

- b) In failing to use flashing lights and audible warning signals;
- c) In failing to keep a proper lookout;
- d) In failing to keep the automobile under proper control;
- e) In violating S.C. Code Ann. §56-5-1520
- f) In violating S.C. Code Ann. §56-5-760

5. As a result of the negligence of the defendant's agent and/or employee the plaintiff has suffered serious and severe injuries which caused her to incur expenses for hospitalization, medical care, and for medical treatments. The plaintiff has been permanently injured and will incur expenses for medical care in the future and will suffer pain and suffering for the remainder of her life.

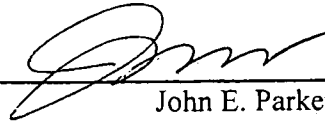
WHEREFORE, plaintiff prays for judgment against the defendant for actual damages, together with punitive damages in an appropriate amount, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

Lawrence C. Kobrovsky, Esquire
123 Meeting Street
Charleston, SC 29401

-AND-

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

BY: _____



John E. Parker
P.O. Box 457
Hampton, SC 29924
(803) 943-2111

ATTORNEYS FOR PLAINTIFF

June 12, 2015
Hampton, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ANN M. BLANDIN,)
)
Plaintiff,)
)
v.)
)
CITY OF NORTH CHARLESTON,)
)
Defendant.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-10-3392

ENTRY OF DEFAULT

FILED
2015 NOV 10 PM 3:24
JULIE J. ARMSTRONG
CLERK OF COURT

This matter comes before me on motion of John E. Parker, as counsel for the Plaintiff in the above-captioned action, pursuant to Rule 55(a), SCRCF for an Entry of Default against the Defendant City of North Charleston.

The Civil Action Cover Sheet, Summons, and Complaint were filed in this action on June 15, 2015. It appears from the Affidavit of Service filed on July 7, 2015 that the Defendant, City of North Charleston's authorized agent, Sandy Brown, was served by process server with the Civil Action Cover Sheet, Summons, and Complaint on June 30, 2015. According to the Affidavit of Service, Ms. Brown was authorized to accept service. It further appears from the Affidavit of John E. Parker that more than thirty-five (35) days have elapsed since June 30, 2015, excluding the day of such service and that no Answer, Demurrer or Notice of Appearance has been served upon him by or on behalf of the Defendant City of North Charleston, within the required time. No Answer, Demurrer, or Notice of Appearance has been filed in the Charleston County Court of Common Pleas by or on behalf of the Defendant, City of North Charleston, within the required time. It is therefore,

ORDERED, ADJUDGED, AND DECREED that the Defendant, City of North Charleston, is in default in this matter pursuant to Rule 55(a), and IT IS SO ORDERED.

[Signature]
The Honorable Julie J. Armstrong
Charleston County Clerk of Court

[Handwritten]
October 9, 2015
Charleston, South Carolina

EXHIBIT
2

ATTEST: A TRUE COPY
JULIE J. ARMSTRONG (SEAL)
CLERK C.P., G.S. & F.C.
By *[Signature]*
DEPUTY CLERK

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON)
 Ann M. Blandin,) C/A No. 2015-CP-10-3392
)
 Plaintiff,)
)
 Versus) NOTICE OF MOTION AND MOTION
) TO SET ASIDE ENTRY OF
 City of North Charleston,) DEFAULT AND FOR LATE ANSWER
)
)
 Defendant.)

FILED
 2016 MAY 19 PM 3:2
 CLERK OF COURT

TO: JOHN E. PARKER, ATTORNEY FOR THE PLAINTIFF:

The Defendant, City of North Charleston (hereinafter "the City"), by and through its counsel, and pursuant to Rules 6(b) and 55(c) of the South Carolina Rules of Civil Procedure, hereby moves before the Presiding Judge of the Charleston County Court of Common Pleas for an Order to Set Aside the Entry of Default and to Enlarge the Time for the City to Answer the Plaintiff's Summons and Complaint and allow the City to plead in response to Plaintiff's Complaint. In support of this Motion, the City would state as follows:

1. The City has acted with reasonable promptness to have this motion filed. The City retained the Hood Law Firm, LLC immediately upon receiving notice on May 17, 2016 that a default hearing had been scheduled for July 7, 2016. The City and undersigned counsel immediately began investigating the circumstances and filed this motion two days after receiving notice of the default. The City also separately filed an Answer to the Plaintiff's Complaint today. See Exhibit 1.

2. The City's failure to answer Plaintiff's Complaint in a timely manner was based on exceptional circumstances surrounding the employees in the City's



Risk Department regarding who was to send the Summons and Complaint to the City's liability claims handler.

3. Typically, Leslie Mitchum, Risk Manager for the City, forwards the Summons and Complaint to City's liability claims handler. Affidavit of Leslie Mitchum, Exhibit 2 at ¶5. In this instance, Ms. Mitchum instead sent an email from her mobile phone to Karen Helms, Claims and Insurance Coordinator for the City, requesting that Ms. Helms send the Summons and Complaint to City's liability claims handler. Ex. 2 at ¶6.

4. As this email from sent from her mobile phone, Ms. Mitchum explains that the likely reason she asked Ms. Helms to send the documents to the claims handler instead of herself was because Ms. Mitchum was out of the office and has had trouble sending emails with large attachments from her mobile phone. Ex. 2 at ¶7.

5. Although this email is currently in Ms. Helms's email inbox, she does not recall receiving the email at the time. Affidavit of Karen Helms, Exhibit 3 at ¶6. Ms. Helms has no explanation for why she either did not receive this email at the time or did not notice receiving this email at the time, Ex. 3 at ¶6, but both Ms. Mitchum and Ms. Helms both state that it would be extremely out of character for Ms. Helms to not read and respond to an email like this if it was delivered. Ex. 2 at ¶8; Ex. 3 at ¶6.

6. Ms. Mitchum and Ms. Helms have been employed in the Risk Department for the City since 2005 and 2011, respectively, and both attest that they are aware of no other occasions in which default was entered against the City

based on their failure to forward a Summons and Complaint to the City's liability claims handler. Ex. 2 at ¶14; Ex. 3 at ¶12.

7. Because of these unprecedented circumstances, the City's liability claims handler never received a copy of the Summons and Complaint. Ex. 2 at ¶11; Ex. 3 at ¶7. Therefore, legal counsel was not assigned to defend the City and no responsive pleading was filed.

8. The City would have answered the Plaintiffs Summons and Complaint in a timely fashion except for the exceptional circumstances which reasonably provide good cause for the City's failure to timely answer the Summons and Complaint. Ex. 2 at ¶12; Ex. 3 at ¶10.

9. Since learning on May 17, 2016 of Plaintiff's hearing for default on July 7, 2016, the City has diligently worked with its counsel to investigate this matter and prepare and file an Answer and Motion to Set Aside Default with supporting affidavits. Ex. 2 at ¶11; Ex. 3 at ¶9.

10. The City believes it has meritorious defenses to Plaintiff's claims, including that the Plaintiff was at fault for the accident. Ex. 2 at ¶13; Ex. 3 at ¶11. The investigating officer found both drivers to have contributed to the accident, finding that the Plaintiff "disregarded the stop sign."

11. No prejudice will result to Plaintiff as a result of the Court enlarging the time for this Defendant to Answer the Plaintiff's Complaint since doing so will not impede the ability of Plaintiff to present its claims, and delay alone is insufficient to establish prejudice. Additionally, the City will agree to enter an expedited Scheduling Order, so little to no delay would even occur.

12. South Carolina Rules of Civil Procedure (SCRCP), Rule 55(c) provides that “[f]or good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b).” A judgment by default has not been entered in this case. “Rule 55(c) should be liberally construed to promote justice and dispose of cases on the merits.” Melton v. Olenik, 379 S.C. 45, 664 S.E.2d 487, 492 (2008). “Any doubts about whether relief should be granted should be resolved in favor of setting aside the default so that the case may be heard on the merits.” Tolson v. Hodge, 411 F.2d 123, 130 (4th Cir.1969). It is within the trial court’s discretion whether to grant relief from an entry of default. Melton v. Olenik, 379 S.C. 45, 664 S.E.2d 487, 492 (2008). The standard for granting relief from an entry of default is “good cause,” and is “less stringent than the excusable neglect standard for setting aside a final judgment on the basis of mistake, inadvertence, excusable neglect, newly discovered evidence, or fraud.” Limehouse v. Hulsey, 397 S.C. 49, 70 723 S.E.2d 211, 221 (Ct.App. 2011). The “good cause” standard requires only that the party seeking relief from default to “provide an explanation for the default and give reasons why vacation of the default entry would serve the interests of justice.” Wilder v. Blue Ribbon Taxicab Corp., 396 S.C. 139, 719 S.E.2d 703, 706 (2011) (citing Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885, 888 (2009)). In deciding whether good cause exists and whether to set aside an entry of default, the trial court should consider the following factors: (1) the timing of the defendant’s motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted.” Melton v. Olenik, 379 S.C. 45, 664 S.E.2d 487, 492 (2008).

13. The policy that "Rule 55(c) should be liberally construed to promote justice and dispose of cases on the merits," Melton, 379 S.C. 54, is particularly true when the defendant is a governmental entity. Unlike the defendant that is an individual or private entity, the financial burden of a default judgment against a governmental entity's falls on the tax payers and citizenry instead of those responsible for the untimely Answer. This unfair and costly financial burden on the public is contrary to the public policy of the State of South Carolina. These policy concerns are specifically referenced in Rule 55(e) with regard to the State and the City believes that, as a political subdivision of the state, those concerns are equally present here.

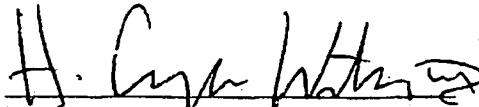
This Motion is supported by the applicable laws, statutes and South Carolina Rules of Civil Procedure. This Motion will be supported by a memorandum of law and additional affidavits as necessary.

The undersigned hereby certifies and affirms, in accordance with Rule 11 of the South Carolina Rules of Civil Procedure, as amended, that he has attempted consultation with opposing counsel in good faith in order to resolve the subject Motion. However, at the time of this filing the undersigned has not been able to reach opposing counsel.

WHEREFORE, this Defendant moves for this Court to set aside the entry of default against the City and to allow the City to responsively plead to Plaintiff's Complaint.

HOOD LAW FIRM, LLC

172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com



Robert H. Hood (SC #2599)
H. Cooper Wilson, III (SC #74939)
William G. DesChamps, IV (SC #100596)

*Attorneys for the Defendant
City of North Charleston*

5/19, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 19th day of May, 2016.

Amanda Juarez

EXHIBIT 1

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
)	
Ann.M. Blandin,	)	C/A No. 2015-CP-10-3392
)	
<i>Plaintiff,</i>)	
)	
Versus	)	DEFENDANT'S ANSWER TO
	)	PLAINTIFF'S COMPLAINT
City of North Charleston,)	
)	
)	
<i>Defendant.</i>)	

TO: JOHN E. PARKER, ATTORNEY FOR THE PLAINTIFF:

Comes now, the Defendant, City of North Charleston (hereinafter "the Defendant"), and hereby answers the allegations of the Plaintiff's Complaint, subject to any and all affirmative defenses, motions, or other qualifications, as follows:

1. Each and every allegation not specifically herein admitted is denied.
2. The Defendant admits the allegations contained in Paragraphs 1 and 2 of the Plaintiff's Complaint.
3. In response to the allegations contained in Paragraph 3 of the Plaintiff's Complaint, the Defendant admits only that on January 3, 2015 a vehicle operated by the Plaintiff and a vehicle operated by an employee of the Defendant collided at or near the intersection of McDowell Avenue and East Montague in the City of North Charleston. The Defendant denies the remaining allegations contained in Paragraph 3 of the Plaintiff's Complaint.
4. The Defendant denies the allegations contained in Paragraphs 4 and 5 of the Plaintiff's Complaint, including the WHEREFORE paragraph, those being the remaining allegations of the Plaintiff's Complaint.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(No Proximate Cause)

5. That, even if the Defendant was negligent, as alleged in the Complaint, which is specifically denied, the negligence of the Defendant is not the direct or proximate cause of any injury alleged by the Plaintiff and therefore the Defendant is not liable for any damages allegedly sustained by the Plaintiff.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Comparative Negligence)

6. That, upon information and belief, even if the Defendant was negligent as described in the Complaint, which is specifically denied, the Plaintiff's alleged injuries and damages, if any, resulted from, or were due to the negligence of the Plaintiff, which combined and concurred with any negligence on the part of the Defendant, which is specifically denied, to bring about the said damages, if any, as a proximate cause thereof and without which the same would not have occurred.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Unforeseeable/Superseding/Intervening Events)

7. Whatever injuries and damages, if any, may have been sustained by the Plaintiff, were due to an unforeseeable and/or superseding and/or intervening event beyond the control of the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Intervening Negligence/Negligence of a Third Party)

8. That, upon information and belief, even if the Defendant was negligent in the manner described in the Complaint, which is specifically denied, whatever injuries and damages, if any, which may have been sustained by the Plaintiff as a

result of the accident were the direct and proximate result of the intervening and superseding negligence of third parties, for whose conduct the Defendant bears no responsibility. Therefore, the Plaintiff is barred from recovery against the Defendant.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Punitive Damages Unconstitutional)

9. That any award or assessment of punitive damages as prayed for by the Plaintiff would violate the Defendant's Constitutional rights under the Fifth, Sixth and Fourteenth Amendments of the United States Constitution and comparable provisions of the South Carolina Constitution.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Unavoidable Accident)

10. That the accident involving the Plaintiff and the Defendant was the result of an unavoidable accident and, by reason thereof, the Defendant should not be liable and the Plaintiff should be barred from recovery against same.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Governmental Immunity/Tort Claims Act)

11. The Defendant is a governmental entity as defined by South Carolina Code Ann. § 15-78-30 and as such is immune from liability for any tort except as specifically waived by the South Carolina Tort Claims Act pursuant to § 15-78-60. The South Carolina Tort Claims Act constitutes the exclusive remedy for any tort committed by the employee of the governmental entity who is acting within the scope of his or her employment. No award for damages under Chapter 78 shall

include punitive or exemplary damages a pre-judgment interest or exceed the statutory limits contained therein. South Carolina Code Ann. Sec. 15-78-120.

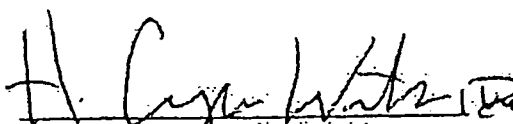
FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE,
THE DEFENDANT ALLEGES:
(Reservation and Non-Waiver)

12. The Defendant reserves any additional and affirmative defenses as may be revealed or become available to it during the course of their investigation and/or discovery in the case and is consistent with the South Carolina Rules of Civil Procedure.

WHEREFORE, having fully answered the Plaintiff's Complaint, and having asserted these affirmative defenses, the Defendant, City of North Charleston, prays that the Plaintiff's Complaint be dismissed with prejudice and that they be awarded the costs and reasonable fees associated with this matter, and such other relief as the Court may deem just and proper.

HOOD LAW FIRM, LLC

172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com



Robert H. Hood (SC #2599)
H. Cooper Wilson, III (SC #74939)
William G. DesChamps, IV (SC #100596)

Attorneys for the Defendant
City of North Charleston

5/19 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of the foregoing was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 10th day of May, 2016.

Amanda J. Smith

EXHIBIT 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
)	
Ann M. Blandin,	)	C/A No. 2015-CP-10-3392
)	
<i>Plaintiff,</i>)	
)	
Versus	)	AFFIDAVIT OF LESLIE MITCHUM
)	
City of North Charleston,)	
)	
)	
<i>Defendant.</i>)	

PERSONALLY APPEARED BEFORE ME, LESLIE MITCHUM, who after being duly sworn, deposes and says as follows:

1. My name is Leslie Mitchum.
2. I am over the age of 18.
3. I am employed as Risk Manager for the City of North Charleston.
4. On June 30, 2015, Beth Woodall, legal assistant for the City of North Charleston, emailed me a copy of the Summons and Complaint in the above-referenced lawsuit.
5. Upon receiving a copy of the Summons and Complaint, protocol is typically for me to forward the same to the City's liability claims handler to assign legal counsel to defend the City.
6. Email records indicate that on June 30, 2015, I sent an email from my mobile phone to Karen Helms, who works ^{for} with me in the Risk Department for the City of North Charleston as Claims and Insurance Coordinator, forwarding the email from Ms. Woodall and requesting that Ms. Helms send the Summons and Complaint to the City's liability claims handler.

7. I do not specifically recall sending this particular email to Ms. Helms or the circumstances surrounding it, as it was nearly a year ago. However, the text of the email shows that I sent it from my mobile phone, which would indicate that I was not in my office. There have been occasions where I was unable to send emails with large attachments from my mobile phone, which likely is the reason why I asked Ms. Helms to forward the Summons and Complaint for this lawsuit to the City's liability claims handler instead of sending the documents myself.

8. Upon information and belief, Ms. Helms did not realize until very recently that I had made this request to her and therefore did not send a copy of the Summons and Complaint to the City's liability claims handler. I do not know the reason why Ms. Helms either did not receive this email at the time or did not notice receiving the email, but it would be extremely out of character for Ms. Helms to not read and respond to such an email upon receiving it.

9. I was under the belief that Ms. Helms had forwarded a copy of the Summons and Complaint to the City's liability claims handler. Accordingly, I did not send the Summons and Complaint to the City's liability claims handler and, upon information and belief, the City's liability claims handler never received a copy of the Summons and Complaint.

10. On May 17, 2016, I was forwarded a letter from counsel for the Plaintiff in the above-referenced lawsuit advising that a default hearing had been scheduled for July 7, 2016. Prior to receiving this letter, I was not aware that default had been entered against the City in this lawsuit.

11. Since learning of the default, Ms. Helms and I have worked diligently with the City's attorneys and liability claims handler to understand what happened and promptly respond to this issue.

12. The City would have answered the Plaintiff's Summons and Complaint in a timely fashion except for these exceptional circumstances which I believe reasonably provide good cause for the City's failure to timely answer the Summons and Complaint.

13. Based on the investigation of the subject accident, I believe the City has meritorious defenses to the lawsuit, including that the Plaintiff was at fault for the accident.

14. I have been employed as Risk Manager for the City of North Charleston since 2005 and I am not aware of any other occasion of the City being in default based on a failure to retain counsel following receipt of a Summons and Complaint.

FURTHER THE AFFIANT SAYETH NOT!

Leslie Mitchum
Leslie Mitchum

SWORN TO AND SUBSCRIBED before me
this 19th day of May 2016.

Cathy D. Cottum
NOTARY PUBLIC FOR South Carolina
MY COMMISSION EXPIRES: 3-16-20

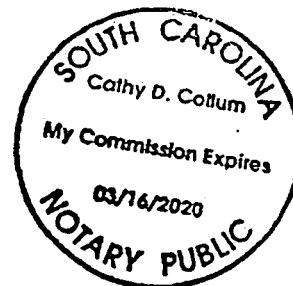


EXHIBIT 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	
)	
Ann M. Blandin,	)	C/A No. 2015-CP-10-3392
)	
<i>Plaintiff,</i>)	
)	
Versus	)	AFFIDAVIT OF KAREN HELMS
)	
City of North Charleston,)	
)	
)	
<i>Defendant.</i>)	

PERSONALLY APPEARED BEFORE ME, KAREN HELMS, who after being duly sworn, deposes and says as follows:

1. My name is Karen Helms.
2. I am over the age of 18.
3. I am employed as the Claims and Insurance Coordinator for the City of North Charleston.
4. Upon information and belief, on June 30, 2015, Leslie Mitchum, Risk Manager for the City of North Charleston, was emailed a copy of the Summons and Complaint in the above-referenced lawsuit.
5. Upon receiving a copy of a Summons and Complaint, protocol is typically for Ms. Mitchum to forward the same to the City's liability claims handler to assign legal counsel to defend the City.
6. I did not realize until this week that Ms. Mitchum had apparently emailed me from her mobile phone on June 30, 2015 requesting that I forward the Summons and Complaint to the City's liability claims handler. I do not recall receiving this email on June 30, 2015 but can observe now that it is in my email inbox. I do not have an explanation for why I either did not receive this email at the

time or did not notice receiving this email but can state that it would be extremely out of character for me to not read and respond to such an email upon receiving it.

7. Upon information and belief, Ms. Mitchum was under the mistaken belief that I had forwarded a copy of the Summons and Complaint to the City's liability claims handler and therefore did not do so herself. Accordingly, upon information and belief, the City's liability claims handler never received a copy of the Summons and Complaint.

8. On May 17, 2016, I was forwarded a letter from counsel for the Plaintiff in the above-referenced lawsuit advising that a default hearing had been scheduled for July 7, 2016. Prior to receiving this letter, I was not aware that default had been entered against the City of North Charleston in the lawsuit.

9. Since learning of the default, Ms. Mitchum and I have worked diligently with the City's attorneys and liability claims handler to understand what happened and promptly respond to this issue.

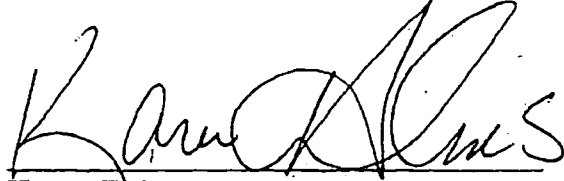
10. The City would have answered the Plaintiff's Summons and Complaint in a timely fashion except for these exceptional circumstances which I believe reasonably provide good cause for the City's failure to timely answer the Summons and Complaint.

11. Based on the investigation of the subject accident, I believe the City has meritorious defenses to the lawsuit, including that the Plaintiff was at fault for the accident.

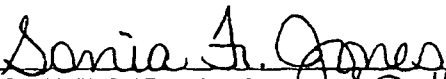
12. I have been employed in the Risk Department for the City of North Charleston since 2011 and I am not aware of any other occasion of the City being in

default based on a failure to retain counsel following receipt of a Summons and Complaint.

FURTHER THE AFFLIANT SAYETH NOT!


Karen Helms

SWORN TO AND SUBSCRIBED before me
this 19 day of May 2016.


NOTARY PUBLIC FOR South Carolina
MY COMMISSION EXPIRES: 8/12/2025

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3392

Ann M. Blandin

City of North Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or
	<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.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41 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

FILED
 2016 JUN 15 AM 10:50
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY [Signature]

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: Upon review, Defendant's Motion to Set Aside Default filed on May 19, 2016 and argued before this Court on June 14, 2016 is denied.

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

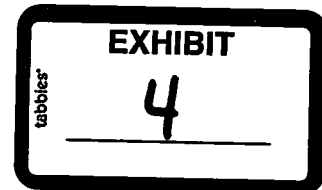
INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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.

[Signature]
 Circuit Court Judge

2117
 Judge Code

6/14/16
 Date



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
 COUNTY OF CHARLESTON)
 Ann M. Blandin,) C/A No. 2015-CP-10-3392
)
 Plaintiff,)
)
 Versus)
)
 City of North Charleston,)
)
 Defendant.)

**DEFENDANT'S NOTICE OF
 MOTION AND MOTION TO
 RECONSIDER**

FILED
 2016 JUN 21 PM 3:53
 JULIE J. ARMSTRONG
 CLERK OF COURT

TO: JOHN E. PARKER, ATTORNEY FOR THE PLAINTIFF:

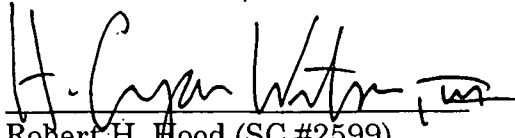
Pursuant to Rule 59(e), SCRCP, the Defendant, City of North Charleston ("City"), hereby moves for reconsideration of the Court's order denying its Motion to Set Aside Entry of Default, entered on June 15, 2016, and received in the mail by the undersigned counsel on June 17, 2016.

By motion filed May 19, 2016, the City moved the Court to set aside the entry of default judgment pursuant to Rule 55(c), SCRCP, showing that good cause and the interest of justice dictate that the entry of default against the City should be vacated. A hearing was held on June 14, 2016 and the Court issued its ruling denying the motion in a Form 4 order without stating its reasoning.

WHEREFORE, the City makes this motion asking the Court to reconsider and grant the City's motion based on the good cause shown or, in the alternative, the City respectfully requests the Court issue an order stating its reasoning for holding that the Defendant had not shown "good cause" and thus denying the City's Motion to Set Aside Entry of Default in order to preserve this issue for future appeal.



HOOD LAW FIRM, LLC
172 Meeting Street
Post Office Box 1508
Charleston, SC 29402
Phone: (843) 577-4435
Facsimile: (843) 722-1630
Email: Info@hoodlaw.com



Robert H. Hood (SC #2599)
H. Cooper Wilson, III (SC #74939)
William G. DesChamps, IV (SC #100596)

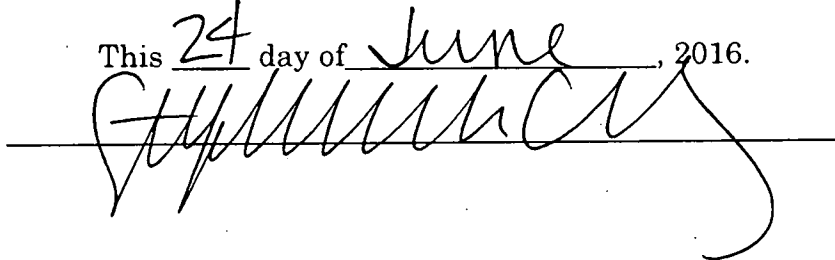
*Attorneys for the Defendant
City of North Charleston*

6/24, 2016
Charleston, South Carolina

CERTIFICATE OF SERVICE

I certify that on this date a copy of **DEFENDANT'S NOTICE OF MOTION AND MOTION TO RECONSIDER** was served on each party or counsel of record by mailing, e-mailing, facsimile, or hand delivery in the manner prescribed by the applicable Rule of Civil Procedure.

This 24 day of June, 2016.



FILED

CASE NO. 2015-CP-10-3392

2016 JUL 12 PM 3:32

Ann M. Blandin
 PLAINTIFF(S)

JULIE J. ARMSTRONG
 CLERK OF COURT

City of North Charleston
 DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <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.
- 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 to Reconsider filed on June 24, 2016 is denied as to the request for the Court to withdraw its prior ruling. However, the Court does clarify that the June 14, 2016 Order denied the Motion to Set Aside Entry of Default because failure to forward an e-mail does not amount to good cause shown for failure to timely file an Answer. In addition, the City of North Charleston is not a state agency under SCRPC Rule 55(e).

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : _____

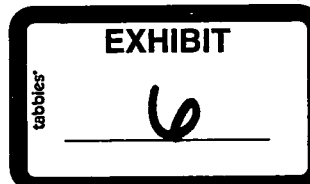
INFORMATION FOR THE PUBLIC INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
If applicable, describe the property, including tax map information and address, referenced in the order: N/A		

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.

[Signature]
 Circuit Court Judge

2117
 Judge Code

7/2/16
 Date



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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-3392

FILED
 2017 JUN 23 AM 11:16
 JULIE J. APOSTOLONG
 CLERK OF COURT

Blandin

City of North Charleston

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- 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 ATTACHED

ORDER INFORMATION

This order ends does not end the case.


Additional Information for the Clerk : _____

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

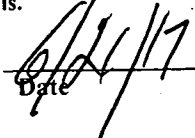
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Ann M. Blandin	City of North Charleston	\$300,000.00
		\$
		\$

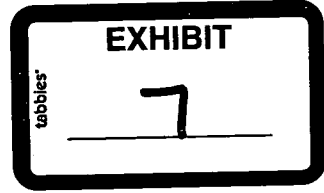
If applicable, describe the property, including tax map information and address, referenced in the order:

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 

3062
 Judge Code

Date 



For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
ANN M. BLANDIN,)
)
Plaintiff,)
)
v.)
)
CITY OF NORTH CHARLESTON,)
Defendant.)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2015-CP-10-3392

FILED
2017 JUN 23 AM 11:16
JULIE J ARMSTRONG
CLERK OF COURT
BY
ORDER

This matter came before the Court on May 2, 2017 for a hearing to determine the amount of damages sustained by the Plaintiff, Ann M. Blandin. Present before the Court were John E. Parker and William F. Barnes, III for Ms. Blandin and Robert H. Hood Jr. and William G. DesChamps, IV for the City of North Charleston ("City"). After hearing testimony and reviewing the exhibits, the Court makes the following findings regarding Ms. Blandin's damages.

BACKGROUND

This action arises out of a serious collision that occurred on January 3, 2015 in the City of North Charleston. (Compl. ¶ 3). On that day, Ms. Blandin was traveling North on McDowell Avenue in North Charleston. (Compl. ¶ 3). She stopped for a stop sign at the intersection of McDowell Avenue and East Montague Avenue. (Compl. ¶ 3). While stopped she looked both ways and there was no traffic approaching from either direction which posed a danger to her crossing East Montague Avenue. (Compl. ¶ 3). Ms. Blandin was almost across East Montague Avenue when her vehicle was struck by a North Charleston Police car being operated by an employee of North Charleston at an unlawfully high rate of speed without flashing lights or other audible warning devices as required by law. (Compl. ¶ 3).



Ms. Blandin filed a Complaint against the City of North Charleston on June 15, 2015. (Compl.). The Complaint alleges that the City of North Charleston's employee was negligent in several particulars: in traveling at an excessive and unlawful rate of speed; in failing to use flashing lights and audible warning signals; in failing to keep a proper lookout; in failing to keep the automobile under proper control; in violating § 56-5-1520; and in violating S.C. Code of Laws Ann. § 56-5-760 (1976, as amended). (Compl. ¶ 4 (a)-(f)). The Complaint alleges that the collision caused Ms. Blandin to suffer severe and permanent injuries which caused her to incur expenses for medical treatment. (Compl. ¶ 5). As a result of the collision Ms. Blandin will also suffer pain for the rest of her life. (Compl. ¶ 5).

North Charleston was served with the Complaint on June 30, 2015. (Aff. of Service). City of North Charleston Mayor, R. Keith Summey, was served in addition to Sandy Brown, an Administrative Assistant to Clerk of Council, who was authorized to accept service on behalf of the City. (Aff. of Service). The Affidavit of Service was filed on July 7, 2015. (Aff. of Service).

On November 9, 2015, The Honorable Julie J. Armstrong, Charleston County Clerk of Court, entered default against the City pursuant to Rule 55(a), SCRPC, based on the accompanying affidavit that no answer or other responsive pleading was filed as required by Rule 12, SCRPC. (Entry of Default).

On April 5, 2016, The Honorable Thomas L. Hughston, Jr. entered an Order referring the matter to this Court, pursuant to Rule 53(b), SCRPC, to determine the damages to be awarded to Ms. Blandin since the City is in default. (Order of Reference). On May 17, 2016, the City received notice of a damages hearing that was scheduled for July 7, 2016. (Mot. to Set Aside Default). The City moved to set aside the default and for late answer pursuant to Rules 6(b) and 55(c), SCRPC. (Mot. to Set Aside Default).



Following a hearing on the City's motion on June 14, 2016, The Honorable J. C. Nicholson, Jr., denied the City's motion to set aside default and for late answer. (Order filed June 15, 2016). On June 24, 2016, the City moved pursuant to Rule 59(e), SCRCP, to reconsider the Court's June 15, 2016 Order denying the motion to set aside default and for late answer. (Mot. to Reconsider). In an Order filed July 12, 2016, the Court denied the motion to reconsider as to the request for the Court to withdraw its prior ruling. The Court clarified its prior order, however, by noting that "the June 14, 2016 Order denied the Motion to Set Aside Entry of Default because failure to forward an e-mail does not amount to good cause shown for failure to timely file an Answer. In addition, the City of North Charleston is not a state agency under SCRCP 55(e)." (Order filed July 12, 2016).

I. DAMAGES AWARD

This matter was scheduled for a damages hearing on May 2, 2017 at 2:00 pm. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). The Court heard testimony from Paul Pritchard, M.D, Ann Blandin, and Corona Campbell. The City cross-examined each witness to contest damages. Dr. Pritchard testified as an expert witness regarding Ms. Blandin's injuries and damages. According to Dr. Pritchard, Ms. Blandin sustained a fractured vertebra, multiple fractured ribs, and a concussion as a result of the collision on January 3, 2015. Ms. Blandin remained hospitalized at MUSC from January 3, 2015 through January 6, 2015. (Ex. 1). At the time Ms. Blandin was discharged, she was immobile. Ms. Blandin returned to MUSC on January 11, 2015 and remained hospitalized until January 21, 2015. (Ex. 2). Dr. Pritchard testified that, at the time of the collision on January 3, 2015, Ms. Blandin was on peritoneal dialysis which she self-administered. Following this collision, Ms. Blandin could no longer receive peritoneal dialysis and instead had to switch to hemodialysis.



According to Dr. Pritchard, this switch was, to a reasonable degree of medical certainty, related to the collision of January 3, 2015.

Dr. Pritchard testified about Ms. Blandin's extensive medical treatment following the collision. Ms. Blandin's medical expenses were admitted into evidence subject to several redactions – Exhibits 1-30. Dr. Pritchard testified that, with the exception of one provider, Ms. Blandin's medical expenses were caused, to a reasonable degree of medical certainty, by the collision of January 3, 2015. Ms. Blandin's daughter detailed the treatment from the other provider. Ms. Blandin incurred medical expenses totaling \$1,451,190.91. (Ex. 31). Dr. Pritchard testified that her injuries, to a reasonable degree of medical certainty, were permanent.

The City cross-examined Dr. Pritchard about the switch from peritoneal dialysis and hemodialysis and that he had not taken out the costs of the peritoneal dialysis from the total medical expenses of \$1,451,190.91 that Ms. Blandin received for approximately three (3) months following the collision.

Following Dr. Pritchard, Ms. Blandin testified about her life prior to and since the collision. Prior to the collision Ms. Blandin lived by herself and self-administered peritoneal dialysis. However, following this collision she was never able to live by herself and was dependent on others to take care of her. She also has great difficulty moving her legs and is confined to a wheelchair.

Lastly, Ms. Blandin's daughter, Corona Campbell, testified about the impact the collision had on Ms. Blandin, and verified Ms. Blandin's inability to walk and take care of herself.

Having conducted a hearing on the damages Ms. Blandin sustained, I find the testimony of Paul Pritchard, MD, Ann Blandin, and Corona Campbell to be credible. Ms. Blandin was born on March 17, 1944, which according to S.C. Code of Laws Ann. § 19-1-150 (1976, as amended) she has a life expectancy of 14.31 years. Ms. Blandin sustained debilitating injuries in the collision that are

permanent and dramatically altered her life. Additionally, I find the testimony of Paul Pritchard credible that the change from peritoneal dialysis to hemodialysis was caused from the collision. Even taking into consideration the three (3) months of peritoneal dialysis following the collision that Ms. Blandin would have incurred regardless, I find that the medical expenses total \$1,000,000.00 related to this collision. I also award and find \$4,250,000.00 for Ms. Blandin's damages related to past pain and suffering, future pain and suffering, and permanent injury. The total judgment against the City is in the amount of \$5,250,000.00

II. APPLICATION OF CAPS CONTAINED IN S.C. CODE OF LAWS ANN. § 15-78-120(A) (1976, as amended).

Having determined the amount of the judgment against the City, the next issue is whether the judgment should be lowered to the caps contained in § 15-78-120(a) ("Cap"), that would impose a cap of three hundred thousand dollars. Ms. Blandin contends that the Cap does not apply to this action as it is a limitation of liability that must be pled as an affirmative defense that is different than an exception to the waiver of immunity contained in S.C. Code of Laws Ann. § 15-78-60 (1976, as amended). In support of this position, Ms. Blandin relies on several cases from the South Carolina Supreme Court and Court of Appeals which state that "[t]he burden of establishing *a limitation upon liability* or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense." Strange v. SC. Dept. of Hwys. & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994) (emphasis added); see also, Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) ("The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense."); Niver v. S.C. Dep't of Hwys. & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App. 1990) ("The burden of establishing a limitation upon liability or



an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense.”).

According to Ms. Blandin the disjunctive “or” in the above cases create two categories of affirmative defenses that are different - (1) a limitation upon liability or (2) an exception to the waiver of immunity contained in § 15-78-60. Ms. Blandin submits that both categories must be pled as affirmative defenses based on South Carolina law. For example, in Pike v. S.C. Dept. of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000), the Supreme Court held that “when a governmental entity asserts the *affirmative defense of discretionary immunity* under the Tort Claims Act, the *burden of proof is on the governmental entity* and this burden is one of persuasion by a preponderance of the evidence.” Id. at 232, 540 S.E.2d at 91 (emphasis added). Given that the City is in default and does not have any affirmative defense except to cross-examine witnesses and object to evidence, the limitation upon liability imposed by S.C. Code of Laws Ann. § 15-78-120 (1976, as amended) cannot be asserted.

The City relies on the Court of Appeals decision in Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 607 S.E.2d 711 (Ct. App.2005). Parker involved an automobile collision that involved a van owned by the Spartanburg Sewer District. Id. at 279, 607 S.E.2d at 713. The Sewer District did not plead the Tort Claims Act in its answer. Id. On the first day of trial the Sewer District filed an amended answer, essentially asserting the Cap. Id. The trial judge stated that the amended answer that the Sewer District filed could not be filed without permission of the Court. Id. at 280, 607 S.E.2d 713. The Sewer District then moved to amend its answer to conform to the evidence, which the trial court denied. Id. The jury returned a verdict for \$450,000.00. Id. The Sewer District moved to reduce the amount to the Cap but the trial court denied that motion. Id. In reversing the trial court, the Court of Appeals noted that there is nothing in the South Carolina Tort Claims Act “mandating that a governmental entity plead the monetary statutory cap included within section 15-78-20.” Id. at



285, 607 S.E.2d at 716. The Court of Appeals also held that the trial court abused its discretion in denying the Sewer District's motion to amend its answer. Id. at 287, 607 S.E.2d at 717; see also S.C. Code of Laws Ann. § 15-78-20 (b) (1976, as amended) ("The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents ...") and S.C. Code of Laws Ann. § 15-78-20 (f) (1976, as amended) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.").

After reviewing these cases and the South Carolina statutory requirements, I conclude as a matter of law that the statutory cap and the Court of Appeals decision in Parker controls. Accordingly, I must apply the Cap and reduce the judgment to \$300,000.00. The Cap operates by law and does not have to be pled as an affirmative defense. I reduce the \$5,250,000.00 judgment proportionately based on the medical expenses and other damages and award \$57,150.00 allocated to Ms. Blandin's medical expenses and \$242,850.00 related to past pain and suffering, future pain and suffering, and permanent injury.

CONCLUSION

For these reasons, the Court applies the Cap and enters judgment against the City for \$300,000.00.

IT IS SO ORDERED.

Charleston, South Carolina
May 6/21, 2017


The Honorable Mikell R. Scarborough

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Charleston County
Court of Common Pleas
Mikell R. Scarborough, Master-in-Equity

Case No. 2015-CP-10-3392

FILED
2017 AUG -3 PM 3:17
JULIE L. ARMS TRONG
CLERK OF COURT

Ann M. Blandin,

Respondent,

v.

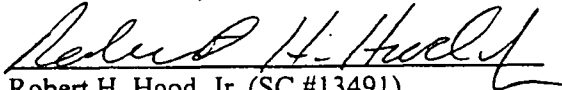
City of North Charleston,

Appellant.

NOTICE OF APPEAL

City of North Charleston appeals from the Order-Judgment of the Honorable Mikell R. Scarborough, filed June 23, 2017. The undersigned received written notice of entry of the final order ending the case on July 3, 2017.

Hood Law Firm, LLC



Robert H. Hood, Jr. (SC #13491)

William G. DesChamps, IV (SC #100596)

Deborah H. Sheffield, *Of Counsel* (SC #2757)

172 Meeting Street ~ P.O. Box 1508

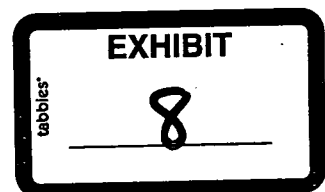
Charleston, South Carolina 29402

Phone: (843) 577-4435 / Facsimile: (843) 722-1630

Attorneys for the Appellant

City of North Charleston

July 28, 2017
Charleston, South Carolina



Other Counsel of Record:

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kobrovskyl@bellsouth.net

And

John E. Parker, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
P: 803-943-2111 / P: 803-580-6928/F: 803-914-2014
E: jparker@pmped.com

Attorneys for the Respondent

Certificate of Service

I, Robert H. Hood, Jr., attorney for the Appellant do hereby certify that on 7/28, 2017, I served a copy of the Notice of Appeal on Counsel for Respondent, via U.S. Mail, first class, postage prepaid to the following address:

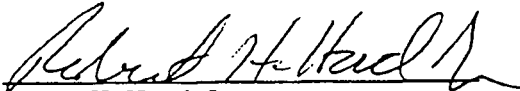
Lawrence C. Kobrovsky, Esquire
123 Meeting Street
Post Office Box 1726
Charleston, SC 29402-1726
Ph: (843) 853-3703 / Fax: (843) 853-2331
kobrovskyl@bellsouth.net

And

John E. Parker, Esquire
Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A.
101 Mulberry Street East
P.O. Box 457
Hampton, SC 29924
P: 803-943-2111 / P: 803-580-6928/F: 803-914-2014
E: jparker@pmped.com

I further certify that I filed a copy of the Notice of Appeal with the Clerk of the Court for Charleston on this same date at:

Julie Armstrong, Clerk
Charleston County – Court of Common Pleas
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258


Robert H. Hood, Jr.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-3392

FILED
 2017 JUN 23 AM 11:16
 JULIE J. ALFSTRONG
 CLERK OF COURT

Blandin _____

City of North Charleston _____

PLAINTIFF(S)

DEFENDANT(S)

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

ORDER INFORMATION

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

INFORMATION FOR THE PUBLIC INDEX		
(Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate N/A in one of the boxes below.)		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Ann M. Blandin	City of North Charleston	\$300,000.00
		\$
		\$
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 _____

3052
 Judge Code

Date 6/21/17

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 ANN M. BLANDIN,)
)
 Plaintiff,)
)
 v.)
)
 CITY OF NORTH CHARLESTON,)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO.: 2015-CP-10-3392

FILED
 2017 JUN 23 AM 11:16
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____
 ORDER

This matter came before the Court on May 2, 2017 for a hearing to determine the amount of damages sustained by the Plaintiff, Ann M. Blandin. Present before the Court were John E. Parker and William F. Barnes, III for Ms. Blandin and Robert H. Hood Jr. and William G. DesChamps, IV for the City of North Charleston ("City"). After hearing testimony and reviewing the exhibits, the Court makes the following findings regarding Ms. Blandin's damages.

BACKGROUND

This action arises out of a serious collision that occurred on January 3, 2015 in the City of North Charleston. (Compl. ¶ 3). On that day, Ms. Blandin was traveling North on McDowell Avenue in North Charleston. (Compl. ¶ 3). She stopped for a stop sign at the intersection of McDowell Avenue and East Montague Avenue. (Compl. ¶ 3). While stopped she looked both ways and there was no traffic approaching from either direction which posed a danger to her crossing East Montague Avenue. (Compl. ¶ 3). Ms. Blandin was almost across East Montague Avenue when her vehicle was struck by a North Charleston Police car being operated by an employee of North Charleston at an unlawfully high rate of speed without flashing lights or other audible warning devices as required by law. (Compl. ¶ 3).

Ms. Blandin filed a Complaint against the City of North Charleston on June 15, 2015. (Compl.). The Complaint alleges that the City of North Charleston's employee was negligent in several particulars: in traveling at an excessive and unlawful rate of speed; in failing to use flashing lights and audible warning signals; in failing to keep a proper lookout; in failing to keep the automobile under proper control; in violating § 56-5-1520; and in violating S.C. Code of Laws Ann. § 56-5-760 (1976, as amended). (Compl. ¶ 4 (a)-(f)). The Complaint alleges that the collision caused Ms. Blandin to suffer severe and permanent injuries which caused her to incur expenses for medical treatment. (Compl. ¶ 5). As a result of the collision Ms. Blandin will also suffer pain for the rest of her life. (Compl. ¶ 5).

North Charleston was served with the Complaint on June 30, 2015. (Aff. of Service). City of North Charleston Mayor, R. Keith Summey, was served in addition to Sandy Brown, an Administrative Assistant to Clerk of Council, who was authorized to accept service on behalf of the City. (Aff. of Service). The Affidavit of Service was filed on July 7, 2015. (Aff. of Service).

On November 9, 2015, The Honorable Julie J. Armstrong, Charleston County Clerk of Court, entered default against the City pursuant to Rule 55(a), SCRPC, based on the accompanying affidavit that no answer or other responsive pleading was filed as required by Rule 12, SCRPC. (Entry of Default).

On April 5, 2016, The Honorable Thomas L. Hughston, Jr. entered an Order referring the matter to this Court, pursuant to Rule 53(b), SCRPC, to determine the damages to be awarded to Ms. Blandin since the City is in default. (Order of Reference). On May 17, 2016, the City received notice of a damages hearing that was scheduled for July 7, 2016. (Mot. to Set Aside Default). The City moved to set aside the default and for late answer pursuant to Rules 6(b) and 55(c), SCRPC. (Mot. to Set Aside Default).

Following a hearing on the City's motion on June 14, 2016, The Honorable J. C. Nicholson, Jr., denied the City's motion to set aside default and for late answer. (Order filed June 15, 2016). On June 24, 2016, the City moved pursuant to Rule 59(e), SCRPC, to reconsider the Court's June 15, 2016 Order denying the motion to set aside default and for late answer. (Mot. to Reconsider). In an Order filed July 12, 2016, the Court denied the motion to reconsider as to the request for the Court to withdraw its prior ruling. The Court clarified its prior order, however, by noting that "the June 14, 2016 Order denied the Motion to Set Aside Entry of Default because failure to forward an e-mail does not amount to good cause shown for failure to timely file an Answer. In addition, the City of North Charleston is not a state agency under SCRPC 55(e)." (Order filed July 12, 2016).

I. DAMAGES AWARD

This matter was scheduled for a damages hearing on May 2, 2017 at 2:00 pm. "It is well settled that by suffering a default, the defaulting party is deemed to have admitted the truth of the plaintiff's allegations and to have conceded liability." Roche v. Young Bros., Inc., of Florence, 332 S.C. 75, 81, 504 S.E.2d 311, 314 (1998). The Court heard testimony from Paul Pritchard, M.D, Ann Blandin, and Corona Campbell. The City cross-examined each witness to contest damages. Dr. Pritchard testified as an expert witness regarding Ms. Blandin's injuries and damages. According to Dr. Pritchard, Ms. Blandin sustained a fractured vertebra, multiple fractured ribs, and a concussion as a result of the collision on January 3, 2015. Ms. Blandin remained hospitalized at MUSC from January 3, 2015 through January 6, 2015. (Ex. 1). At the time Ms. Blandin was discharged, she was immobile. Ms. Blandin returned to MUSC on January 11, 2015 and remained hospitalized until January 21, 2015. (Ex. 2). Dr. Pritchard testified that, at the time of the collision on January 3, 2015, Ms. Blandin was on peritoneal dialysis which she self-administered. Following this collision, Ms. Blandin could no longer receive peritoneal dialysis and instead had to switch to hemodialysis.



According to Dr. Pritchard, this switch was, to a reasonable degree of medical certainty, related to the collision of January 3, 2015.

Dr. Pritchard testified about Ms. Blandin's extensive medical treatment following the collision. Ms. Blandin's medical expenses were admitted into evidence subject to several redactions - Exhibits 1-30. Dr. Pritchard testified that, with the exception of one provider, Ms. Blandin's medical expenses were caused, to a reasonable degree of medical certainty, by the collision of January 3, 2015. Ms. Blandin's daughter detailed the treatment from the other provider. Ms. Blandin incurred medical expenses totaling \$1,451,190.91. (Ex. 31). Dr. Pritchard testified that her injuries, to a reasonable degree of medical certainty, were permanent.

The City cross-examined Dr. Pritchard about the switch from peritoneal dialysis and hemodialysis and that he had not taken out the costs of the peritonetal dialysis from the total medical expenses of \$1,451,190.91 that Ms. Blandin received for approximately three (3) months following the collision.

Following Dr. Pritchard, Ms. Blandin testified about her life prior to and since the collision. Prior to the collision Ms. Blandin lived by herself and self-administered peritoneal dialysis. However, following this collision she was never able to live by herself and was dependent on others to take care of her. She also has great difficulty moving her legs and is confined to a wheelchair.

Lastly, Ms. Blandin's daughter, Corona Campbell, testified about the impact the collision had on Ms. Blandin, and verified Ms. Blandin's inability to walk and take care of herself.

Having conducted a hearing on the damages Ms. Blandin sustained, I find the testimony of Paul Pritchard, MD, Ann Blandin, and Corona Campbell to be credible. Ms. Blandin was born on March 17, 1944, which according to S.C. Code of Laws Ann. § 19-1-150 (1976, as amended) she has a life expectancy of 14.31 years. Ms. Blandin sustained debilitating injuries in the collision that are



permanent and dramatically altered her life. Additionally, I find the testimony of Paul Pritchard credible that the change from peritoneal dialysis to hemodialysis was caused from the collision. Even taking into consideration the three (3) months of peritoneal dialysis following the collision that Ms. Blandin would have incurred regardless, I find that the medical expenses total \$1,000,000.00 related to this collision. I also award and find \$4,250,000.00 for Ms. Blandin's damages related to past pain and suffering, future pain and suffering, and permanent injury. The total judgment against the City is in the amount of \$5,250,000.00

II. APPLICATION OF CAPS CONTAINED IN S.C. CODE OF LAWS ANN. § 15-78-120(A) (1976, as amended).

Having determined the amount of the judgment against the City, the next issue is whether the judgment should be lowered to the caps contained in § 15-78-120(a) ("Cap"), that would impose a cap of three hundred thousand dollars. Ms. Blandin contends that the Cap does not apply to this action as it is a limitation of liability that must be pled as an affirmative defense that is different than an exception to the waiver of immunity contained in S.C. Code of Laws Ann. § 15-78-60 (1976, as amended). *In support of this position, Ms. Blandin relies on several cases from the South Carolina Supreme Court and Court of Appeals which state that "[t]he burden of establishing a limitation upon liability or an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense."* Strange v. SC. Dept. of Hwys. & Pub. Transp., 314 S.C. 427, 430, 445 S.E.2d 439, 440 (1994) (emphasis added); *see also*, Steinke v. S.C. Dep't of Labor, Licensing & Regulation, 336 S.C. 373, 393, 520 S.E.2d 142, 152 (1999) ("The burden of establishing a limitation upon liability or an exception to the waiver of immunity under the Tort Claims Act is upon the governmental entity asserting it as an affirmative defense."); Niver v. S.C. Dept't of Hwys. & Pub. Transp., 302 S.C. 461, 463, 395 S.E.2d 728, 730 (Ct. App. 1990) ("The burden of establishing a limitation upon liability or

an exception to the waiver of immunity is upon the governmental entity asserting it as an affirmative defense.”).

According to Ms. Blandin the disjunctive “or” in the above cases create two categories of affirmative defenses that are different - (1) a limitation upon liability or (2) an exception to the waiver of immunity contained in § 15-78-60. Ms. Blandin submits that both categories must be pled as affirmative defenses based on South Carolina law. For example, in Pike v. S.C. Dept. of Transp., 343 S.C. 224, 540 S.E.2d 87 (2000), the Supreme Court held that “when a governmental entity asserts the *affirmative defense of discretionary immunity* under the Tort Claims Act, the *burden of proof is on the governmental entity* and this burden is one of persuasion by a preponderance of the evidence.” Id. at 232, 540 S.E.2d at 91 (emphasis added). Given that the City is in default and does not have any affirmative defense except to cross-examine witnesses and object to evidence, the limitation upon liability imposed by S.C. Code of Laws Ann. § 15-78-120 (1976, as amended) cannot be asserted.

The City relies on the Court of Appeals decision in Parker v. Spartanburg Sanitary Sewer Dist., 362 S.C. 276, 607 S.E.2d 711 (Ct. App.2005). Parker involved an automobile collision that involved a van owned by the Spartanburg Sewer District. Id. at 279, 607 S.E.2d at 713. The Sewer District did not plead the Tort Claims Act in its answer. Id. On the first day of trial the Sewer District filed an amended answer, essentially asserting the Cap. Id. The trial judge stated that the amended answer that the Sewer District filed could not be filed without permission of the Court. Id. at 280, 607 S.E.2d 713. The Sewer District then moved to amend its answer to conform to the evidence, which the trial court denied. Id. The jury returned a verdict for \$450,000.00. Id. The Sewer District moved to reduce the amount to the Cap but the trial court denied that motion. Id. In reversing the trial court, the Court of Appeals noted that there is nothing in the South Carolina Tort Claims Act “mandating that a governmental entity plead the monetary statutory cap included within section 15-78-20.” Id. at

285, 607 S.E.2d at 716. The Court of Appeals also held that the trial court abused its discretion in denying the Sewer District's motion to amend its answer. Id. at 287, 607 S.E.2d at 717; see also S.C. Code of Laws Ann. § 15-78-20 (b) (1976, as amended) ("The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents ...") and S.C. Code of Laws Ann. § 15-78-20 (f) (1976, as amended) ("The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.").

After reviewing these cases and the South Carolina statutory requirements, I conclude as a matter of law that the statutory cap and the Court of Appeals decision in Parker controls. Accordingly, I must apply the Cap and reduce the judgment to \$300,000.00. The Cap operates by law and does not have to be pled as an affirmative defense. I reduce the \$5,250,000.00 judgment proportionately based on the medical expenses and other damages and award \$57,150.00 allocated to Ms. Blandin's medical expenses and \$242,850.00 related to past pain and suffering, future pain and suffering, and permanent injury.

CONCLUSION

For these reasons, the Court applies the Cap and enters judgment against the City for \$300,000.00.

IT IS SO ORDERED.

Charleston, South Carolina
May 6th, 2017


The Honorable Mikell R. Scarborough