted to deposit the judgment amount of Thirty Thousand and NO/100 (\$30,000.00) Dollars with the Court.

RESPECTFULLY SUBMITTED,

s/Matthew C. LaFave
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ATTORNEY FOR THE DEFENDANT

This 2nd day of June 2017
Columbia, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE	)	Case No(s) : 2015CP2307297
)	
Lahitsha Hampton,)	
)	
Plaintiff,)	
)	
-VS-	)	TRANSCRIPT OF RECORD
)	
George Edward Willoughby,)	
Richard Mann, and William)	
Sherman)	
)	
Defendant.)	

July 28, 2016
Greenville, South Carolina

B E F O R E :

HONORABLE LETITIA H. VERDIN, Judge.

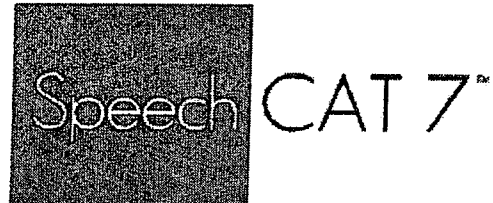
A P P E A R A N C E S :

BRIAN T. SMITH, Esquire
CHRISTINA BRADFORD, Esquire
Attorneys for the Plaintiff

MATTHEW C. LAFAVE, Esquire
Attorney for the Defendant

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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

1
2 (Proceedings begin on the 28th day of July, 2016
3 at approximately 9:53 a.m.)

4 **THE COURT:** All right. Looks like we've
5 got two motions. We've got Defendant William
6 Sherman's motion for relief and a damages
7 hearing, it looks like, also set on behalf of
8 the plaintiff. It seems like it would probably
9 make sense to do the motion to relieve or
10 motion for relief. It's set first. We can go
11 ahead and proceed with that one. All right.

12 **MR. LAFAVE:** Thank you, Your Honor. May it
13 please the Court.

14 **THE COURT:** Yes.

15 **MR. LAFAVE:** Matt LaFave on behalf of Mr.
16 William Sherman. Your Honor, we had filed, in
17 response to this matter, an order setting aside
18 -- an order entering default as to Mr. Sherman,
19 which was filed by the Court on March 24th of
20 2016.

21 Taking this case back, Your Honor, it stems
22 from a motor vehicle accident dated March 30th
23 of 2015 in which my client, William Sherman's,
24 vehicle was being driven by a gentleman, George
25 Willoughby. Mr. Sherman did not give Mr.

1 Willoughby the keys to the car, nor did he give
2 him permission to be using the vehicle. His
3 vehicle was rear-ended by Defendant Richard
4 Mann, pushed into oncoming traffic and struck a
5 vehicle being driven by the plaintiff.

6 The indications are, Your Honor, that Mr.
7 Sherman was personally served on December 14th,
8 2015. An affidavit of service was filed with
9 the Court, as signed by Brian Garrett with SC
10 Process Service. I discussed this matter
11 extensively with my client, Your Honor. He has
12 no recollection of either receiving the Summons
13 and Complaint or any subsequent communications.
14 There's going to be an indication from counsel,
15 I'm sure, that he called his office -- he,
16 being Mr. Sherman, called counsel's office
17 about the documents. He has no recollection of
18 that as well.

19 Your Honor, the good cause to have this
20 matter set aside is the fact that he has no
21 involvement in the case. He has no recollection
22 of receiving the Summons and Complaint. The
23 only thing that has any tie to him relative to
24 this underlying lawsuit is the fact that it was
25 his vehicle. It was not a family member driving

1 his vehicle. He has no connection to the
2 lawsuit, and thus was completely caught off
3 guard and unaware or unfamiliar with his being
4 involved in any sort of lawsuit.

5 The interest of justice, Your Honor, as
6 established in the Sundown case -- if you look
7 at the complaint, Your Honor, the interest of
8 justice would actually be undone if this
9 default were permitted to stand. If you look at
10 the complaint, counsel and plaintiff have
11 provided a litany of theories. They've argued
12 negligent entrustment, the Family Purpose
13 Doctrine, bailor/bailee, employer/employee,
14 master/servant, all of these different
15 theories. Yet, the only allegation that they
16 have relative to Mr. Sherman tying him to this
17 claim is the fact that it was his vehicle. They
18 make an allegation that he provided the vehicle
19 to Mr. Willoughby upon information and belief,
20 but without any specific facts.

21 Your Honor, the courts of South Carolina
22 have actually gone so far as to say that good
23 cause should be construed literally to promote
24 justice and dispose of cases on the merits as
25 opposed to disposing them on a mere

1 technicality. That is from Melton versus
2 Olenik, a Court of Appeals case from 2008, Your
3 Honor.

4 Then, you turn your attention, Your Honor,
5 to the Wham factors. Counsel, I'm sure, is
6 going to point to the fact that the motion to
7 set aside default did not get filed until June
8 1st of 2016 in comparison to service of the
9 Summons and Complaint being December 14th of
10 2015. Your Honor, we would point actually to
11 the fact that the entry of default did not
12 occur until March 24th of 2016. In fact, there
13 was no notification even to Mr. Sherman or to
14 his insurance company that parties had moved
15 forward with default.

16 The matter had been resolved between the
17 insurance companies with Mr. Mann's insurance
18 carrier paying for the total loss of the
19 vehicle. Therefore, the insurance carrier had
20 no reason to believe that there would be any
21 further involvement with their insured, my
22 client, Mr. Sherman.

23 So relative to the timeliness element, Your
24 Honor, we moved as soon as we were made aware
25 that the matter was in default, which is one of

1 the was files sent over to me.

2 **THE COURT:** All right.

3 **MR. LAFAVE:** As to the meritorious
4 defense, again, we would point to the
5 allegations based in the compliant. The only
6 allegation is that the claim that Mr. Sherman
7 provided the vehicle to Mr. Willoughby upon
8 information and belief. There's no allegations
9 that the two gentlemen are related. There's no
10 allegations that they had a working
11 relationship. Therefore, the only theory under
12 which this case could potentially move forward
13 as to Mr. Sherman would be that of negligent
14 entrustment theory.

15 Your Honor, the court has repeatedly
16 refused to adopt the Second Restatement of
17 Torts Sections 308 and 390 to expand negligent
18 entrustment in South Carolina. Therefore, the
19 only way for a negligent entrustment claim to
20 proceed is to show some evidence of
21 intoxication. There has to be alcohol involved
22 for a negligent entrustment claim to advance.
23 South Carolina has not yet adopted the Second
24 Restatement expanding that theory. There's been
25 no allegation, there's no evidence, nor is

1 there any assertion by the plaintiff that Mr.
2 Willoughby was under the influence of any
3 alcohol or, for that matter, that Mr. Sherman
4 had any knowledge of Mr. Willoughby's
5 consumption of alcohol, if any --

6 **THE COURT:** All right.

7 **MR. LAFAVE:** Finally, Your Honor, as the
8 third element of the Wham factors, which is the
9 prejudice that the plaintiff would suffer. This
10 is perhaps the most clear and easy argument.
11 Your Honor, the matter is still pending as to
12 Defendant George Willoughby. George Willoughby,
13 only recently, was served by publication with
14 an order being signed May 26th of 2016 by the
15 Court.

16 **THE COURT:** I see that. Yeah.

17 **MR. LAFAVE:** An Answer was only just
18 recently filed on his behalf, July 13th.
19 Therefore, if nothing else, the matter is still
20 going forward as to Defendant Willoughby.
21 Furthermore, Defendant Mann is already in
22 default. As Your Honor noted earlier from
23 looking at the motions roster, there's actually
24 a damages hearing as to Defendant Mann coming
25 up following this hearing. Therefore, plaintiff

1 has ample opportunity, ample avenues to fully
2 recover.

3 What's more important about the prejudice
4 element, Your Honor, is there has been no
5 formal discovery in the matter involving Mr.
6 Willoughby and the matter involving Mr.
7 Willoughby would actually fall under the same
8 insurance policy. So even if relief were
9 granted as to Mr. Sherman and if Mr. Sherman's
10 case were dismissed in some form or fashion
11 where there was no responsibility by him,
12 plaintiff still has access to the same
13 insurance policy by virtue of the fact that
14 they have a claim for negligence pending
15 against the driver of the insured automobile,
16 George Willoughby.

17 **THE COURT:** Mr. Smith, I assume -- are you
18 going to say there's an affidavit of service
19 that shows that Mr. Sherman here was personally
20 served?

21 **MR. SMITH:** Yes. Yes, Your Honor.

22 **THE COURT:** All right.

23 **MR. SMITH:** We have that affidavit in the
24 record.

25 **THE COURT:** And I -- so my question to you

1 would be, well, then why can't everybody do
2 this in every case? There's an affidavit of
3 personal service and then the person say I
4 don't remember ever getting it. I mean, it's --
5 so far as an initial showing of any reason,
6 just forgetting, it doesn't seem to overcome
7 the affidavit, nor does it seem to -- nor does
8 it seem to show any good reason why he didn't
9 respond or send it immediately.

10 Now, I've got no doubts certainly that as
11 quick as you got something, you -- you hopped
12 on it. I don't have any question about that
13 whatsoever. But it does seem to open -- it
14 would seem to open the door of this situation
15 while -- you know, while -- while -- I -- may
16 be understandable or may be we've all forgotten
17 something. It does seem to open the door that
18 just anybody can say that.

19 **MR. LAFAVE:** And I would agree, Your
20 Honor, except for the fact that -- and again,
21 the issue here -- the good cause in this
22 particular case actually is more tied into the
23 facts of the case. The explanation for why he
24 didn't respond and why it wasn't turned over to
25 the insurance company is his vehicle had

1 already been deemed a total loss. He had
2 already been compensated, not by his insurance
3 company, but by the gentleman that struck the
4 rear of his vehicle. And he didn't understand
5 -- Your Honor would obviously know if you
6 received these documents.

7 **THE COURT:** Sure.

8 **MR. LAFAVE:** I would know. Counsel would
9 know.

10 **THE COURT:** Sure.

11 **MR. LAFAVE:** But in this particular case,
12 we have a gentleman who has absolutely no
13 connection to this accident other than his
14 vehicle. He wasn't driving the vehicle. It's
15 not a situation where he, himself, personally
16 caused an accident and was at the scene of the
17 collision, was ticketed or anything in that
18 regard. So the good cause in this case is his
19 lack of an understanding as to how he could be
20 sued.

21 I get the fact and I understand Your
22 Honor's point about opening the door. That's
23 why I pointed to the Olenik case where the
24 courts say if it's in the interest of justice,
25 good cause should be construed liberally so

1 that cases can be adjudicated on the merits.
2 Because the problem with a case such as this,
3 Your Honor, is there is just no case against
4 him. There should have -- Mr. Sherman had no
5 business being sued to begin with. As you can
6 see clearly from the plaintiff's complaint, the
7 only assertion is he provided the vehicle.
8 That's not enough to bring a negligent
9 entrustment claim in South Carolina, Your
10 Honor.

11 And the problem that you would have, if the
12 order for default is not set aside, is you have
13 an individual for whom there is no merit to a
14 claim against is subjected to a personal
15 judgement simply by virtue of the fact that he
16 failed to respond timely to a complaint that
17 really should have never been. It should have
18 never included his name. There's ample
19 opportunities for them to recover in these
20 other avenues.

21 **THE COURT:** All right. All right. I -- I
22 -- I better see your point after that. Well,
23 Mr. Smith, let me ask you this. Wouldn't it be
24 better to -- wouldn't it be better to proceed
25 against the real party who Mr. Sherman says he

1 didn't even know this person had the car.

2 **MR. SMITH:** Your Honor, with all due
3 respect, if I can present my side of the case.
4 The issue here is good cause. Okay. We have
5 White Oak versus Lexington Insurance Company
6 that basically says that good cause works as a
7 threshold. If you don't have good cause, you
8 didn't get to the Wham factors. And the
9 elements of negligent entrustment, you don't
10 need just alcohol. Under Howle v. McDaniel, I
11 believe was a 1957 case that's still good on
12 the law, it clearly states that a negligent
13 entrustment is not just required to find
14 alcohol, Your Honor. This is, in my opinion,
15 not what is before the Court today.

16 What is before the Court today first is
17 whether there is good cause. To have good
18 cause, you need sufficient explanation. The
19 explanation in the motion, okay, is that he
20 wasn't served. Now, today's explanation, Your
21 Honor, is he doesn't remember. I brought my
22 process server, Brian Garrett, who is a
23 Greenville County Sheriff's deputy to testify
24 that he personally served him -- and we have
25 that in affidavit as part of the record -- on

1 December 15th. So that is not an explanation
2 and it's certainly not a sufficient one with
3 any evidentiary support.

4 The second element of good cause, Your
5 Honor, is, in my -- as you know, you have to
6 provide why it's in the interest of justice to
7 be relieved of default. There's -- in his
8 motion, Your Honor, there is nothing discussing
9 the interest of justice. And what is in his
10 argument before the Court today, Your Honor --
11 counsel has argued it before the Court today, I
12 do not believe we discussed why it's in the
13 interest of justice that he be relieved, only
14 the theory as to the legal case which is
15 relevant to what's before the Court.

16 You don't even get to the Wham factors,
17 Your Honor, in our opinion -- in our strong
18 opinion, which we feel is strongly supported by
19 case law, if you do not establish good cause as
20 shown in White Oak v. Lexington showing that
21 Sundown is now establishing a threshold.

22 Now, of course, if you want to discuss the
23 Wham factors, you have the timeliness of the
24 defendant's response. He was served on the 15th
25 of December 2015. The motion for relief was --

1 from default is June 2nd. That's seven months.
2 Then we have to discuss the prejudice to the
3 defendant. Well, we're ready to put on our
4 default hearing, Your Honor. My client has
5 suffered a concussion. Okay. Her memory is not
6 what it used to be. That's very important
7 because if the client is forced to go through
8 extensive litigation, as time goes on, she's
9 going to be less remember. If you have a client
10 which -- less remember the factors of the case
11 which will hurt her position.

12 Whether there is a meritorious defense, I
13 don't even think you get to that because you
14 first have to look at the good cause. And we
15 don't get over the threshold.

16 **THE COURT:** I got you.

17 **MR. SMITH:** If we don't get over the
18 threshold, that's really all we have to worry
19 about in my opinion, Your Honor.

20 **THE COURT:** All right. Anything you want
21 to say in brief reply?

22 **MR. SMITH:** And I --

23 **MR. LAFAVE:** One -- okay. I'm sorry.

24 **THE COURT:** That's fine.

25 **MR. SMITH:** I was just going to say

1 there's an order that just came out. O'Day -- I
2 mean, this is not -- it's persuasive, but it
3 came out of York County, O'Day v. Watkins.

4 **THE COURT:** Okay.

5 **MR. SMITH:** If I may approach, Your Honor?

6 **THE COURT:** Certainly.

7 **MR. SMITH:** It has just been ordered. It
8 says that simply not remembering being served
9 is no justification for the overturning of
10 default in this case -- in that case, and I
11 believe it applies here. I guess if we're going
12 to argue the interest of justice, Your Honor,
13 it would be on our side. There has to be the
14 default process. When you get a court document
15 that says you have 30 days to respond, that's
16 important.

17 I will say that he did call my office. I
18 have a call log in my -- just -- I do. When
19 clients call, we email it. And -- so we could
20 return phone calls, you know. This is what I
21 have in my -- if I may approach, I'll show you
22 the document.

23 **THE COURT:** Oh, sure. Yeah.

24 **MR. SMITH:** It says that he called,
25 Sherman, with his number listed above asking

1 what to do. I have -- my paralegal, Madison
2 Evans, took the message and referred it to my
3 associate, Christina Bradford, who then will
4 issue a -- we have an affidavit today or she
5 can testify that she told him to call his
6 insurance company. Your Honor --

7 **THE COURT:** That was back in December?

8 **MR. SMITH:** That was back in December.

9 **THE COURT:** I got you.

10 **MR. SMITH:** So in the interest of justice,
11 if we let every defendant out by simply
12 forgetfulness or saying that they weren't
13 served, what's the point of having the default
14 system? There is no --

15 **THE COURT:** I got you.

16 **MR. SMITH:** All right. Thank you.

17 **THE COURT:** I got you.

18 Anything you want to say in response?

19 **MR. LAFAVE:** Just briefly, Your Honor.
20 Number one, again -- and I'll point to the
21 Olenik case for the Court's sake -- good cause
22 is construed liberally so that cases could be
23 adjudicated on the merits, not based on a
24 technicality. We're not sitting before the
25 Court saying that there should be a blanket

1 carte blanche any time you move to have a
2 default entry set aside, it should be done.
3 That's not our argument.

4 Our argument here is, again, Mr. Sherman
5 should have never been sued to begin with.
6 Counsel points to a 1957 case. My argument
7 about the negligent entrustment theory and the
8 claim for negligent entrustment is not to try
9 the case before the Court. My argument there is
10 to show how the interest of justice would be
11 thwarted.

12 **THE COURT:** I got you.

13 **MR. LAFAVE:** The Gadson ex rel. Gadson
14 case, which is a 2007 case, the Court clearly
15 states here are the elements of negligent
16 entrustment, and they are all alcohol-based.
17 Again, the interest of justice argument is the
18 fact that my client is potentially -- simply
19 because of an oversight and a mishandling of
20 the Summons and Complaint is potentially going
21 to be saddled with a judgement potentially
22 leaving him uninsured in the event the
23 insurance carrier does something crazy and says
24 you didn't send us a Summons and Complaint, for
25 a lawsuit that he has no relation to. The

1 complaint doesn't set forth even a sufficient
2 basis for them to have brought a claim against
3 him.

4 **THE COURT:** I appreciate it.

5 **MR. LAFAVE:** Thank you, Your Honor.

6 **THE COURT:** You know, I have to tell you
7 it's not without great reservation, without
8 great reservation that I do this, but I'm going
9 to have to deny your motion for relief. This is
10 a situation where there are just so many
11 factors against him. I believe he may or may
12 not have a meritorious defense, but as Mr.
13 Smith correctly states, we don't get there.

14 This is a situation where Mr. Sherman was
15 personally served and they've got a witness who
16 is here live to testify, if necessary. And I
17 certainly believe that he would testify that he
18 personally served him. They have a call log
19 that they have kept timely with phone calls,
20 which is an excellent thing to do, in which Mr.
21 Sherman, at least, knew enough of the
22 seriousness of it to call the attorney on the
23 other side. There's a witness here who
24 evidently would say that she told him he should
25 call his insurance company.

1 All that being said, I do not find that Mr.
2 Sherman has provided good cause for his failing
3 to forward this on to you. Let me be very clear
4 that defense counsel acted in an extremely
5 timely manner when it was referred to him. But,
6 of course, there's nothing you could do about
7 it when your client does not forward the papers
8 on to you. It is not without reservation that I
9 do that, but your motion for relief is
10 respectfully denied.

11 We've got a damages hearing set, is that
12 correct, next coming up? Is that right?

13 **MS. BOWER:** Yes, Your Honor.

14 **MR. SMITH:** Can we have a break ---

15 **THE COURT:** Sure.

16 **MR. SMITH:** --- since we were earlier, so
17 I can talk to my opposing counsel?

18 **THE COURT:** Yeah, y'all go ahead and have
19 a talk.

20 (WHEREUPON, there is a brief pause.)

21 **THE COURT:** Y'all look -- y'all look like
22 y'all might be getting it -- getting the ball,
23 at least, advanced. Is that right?

24 **MR. SMITH:** I think so.

25 **THE COURT:** Okay.

1 **MR. SMITH:** This is -- this accident was,
2 you know, one of the -- I've been doing
3 personal injury law for a while on the
4 plaintiff's side. This may have been one of the
5 top crazy factors I've ever seen. You had one
6 car -- Mr. Sherman's car that was driven by
7 another defendant, Willoughby, that hit our
8 client. We just ask for your -- so we can maybe
9 try to get a settlement which may be a lot
10 quicker than trying to collect on a default
11 judgement ---

12 **THE COURT:** Sure.

13 **MR. SMITH:** --- if we could just continue.

14 **THE COURT:** Absolutely.

15 **MR. SMITH:** We understand the situation as
16 you correctly --

17 **THE COURT:** I totally --

18 **MR. SMITH:** In all fairness.

19 **THE COURT:** I totally -- I totally agree
20 with you. I love it when good lawyers talk and
21 try to get it worked out, so that's great.
22 That's fantastic. We'll just continue that
23 damages hearing.

24 **MS. BRADFORD:** Your Honor, is it possible
25 to go ahead and take care of Mann today and

1 continue Sherman?

2 **THE COURT:** Oh, sure.

3 **MS. BRADFORD:** That is what we would like
4 to do and then that way we have an opportunity
5 to speak with Mr. Lafave and --

6 **THE COURT:** Does that work -- does that
7 work for you?

8 **MR. LAFAVE:** Can you give us one second?

9 **THE COURT:** Sure.

10 **MR. LAFAVE:** Well, I need to figure
11 something out as to sort of the dynamics to it.

12 **THE COURT:** And I wonder, if y'all think
13 that through, if that's really what you want to
14 do.

15 **(WHEREUPON, counsel hold a conference off the**
16 **record.)**

17 **MR. SMITH:** Your Honor, we'll just ask for
18 a continuance as to them all and give us about
19 60 days so we can try to settle.

20 **THE COURT:** I thought that you might
21 really want to do that. That's sounds good.

22 **MR. SMITH:** We don't actually -- thank
23 you.

24 **THE COURT:** Perfect. All right. Very good.

25 **MR. SMITH:** All right.

1 **THE COURT:** Let me ask you this, does
2 either side want anything more than a Form 4
3 order on this?

4 **MR. SMITH:** Form 4 is fine, Your Honor,
5 as long -- just, you know, put what you mention
6 about you found no good cause was provided.

7 **THE COURT:** We'll certainly -- we
8 certainly will do it.

9 **MR. SMITH:** All right.

10 **THE COURT:** And if nobody's got any
11 objection, I'm going to put in there that you,
12 of course, timely acted.

13 **MR. SMITH:** Okay. Thank you.

14 **THE COURT:** All right.

15 **MR. SMITH:** Thank you, Your Honor.

16

17 (Proceedings conclude at approximately

18 10:18 a.m.)

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CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 8th day of June, 2017.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

Teresa B. Johnson

Official Court Reporter

State of South Carolina
County of Greenville

Court of Common Pleas

Lahitsha Hampton)	
)	
Plaintiff,	)	Transcript of Record
v.	)	2015-CP-23-07297
)	
George Willoughby, Richard Mann, and William Sherman)	
)	
<u>Defendants.</u>)	

November 1, 2016
Greenville, South Carolina

B E F O R E:

The Honorable Letitia Verdin, Judge.

A P P E A R A N C E S:

Christina Bradford, Esquire
Attorney for the Plaintiff

Matthew LaFave, Esquire
Attorney for the Defendant Sherman

Lisa Scott
Circuit Court Reporter

WITNESS

I N D E X

PAGE

No Witnesses.

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

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3 THE COURT: All right. So our first case is
4 *Hampton v. Willoughby*. And this is defendant's
5 motion to enforce default judgement; is that right?

6 MR. LAFAVE: It's a motion to stay.

7 THE COURT: Oh, I'm sorry, stay. Okay. Stay
8 enforcement. I was wondering what enforcement --
9 enforcement of default judgment was going to be.

10 Yes, sir.

11 MR. LAFAVE: Thank you, Your Honor. May it
12 please the Court?

13 THE COURT: Yes.

14 MR. LAFAVE: Just by way of a brief overview,
15 Your Honor. I represent William Sherman. He was
16 found to be in default in a motion before Your
17 Honor, and had that entry of default set aside which
18 was denied on October 3rd. It moved forward in the
19 default stage. We had, prior to the damages
20 hearing, filed a motion to stay the default
21 proceedings, which Judge Stilwell denied.

22 At the conclusion of that, the damages hearing
23 went forward. A default judgement was entered
24 against Mr. Sherman in the amount of \$30,000. It
25 was entered on October 17th. We immediately filed

1 this particular motion, Your Honor, to stay the
2 enforcement of that judgment consistent with Rule
3 62(b) and Rule 54(b) of the South Carolina Rules of
4 Civil Procedure.

5 Specifically, this case, Your Honor, as you're
6 well aware involves -- or it involves three separate
7 defendants. It involves George Willoughby, who is
8 alleged to have been negligent; Richard Mann, who is
9 also alleged to have been negligent, and then
10 William Sherman, who is alleged to have been
11 negligent in the entrustment of his vehicle to
12 George Willoughby.

13 THE COURT: Okay.

14 MR. LAFAVE: Okay. So it involves three
15 separate parties, three separate things.

16 Rule 62(b) talks about the Court having ordered
17 a final judgment consistent with another as a
18 condition of Rule 54(b), that the Court may stay the
19 enforcement of that judgement until the entering of
20 a subsequent judgment or judgements as to the
21 remaining claims and/or parties in the action.

22 Rule 54(b), Your Honor, specifically says, as
23 is the case in the incident litigation, "Where more
24 than one claim for relief has been presented to the
25 Court, which it has in this case, and that case is

1 continuing in litigation as to one or more other
2 claims or parties, the Court may upon a good showing
3 stay the enforcement of that particular judgment."

4 We believe in this case, Your Honor, it's
5 appropriate because of the nexus between the claims
6 for which Mr. Sherman has been found to be in
7 default and the claim of Mr. Willoughby so as to
8 void any consistent outcome.

9 Mr. Willoughby, you'll recall, was reportedly
10 driving Mr. Sherman's vehicle. There's been no
11 charge or no claim that he's been negligent; and,
12 therefore, we believe that to avoid an inconsistent
13 outcome, Your Honor, that a motion to stay the
14 enforcement of the judgment against Mr. Sherman
15 would be proper. Thank you.

16 THE COURT: Thank you. Yes.

17 MS. BRADFORD: Good morning, Your Honor. Did
18 you get a copy of our memo, or we have a copy for
19 you if you want.

20 THE COURT: All right. Thank you.

21 MS. BRADFORD: Permission to approach?

22 THE COURT: If you'll just give it to the
23 bailiff.

24 MS. BRADFORD: (Complying.)

25 Good morning, Your Honor. May it please the

1 Court?

2 THE COURT: Tell me your name, please, just for
3 the record.

4 MS. BRADFORD: It's Christina Bradford, Your
5 Honor.

6 THE COURT: Thank you. Okay.

7 MS. BRADFORD: I, along with Mr. Smith,
8 represent the plaintiff.

9 THE COURT: Of course.

10 MS. BRADFORD: Your Honor, what this boils down
11 to is the defense as to -- that Mr. LaFave has
12 presented on behalf of Defendant Sherman to
13 enforcing this judgement involves liability
14 defenses.

15 The only way to look at this as inconsis -- a
16 possible inconsistent outcome, is looking at the
17 liability defenses that have been put before the
18 Court. This would be the second time in defense of
19 the motion to stay.

20 Your Honor, before Judge Stilwell, he denied
21 the motion to stay and noted that in *Howard v.*
22 *Holiday Inn* as defaulting party has conceded
23 liability. Therefore, Mr. Sherman was able to
24 present defense -- able to defend the damages
25 hearing that occurred thereafter.

1 What we have here, Your Honor, is that all
2 claims with regards to Defendant Sherman have been
3 taken care of by way of the default and by way of
4 the judgment that has been obtained as actual
5 damages as to be determined in the order.

6 Your Honor, there are no claims that involve
7 Mr. Sherman also open because the claims against
8 Mr. Willoughby and Mr. Mann are separate and
9 distinct. Mr. Sherman, we can find multiple causes
10 of action and multiple direct causes of action that
11 involve his negligence in handing over the keys.

12 Mr. Willoughby and Mr. Mann's negligence that
13 we will be litigating over going forward involve a
14 collision and what occurred on that afternoon.

15 In addition, Your Honor, we did include an
16 order from Judge Miller in our brief. It's from
17 2014, and in it he discusses that there are not many
18 court cases looking over Rule 62. And he looked to
19 the Federal Rules for some guidance, and they offer
20 four factors that you can look at in whether to stay
21 the enforcement of a judgment.

22 THE COURT: All right.

23 MS. BRADFORD: And those factors involve the
24 likelihood of success of an appeal or for the
25 motions, the harm to the non-movement, the harm to

1 the movement, and the public interest.

2 Your Honor, we would assert that those
3 interests all weigh in favor of the plaintiff. It's
4 already been almost a year since she filed suit in
5 this action. She has medical bills and her car loan
6 outstanding on her credit report, and all the
7 defendant is seeking to do is further delay her
8 ability to collect on this judgment to be able to
9 start getting her life back.

10 THE COURT: All right.

11 MS. BRADFORD: Thank you, Your Honor.

12 THE COURT: Thank you. Anything you want to
13 say in response?

14 MR. LAFAVE: Briefly, Your Honor.

15 Again, we do not believe that these are
16 separate or distinct cases. It's clear that -- and
17 we've maintained all along -- we've acknowledged
18 that by virtue of this being a defaulting party that
19 Mr. Sherman has admitted the factual allegations as
20 they pertain to him. He's conceded liability as it
21 pertains to him as far as the negligent trust fund
22 claim does.

23 The issue here, Your Honor, is that the simple
24 act of handing over the keys is where we've run into
25 an issue because but for Mr. Willoughby, who is

1 operating the vehicle being involved in this
2 accident, then Mr. Sherman cannot have any exposure,
3 any connection to the damages.

4 And specifically in Rule 54(b), Your Honor, it
5 talks about when there's been an entry of a judgment
6 against one or more, but fewer than all of the
7 parties. It doesn't say whether there's been a
8 final judgment entered as to just one particular
9 party, then that ends it as to him and he doesn't
10 have a cause to make the claim or file this
11 particular motion for a stay under that particular
12 rule.

13 What it says is, so long as a cause of action
14 has been filed bringing multiple parties and
15 multiple claims together, that Rule 54(b) would
16 apply and would permit the stay of an enforcement of
17 the judgment.

18 As far as the delay, Your Honor, there's
19 litigation continuing, and to say that this is
20 simply a delay tactic is inconsistent. We believe
21 that the litigation is going to continue forward.
22 Plaintiff has acknowledged this much this morning by
23 saying, "We still intend on persuing our lawsuit
24 against these other two defendants." Therefore, we
25 believe that they're in the same -- essentially the

1 same position, only with the difference being that
2 there's a default in this particular case.

3 We also believe that the public interest, while
4 counsel wants to contend that it weighs heavily in
5 favor of her client. We believe that that's not
6 exactly the case, Your Honor. Public interest in
7 this particular case would favor the stay of this
8 enforcement of this judgement by virtue of the fact
9 that we need to see how the liability piece plays
10 out as to Defendant Willoughby so as to avoid an
11 inconsistent outcome.

12 Where Mr. Sherman would essentially be found
13 liable for the negligence of Mr. Willoughby, yet at
14 the end of the day, Mr. Willoughby likewise could
15 have not been liable for this accident and not been
16 negligent. Simply been in the wrong place at the
17 wrong time when rear ended by a codefendant and
18 pushed into oncoming traffic. And, therefore, we
19 believe the public interest would be served in
20 staying the enforcement of this judgement.

21 THE COURT: All right. Well, I appreciate the
22 arguments on both sides. I want to take a look at
23 the things that have been filed in this case, and
24 I'll issue a decision shortly. I would think I
25 would have a decision for you at the very latest by

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the end of next week. All right. Thank you.

MR. LAFAVE: Thank you, Your Honor.

MS. BRADFORD: Thank you, Your Honor.

(Proceedings concluded at 9:49 a.m.)

* * * * *

1 C E R T I F I C A T E O F R E P O R T E R
2 S T A T E O F S O U T H C A R O L I N A
3 C O U N T Y O F G R E E N V I L L E
4

5 I, the undersigned, Lisa Scott, Circuit Court
6 Reporter for the Thirteenth Judicial Circuit of the
7 State of South Carolina, do hereby certify that the
8 foregoing is a true, accurate and complete
9 transcript of record of all the proceedings had and
10 the evidence introduced in the hearing of the
11 captioned cause, relative to appeal in the Circuit
12 Court for Greenville County, South Carolina, on the
13 1st day of November, 2016.

14 I do further certify that I am neither of kin,
15 counsel, nor interest to any party hereto.

16

17

April 10, 2017

18

19

/s/Lisa Scott

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Lisa Scott
Circuit Court Reporter

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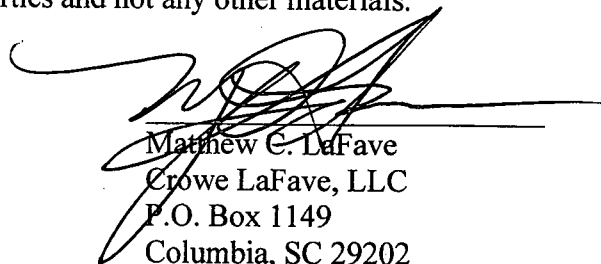
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Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other materials.

December 13, 2017



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