

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

JAN 03 2018

The Honorable Mikell R. Scarborough, Master-In-Suit ~~SC~~ Court of Appeals

Case No.: 2017-001628

Ann M. Blandin .....Respondent-Appellant,

-v-

City of North Charleston .....Appellant-Respondent.

**RESPONDENT-APPELLANT’S MOTION TO DISMISS  
APPELLANT-RESPONDENT’S APPEAL**

Respondent-Appellant, Ann Blandin (“Blandin”) moves to dismiss the Appellant-Respondent, City of North Charleston’s (“City”), appeal as unappealable. For the reasons stated below, the Court should dismiss the City’s appeal.

**PROCEDURAL AND FACTUAL BACKGROUND**

This appeal arises from a judgment in favor of Respondent-Appellant, Ann M. Blandin (“Blandin”) for damages arising from a motor vehicle collision on January 3, 2015 involving a vehicle driven by Blandin and a City of North Charleston Police cruiser.

Blandin filed a Complaint against the City in the Charleston County Court of Common Pleas on June 15, 2015. (Ex. 1 – Compl.). The City was served with the Summons and Complaint on June 30, 2015. City Mayor, R. Keith Summey, was served via Sandy Brown, an Administrative Assistant to the Clerk of Council, who was authorized to accept service on behalf of the City. The

City failed to file an Answer or appear as required by Rule 12, SCRC, within the required time and the Court entered default for the City on November 10, 2015, over four months after service was perfected. (Ex. 2 – Entry of Default). Following the Entry of Default and Order of Reference to Charleston County Master-in-Equity, Mikell R. Scarborough, the City filed a motion for relief from an entry of default pursuant to Rule 55(c) and for late answer pursuant 6(b), SCRC, on May 19, 2016, nearly eleven months after service of the Summons and Complaint. (Ex. 3 – Mot. to Set Aside Entry of Default). The Honorable J.C. Nicholson’s denied the City’s 55(c) and 6(b) motion in an Order filed June 15, 2016. (Ex. 4 – Order 06/15/16). The City filed a Rule 59(e), SCRC, motion to alter or amend on June 24, 2016. (Ex. 5 – Mot. to Reconsider). Judge Nicholson denied the City’s 59(e) motion in an order filed July 12, 2016. (Ex. 6 – Order 07/12/16).

Judge Scarborough heard testimony at the damages hearing on May 2, 2017. Following the damages hearing, the Court entered a judgment against the City in the amount \$5,250,000.00 but reduced judgment to \$300,000.00 pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-120(a). (Ex. 7 – Judg. And Order). Following the entry of the judgment the City did not file a Rule 60(b), SCRC, motion and instead served a Notice of Appeal on July 28, 2017. (Ex. 8 – City Not. of App.).

### ARGUMENT

**I. THE CITY HAS NOT COMPLIED WITH SOUTH CAROLINA APPELLATE COURT RULE 203(d)(1)(B)(ii) AND AS SUCH THIS APPEAL IS NOT PROPERLY BEFORE THIS COURT AND SHOULD BE DISMISSED**

The City failed to comply with Rule 203(d)(1)(B), SCACR, by not identifying the orders denying its 55(c) motion and 59(e) motion in its notice of appeal. (Ex. 8 – City Not. of App.). The City only identified the Order-Judgment filed June 23, 2017 in its Notice of Appeal. (Ex. 8 – City

Not. of Appeal). However, the sole issue in the City's brief relates to the denial of its 55(c) motion. (City Br. p. 1). The order denying the 55(c) or 59(e) motions were not identified in the City's Notice of Appeal and the Order-Judgment filed June 23, 2017 did not address the City's default. (Ex. 7 – Judg. And Order). Rule 203(d)(1)(B), SCACR, requires that the orders challenged on appeal must accompany the notice of appeal:

The notice of appeal filed with the Appellate Court *shall be accompanied* with the following: (i) Proof of service showing that the notice has been served on all respondents; (ii) *A copy of the order(s) and judgment(s) to be challenges on appeal if they have been reduced to writing . . . .*

(emphasis added).

Here the City did not include copies of either the 55(c) order or 59(e) order that it now challenges on appeal. The only order included in the City's Notice of Appeal relates to Blandin's damages and reduction to \$300,000.00 pursuant to S.C. Code Ann. § 15-78-120(a). However, the City does not challenge the amount of the judgment or the reduction to \$300,000.00 on appeal. As a result, the City's appeal should be dismissed on this ground alone.

## **II. THE CITY DID NOT FILE A 60(B) MOTION AND A DIRECT APPEAL DOES NOT LIE FROM A DEFAULT JUDGMENT**

In addition to the City failing to identify the 55(c) (or 59(e)) order in its notice of appeal, the City filed a Notice of Appeal instead of filing a 60(b) motion following the trial court's judgment. "[A] direct appeal does not lie from a default judgment." Winesett v. Winesett, 287 S.C. 332, 333, 338 S.E.2d 340, 341 (1985). Winesett involved an appeal from a family court order terminating alimony that was entered by default. Id. In dismissing the appeal the Supreme Court noted that "a default judgment may not be appealed to this Court." Id. at 334, 338 S.E.2d at 341. "The proper procedure for challenging a default judgment is to move the trial court to set

aside the judgment pursuant to Rule 60(b), SCRCP. An appeal may then be taken from the denial of this motion.” Id. at 334, 338 S.E.2d at 341.

Sundown Operating Co., Inc. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885 (2009), further holds that a 60(b) motion is the manner to challenge a default judgment: “Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the “good cause” standard established in Rule 55(c).” Id. at 608, 681 S.E.2d at 888.

Here, the City did not file a 60(b) motion and instead chose to file a Notice of Appeal that does not challenge the lower court’s judgment amount or reduction to the limitation upon liability. The Court should dismiss the City’s appeal of Judge Scarborough’s Judgment as unappealable. Under Winesett and Sundown, the proper procedure for challenging a default judgement is to file a 60(b) motion, and then appeal from that order if the motion is not granted, which the City has not done. Rather than following this established procedure, the City improperly attempts to appeal the Judgment-Order. Allowing the City’s appeal to proceed in this manner rather than from a 60(b) denial allows the City to argue whether good cause existed to set aside the entry of default under Rule 55(c), which is a lower standard than the more rigorous 60(b) standard after a judgment has already been entered. See Sundown, 383 S.C. at 608, 681 S.E.2d at 888-89 (“The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality, and often occurs later than, a clerk’s entry of default.”). In this case a judgment has already been entered so the City must challenge it under Rule 60(b), instead of 55(c).

#### CONCLUSION

For the reasons stated above, the Court should dismiss the City's appeal.<sup>1</sup>

Respectfully submitted,

PETERS, MURDAUGH, PARKER, ELTZROTH  
& DETRICK, P.A.

January 2, 2018  
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<sup>1</sup>This motion only address the City's appeal.

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**CERTIFICATE OF SERVICE**

This is to certify that I, *Megan C. Davis*, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Respondent-Appellant, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within the *Respondent-Appellant's Motion to Dismiss Appellant-Respondent's Appeal* to:

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*Megan C. Davis*  
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January 2<sup>nd</sup>, 2018  
Hampton, South Carolina

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The Honorable Jenny Abbott Kitchings  
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SC Court of Appeals

*Re: Ann Blandin v. City of North Charleston*  
*Appellate Case No.: 2017-001628*

Dear Ms. Kitchings:

Please find enclosed the original and six (6) copies of Respondent-Appellant's Motion to Dismiss Appellant-Respondent's Appeal in the above-referenced case. Please file the original and return a clocked copy of same in the self-addressed stamped envelope provided.

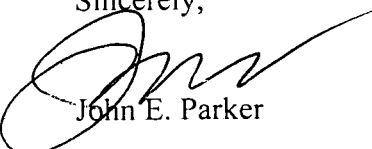
Also, please find enclosed the original and six (6) copies of Respondent-Appellant's Motion to Stay All Deadlines in the above-referenced case. Please file the original and return a clocked copy of same in the self-addressed stamped envelope provided.

In addition, please find our checks in the amount of \$25.00 each (\$50.00 total) for the filing fees.

By copy of this letter, I am serving all counsel of record with a copy of the same.

With kind regards, I am

Sincerely,



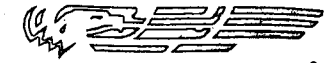
John E. Parker

JEP/mcd  
Enclosures as stated

cc: Robert H. Hood, Jr., Esquire  
Deborah Harrison Sheffield, Esquire  
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