

IN THE STATE OF SOUTH CAROLINA
In the South Carolina Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-38-00992
2013-CP-38-00994

Appellate Case No. 2016-001807

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SC Court of Appeals

Denetra Glover.....Respondent,

v.

William Shervon Stack and Shervon Latrese Simpson,Defendants,

Of whom

Shervon Latrese Simpson.....Appellant.

AND

Shirley Davis.....Respondent,

v.

William Shermom Stack and Shervon Latrese Simpson.....Defendants,

Of Whom Shervon Latrese Simpson.....Appellant.

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

- I. **The Circuit Court erroneously allowed a double recovery to Respondents when it failed to offset the judgments against Simpson by the amounts paid by a second tortfeasor in settlement of claims for the same injuries.**
- II. **The Circuit Court erred by holding that a default damages hearing does not establish the amount of a Plaintiff's total damages arising out of an indivisible injury.**

STATEMENT OF THE CASE

These consolidated appeals arise out of two underlying default judgments that have resulted in Respondents Denetra Glover and Shirley Davis making more than a single recovery for a single harm.¹ On March 10, 2012, Respondents were both passengers in a vehicle operated by Appellant Shervon Latrese Simpson when a vehicle operated by William Shervon Stack turned left in front of Simpson, causing a collision. (R. p. 21, ¶ 4) (R. p. 26, ¶ 4). On September 4, 2013, Respondents each filed suit against Simpson and Stack. (R. pp. 21-30). The Complaints alleged Stack negligently turned left in front of Simpson, and that Simpson was negligent in failing to take evasive action to avoid the collision. (R. p. 21, ¶ 4; p. 22, ¶ 7; p. 24, ¶ 11) (R. p. 26, ¶ 4; p. 27, ¶ 7; p. 29, ¶ 11).

Stack filed an answer, but Simpson did not. On October 31, 2013, the Circuit Court entered defaults against Simpson in both cases. (R. pp. 19-20). Rather than waiting for completion of the action against Stack, Respondents chose to move for an order of reference, which the Circuit Court granted on October 31, 2013, referring the matter to James B. Jackson, Master in Equity. (R. pp. 31-32). Although they could have asked for a jury trial on the issue of their damages, Respondents chose to ask the Master to determine their damages instead. *See* Rule 55(b)(2) (stating that the

¹ For ease of reference, "Respondents" throughout this brief refer to Glover and Davis in that order.

court “shall accord a right of trial by jury to the parties if a proper demand therefor has been made”).

The Master held a damages hearing on May 21, 2014. Simpson did not appear for the hearing, and the evidence submitted in support of Respondents’ damages was unopposed. (R. pp. 13 & 16). At the hearing, Respondent Glover presented medical bills totaling \$3,754.00, and Respondent Davis presented medical bills totaling \$3,448.10. (R. pp. 116 & 119). After hearing the evidence unopposed, the Master entered Orders in favor of Respondents awarding each of them \$18,000. (R. pp. 15 & 18). Therefore, after an unopposed default damages hearing, the Master determined that each Respondent sustained damages in the amount of \$18,000 as a result of the accident.

After entry of the default judgments, Respondents and Stack – the co-defendant – mediated the cases and reached settlements in which Stack paid Respondent Glover \$12,000 and Respondent Davis \$11,000. (R. pp. 46 & 63). Then, over a year after the default, Respondents notified Simpson’s insurer of the default judgment and demanded payment.² Upon learning that Respondents had already recovered \$12,000 and \$11,000, respectively, and citing Section 15-38-50 of South Carolina’s Contribution Among Joint Tortfeasors Statute, Simpson – through her insurance carrier – tendered the outstanding balance of the two judgments – \$6,000 and \$7,000 respectively – and asked Respondents to enter satisfactions of judgment. (R. pp. 47-50, 64-67). When they did not, Simpson moved for entry of satisfaction of judgment.

On June 29, 2016, the Honorable R. Knox McMahon heard arguments on the motion for entry of satisfaction of judgment. On August 2, 2016, the Circuit Court filed an Order denying

² Respondents waited a full year before informing the insurer of the default, which prevented a Rule 60(b) motion to set aside on any of the grounds set forth in sub-parts (1) through (3).

Simpson's motions for entry of satisfaction of judgment. In doing so, Judge McMahon held that a default damages hearing does not determine a plaintiff's total damages and that the statutory offset provision of § 15-38-50(1) did not require the reduction. The Court ordered Simpson to pay \$18,000 to Glover and \$18,000 to Davis, even though Glover and Davis had previously recovered \$12,000 and \$11,000, respectfully, in damages related to the accident. Simpson timely filed appeals in both cases on August 31, 2016, and the two cases were consolidated on October 18, 2016.

STATEMENT OF FACTS

On March 10, 2012, Respondents were passengers in a vehicle operated by Simpson in Richland County, South Carolina when defendant Stack made a left-hand turn onto the ramp of I-20, causing a t-bone collision by striking Simpson's vehicle. (R. p. 21, ¶ 4) (R. p. 26, ¶ 4) (R. p. 13, ¶ 1) (R. p. 16, ¶ 1). Defendant Stack was charged with failure to yield the right of way in causing the accident. (R. p. 13, ¶ 2) (R. p. 17, ¶ 2). Respondents sued Stack, but also sued Simpson alleging she failed to apply her brakes or take evasive action to avoid the collision. (R. p. 14, ¶ 3) (R. p. 17, ¶ 3).

As discussed above in the Statement of the Case, Respondents filed suit against Simpson and Stack, and Simpson defaulted. The default case against Simpson was referred to a Master, who made two findings: (1) "I find that Defendant [Simpson] is in default and is liable for the damages suffered by Plaintiff [Respondents];" and (2) "I conclude, therefore, that Plaintiff [Respondents] is entitled to judgment against Defendant in the amount of Eighteen Thousand and 00/100 Dollars (\$18,000.00) for the reasons set forth herein." (R. pp. 15 & 18). It is undisputed that Respondents have each recovered \$18,000.00 as a result of settlements with Stack (\$12,000

for Glover and \$11,000 for Davis) and payments from Simpson (\$6,000 for Glover and \$7,000 for Davis).

STANDARD OF REVIEW

Whether setoff applies is a question of law. “When the settlement is for the same injury, the nonsettling defendant’s right to a setoff arises by operation of law.” *Smith v. Widener*, 397 S.C. 468, 472, 397 S.E.2d 188, 190 (Ct. App. 2012) (citing *Ellis v. Oliver*, 335 S.C. 106, 112, 515 S.E.2d 268, 271-72 (Ct. App. 1999). “Under this circumstance, ‘[s]ection 15-38-50 grants the court no discretion . . . in applying a set-off.” *Id.* Therefore, this Court’s review is de novo. *See e.g., Buchanan v. The South Carolina Prop. and Cas. Ins. Guar. Ass’n*, 417 S.C. 562, 790 S.E.2d 783, 785 (Ct. App. 2016) (quoting *Lambries v. Saluda Cty. Council*, 409 S.C. 1, 7, 760 S.E.2d 785, 788 (2014)).

ARGUMENT

The Circuit Court’s Order violates the “almost universally held [principle] that there can be only one satisfaction for an injury or wrong.” *Truesdale v. South Carolina Highway Dep’t*, 264 S.C. 221, 213 S.E.2d 740, 746 (1975). In an unopposed default damages hearing, the Master determined that Respondents each sustained \$18,000 in damages as a result of a single collision. The damages are indivisible. Moreover, because Simpson was in default, the Master could not apportion fault. Therefore, the Master’s entry of judgment against Simpson for \$18,000 constitutes the Master’s determination of the entirety of Respondents’ damages. Respondents have each recovered \$18,000 for their injuries from the allegedly at-fault parties. Therefore, their damages have been satisfied, and the Circuit Court’s Order should be reversed. If left undisturbed, the Circuit Court’s Order gives Respondents a windfall double recovery.

South Carolina abhors double recoveries. If the Order is not reversed, then Respondents will recover \$30,000 and \$29,000, respectively, for \$18,000 in damages – a double recovery. The

purpose of tort law is to make a plaintiff whole and put her as close as possible to the position she would have been in had the accident never happened. Because the Master determined Respondents each sustained \$18,000 in damages, they were made whole when they recovered \$12,000 from one tortfeasor and \$6,000 from the other tortfeasor for a total recovery in tort of \$18,000.³ Failure to credit the judgment with payments from other tortfeasors puts Respondents in a better position than they would have been had no accident occurred at all. Such a double recovery violates public policy and the basic principles of tort law.

To avoid double recoveries in situations where one of multiple tortfeasors pays for part of a plaintiff's damages, South Carolina enacted the Contribution Among Tortfeasors Act, which provides that a settlement by one of several tortfeasors "reduces the claim against the others to the extent of any amount stipulated by the release" S.C. Code Ann. § 15-38-50. The Mediation Settlement Agreements that the Respondents entered into with Stack indicate that the settlement payments – \$12,000 for Glover and \$11,000 for Davis – would be paid in exchange for a Release. (R. pp. 46 & 63). Therefore, the judgment against Simpson was reduced as a matter of law by the payments Respondents received from Stack. Because Simpson paid the balance of the judgment after reduction for Stack's payments, the judgments have been satisfied.

Even before the adoption of the Contribution Among Tortfeasors Act, South Carolina applied the doctrine of setoff to prevent double recoveries. When two or more tortfeasors cause a single, indivisible harm, the plaintiff may choose to sue one or more of the tortfeasors in one or multiple lawsuits. However, the plaintiff cannot recover more than once for her injuries. Here, Respondents effectively pursued two actions. They pursued a default judgment against Simpson, and they pursued a traditional tort case subject to a jury trial against Stack. The law permits that

³ Davis recovered \$11,000 from Stack and \$7,000 from Simpson.

approach, but it does not allow them to recover twice for the same injuries. Because this case deals with a single vehicular collision, Respondents' damages are indivisible and they cannot multiply their recoveries by pursuing multiple defendants.

I. South Carolina's Contribution Among Tortfeasors Act and common law require a *pro tanto* reduction of the judgment against Simpson by the settlement amounts paid by Stack.

South Carolina does not allow double recoveries. *Riley v. Ford Motor Co.*, 414 S.C. 185, 195, 777 S.E.2d 824, 830 (2015). To prevent double recoveries where two or more tortfeasors cause a single, indivisible injury, "the rule is almost universally followed that one tort feator is entitled to credit for the amount paid by another tort feator for a covenant not to sue." *Powers v. Temple*, 250 S.C. 149, 155, 156 S.E.2d 759, 761 (1967).

Even prior to the enactment of the South Carolina Contribution Among Tortfeasors Act, South Carolina common law precluded double recoveries through the principle of setoff, which "prevents an injured person from obtaining a double recovery for the damage he sustained, for it is almost universally held that there can be only one satisfaction for an injury or wrong." *Riley*, 414 S.C. at 195, 777 S.E.2d at 830 (quoting *Rutland v. South Carolina Dep't of Transp.*, 400 S.C. 209, 216, 734 S.E.2d 142, 145 (2012)). Under this rule, "[a] non-settling defendant is entitled to credit for the amount paid by another defendant who settles for the same cause of action." *Id.* As the Supreme Court recognized in *Riley*, "[t]he right to setoff has existed at common law in South Carolina for over 100 years." 414 S.C. at 195, 777 S.E.2d at 830.

"In 1988, these equitable principles were codified as part of the South Carolina Contribution Among Tortfeasors Act (the Act), S.C. Code Ann. §§ 15-38-10 to -70 (2005 and Supp. 2014)." *Id.* The Act provides,

When a release . . . is given in good faith to one of two or more persons liable in tort for the same injury . . . it does not discharge any of the other tortfeasors from liability for the injury . . . **but it**

reduces the claim against the others to the extent of any amount stipulated by the release . . . or in the amount of the consideration paid for it, whichever is greater

S.C. Code Ann. § 15-38-50 (emphasis added). Therefore, when one of multiple defendants potentially liable for a single, indivisible harm settles, that settlement reduces the claim against the other defendants. This setoff happens by operation of law, and a trial court has no discretion in applying the setoff. *See Ellis*, 335 S.C. at 113, 515 S.E.2d at 272 (“Section 15-38-50 grants the Court no discretion in determining the equities involved and applying a set-off once a release has been executed in good faith between Plaintiff and one of several joint tortfeasors.”). Put simply, the statute acts to control the Court’s analysis: “We hold that in the absence of a claim of bad faith, the function of the trial court is limited to applying the settlement credit pursuant to § 15-38-50.” *Id.*

A. The § 15-38-50 setoff is mandatory and the Court has no discretion in choosing whether to reduce the judgment.

The statutory setoff required by §15-38-50 must be applied as a matter of law. Therefore, the Circuit Court had no discretion and was required to reduce the judgments against Simpson by the amounts paid by Stack. This Court’s holding in *Ellis* exemplifies the obligatory nature of the setoff. In that case, an estate filed suit against a hospital and an anesthesiologist for the same injuries. The hospital settled, and a jury rendered a verdict against the anesthesiologist. The anesthesiologist appealed, but he failed to request a reduction of the judgment by the settlement amount during the trial, at the end of the trial, or even during post-trial motions. Nonetheless, this Court held that the anesthesiologist’s failure to seek the reduction in a timely manner could not prevent the reduction. The setoff happens as a matter of law under § 15-38-50, and the trial court has no discretion in granting the setoff. *Id.* The principles set forth by this Court in *Ellis* have been reiterated in multiple cases. *See Widener*, 397 S.C. at 472 724 S.E.2d at 190 (“When the

settlement is for the same injury, the nonsettling defendant's right to a setoff arises by operation of law."); *Welch v. Epstein*, 342 S.C. 279, 314, 536 S.E.2d 408, 426 (Ct. App. 2000) (recognizing that the purpose of § 15-38-50 is to ensure that a plaintiff only receives one complete satisfaction for an injury suffered); *Polston v. Eli Lilly and Co.*, 2010 WL 2926159 (D.S.C. July 23, 2010) (noting that the setoff applies to a judgment).

The Circuit Court here reasoned that the statutory setoff in § 15-38-50 only applies to a pre-judgment settlement. Therefore, because Respondents obtained their judgments against Simpson before settling with Stack, the statute does not apply. However, nothing in the wording of the statute indicates that a settlement should be treated differently because it takes place after, rather than before, a judgment. In fact, the Restatement (Second) of Judgments expressly rejects such a distinction: "The rule that payment of a loss, in whole or in part, by one of several obligors reduces the amount that may be obtained from other obligors also applies when the amount of the loss has been adjudicated." *Rest. (Second) of Judgments* § 50, Discharge of Judgment Against One of Several Co-Obligors, cmt. d. The setoff required by § 15-38-50 can only be applied to a judgment. Before there is a judgment, there is nothing for the court to reduce the amount of the settlement from. Therefore, as a logical matter, the setoff cannot take place until there is a judgment. It makes little sense to hold that – once a judgment has been entered – the amount of the judgment should not be reduced because of a subsequent settlement.

There is no logical basis for treating a post-judgment and a pre-judgment settlement differently. The Supreme Court in *Riley* plainly held that the purpose of the § 15-38-50 setoff is to prevent a double recovery. 414 S.C. at 196, 777 S.E.2d at 830 ("Thus, the Act represents the Legislature's determination of the proper balance between preventing double-recovery and South Carolina's 'strong public policy favoring the settlement of disputes.'"). The principle rests upon

the rule that the claimant can make only one recovery for her injuries. If a pre-judgment settlement by another tortfeasor reduces the amount she can recover to avoid a double recovery, then a post-judgment settlement by another tortfeasor has the same effect. In fact, because the judgment has already been entered, there is no risk that the factfinder may have already considered the amount of the settlement in determining the amount of the plaintiff's damages. Therefore, application of the § 15-38-50 setoff is required here to fulfill the purpose of the Act. The setoff is necessary to prevent a double-recovery.

As the Supreme Court discussed in *Riley*, § 15-38-50 promotes settlements while balancing the right of the settling defendant to be free from future litigation with the right of a non-settling defendant who may otherwise have a right of contribution. First, § 15-38-50(2) promises that a settling defendant will not be subject to a future contribution action. S.C. Code Ann. § 15-38-50(2) (providing that the settlement "discharges the tortfeasor to whom [the settlement] is given from all liability for contribution to any other tortfeasor."). Second, § 15-38-50(1) protects the non-settling defendant – who is losing her right to seek contribution – by promising that any judgment against her will be reduced by the full amount of the settlement.

By failing to give Simpson the benefit of the § 15-38-50 offset, the Circuit Court thwarted the equitable principles the Supreme Court found codified in the Act. Respondents will recover more than once for a single injury. Moreover, one of the two mechanisms in § 15-38-50 that the Legislature used to promote settlement will have been lost. Either Simpson will retain her right to seek contribution against Stack because she did not obtain the benefit of the pro tanto reduction in the judgment by the amount of his payments, or Stack will have gained freedom from a

contribution action even though Simpson did not get the benefit of the pro tanto reduction.⁴ Either way, the purpose of the Act has been defeated. Therefore, the Circuit Court erred when it failed to apply the offset required by § 15-38-50.

B. Even if the § 15-38-50 setoff does not apply, well-established principles of South Carolina common law require the offset.

Prior to the adoption of the South Carolina Contribution Among Tortfeasors Act, South Carolina common law recognized several legal principles to protect against multiple recoveries. Addressing the very scenario of this case – a two vehicle accident injuring a passenger in one of the vehicles – the South Carolina Supreme Court in *Rourk v. Selvey*, 252 S.C. 25, 27-28, 164 S.E.2d 909, 910 (1968), clearly held that a plaintiff can only have one recovery for her damages:

This stipulation clearly implies the typical case of a collision between automobiles contributed to by the negligence of both drivers, which causes personal injury to a third person. In such a case, the negligence of each driver is a proximate cause of inherently indivisible injuries. Both wrongdoers are jointly and severally liable for the entire harm, and plaintiff has the election of suing one or both. Upon recovery of a judgment against both, plaintiff may, at his election, collect the full amount from one. However, he is entitled to only one recovery, *and the collection of a judgment against one wrongdoer extinguishes any claim against the other.*

(emphasis added).

The single-recovery rule is deeply grounded in South Carolina law. The South Carolina Constitutional Court of Appeals in *Hawkins v. Hatton*, 1 Nott & McC. 318, 10 S.C.L. 318 (1818), explained the relevant principle:

It is unreasonable, that a party should have more than one satisfaction for the same injury; and although there may be several wrong doers, and the party injured may maintain actions against them severally, yet, *each* is liable for the whole entire damages sustained; and the law, abhorring a multiplicity of actions, will

⁴ The loss of a contribution action is even more unjust in this case because Stack, who was clearly negligent, turned left in front of Simpson. (R. p. 21, ¶ 4) (R. p. 26, ¶ 4) (R. p. 13, ¶¶ 1-2) (R. p. 16, ¶ 1-p. 17, ¶ 2).

presume, that the Jury in any one of these actions would give him damages to the extent of the injury, and forbids that he should prosecute a further remedy, after there has been a satisfaction. . . .

The true rule, I take to be this; if there has been a recovery against *one of several* joint trespassers, the plaintiff may proceed against the others, until there is a satisfaction of the damages recovered against some one of the defendants; and if he elect, as he may, to proceed to the satisfaction of any one of the judgments, the Court will, on the payment of costs in the other cases, order satisfaction to be entered on all the judgments

Id. at 319-320 (emphasis in original).

Applying this principle, the South Carolina Supreme Court in *McGee v. Bruce Hosp. System*, 344 S.C. 466, 545 S.E.2d 286 (2001), held a plaintiff who pursued one of multiple tortfeasors to judgment and obtained satisfaction of that judgment was precluded from pursuing a second tortfeasor for actual damages arising out of the same injury. Where, as here, payment by one tortfeasor does not fully satisfy a plaintiff's damages, the payment – even before the enactment of the Act – operates a *pro tanto* reduction of the plaintiff's damages. This Court in *Loyd's, Inc. by Richardson Const. Co. of Columbia, S.C., Inc. v. Good*, 306 S.C. 450, 454, 412 S.E.2d 441, 444 (Ct. App. 1991), acknowledged that settlement of one co-tortfeasor “is a satisfaction ‘*pro tanto*’ and reduces the amount of damages recoverable against the nonsettling tortfeasors by the amount of the consideration for the release.” (citing *McWhirter v. Otis Elevator Co.*, 40 F. Supp. 11 (D.S.C. 1941)). Therefore, “before the effective date of the Act, the law was clear that the release of one tortfeasor served to release others who wrongfully contributed to the plaintiff's injuries . . . if . . . the injured party in fact received full compensation for his injuries amounting to a satisfaction.” *Id.* (citation omitted). Where, as here, the settlement did not fully compensate the injured party for his injuries, then the settlement operated a reduction *pro tanto* of the judgment.

Another applicable common law principle for the facts of this case is stated by the South Carolina Supreme Court in *Noble v. Cothran*, 18 S.C. 439 (1883). In that case, a plaintiff obtained

separate judgments against two defendants on a single debt. The first judgment was smaller than the second. After entry of the second judgment, the first debtor satisfied the first judgment. The second debtor then sought reduction or satisfaction of the second judgment based upon the post-judgment payment of the first judgment. The Supreme Court held that the payment of the first, smaller, judgment did not act as a complete satisfaction of the second judgment, **but it did reduce the second judgment.** “[W]e know of no principle which would authorize the court to declare the larger judgment against the sureties as satisfied, simply upon it being shown that both judgments were on the same note **One judgment is certainly satisfaction of the other, but only pro tanto.**” *Id.* at 443 (emphasis added). In other words, to prevent a plaintiff from recovering twice for the same debt – which includes a tort judgment – a payment by one tortfeasor **even after judgment has been entered** will serve to reduce the amount owed by any other debtor. That is exactly what happened here. After entry of the default judgments against Simpson, Respondents recovered from Stack. However, the amounts paid by Stack were less than the amount of the judgments against Simpson. Thus, the payments by Stack – like the payments in *Noble* – did not extinguish the judgment against Simpson. However, in order to prevent a double recovery, the payments by Stack – like the payments in *Noble* – reduced the outstanding judgment against Simpson *pro tanto*.

Although the judgments in *Noble* were for a contractual debt, the same rule applies in tort. For example, in *National Bank of Savannah v. Southern Ry. Carolina Division*, 107 S.C. 28, 91 S.E. 972 (1917), the plaintiff filed two separate lawsuits against two tortfeasors. The first suit went to judgment, and the first tortfeasor paid and satisfied the judgment. Therefore, the defendant in the second suit sought dismissal based upon satisfaction of the judgment. The Supreme Court held the action was properly dismissed because a plaintiff can have but one recovery:

The plaintiff had the right to sue them separately and to recover judgment against each. If the plaintiff had prosecuted both actions to judgment, it could have done so, and then elected which judgment it would collect, **but it could have only one satisfaction**. The plaintiff could have a judgment against either of the defendants or both as they were joint tort-feasors, **but it could have but one satisfaction for the wrong done**. But when the plaintiff obtained its judgment against [one defendant] and accepted satisfaction of it, as was done in this case, then under the law the [second defendant] was released from all liability to the plaintiff. **There was but a single tort, and by the acceptance of the amount paid on the judgment obtained in the federal court and satisfying the same the plaintiff was compensated for all damages it sustained by reason of the [tort]**.

Id. at 973 (emphasis added).

Like the plaintiff in *National Bank of Savannah*, Respondents here were free to pursue actions in tort against Simpson and Stack. But, they can only recover their damages once. The amount of their damages was determined at the default damages hearing to be \$18,000. They have already recovered \$18,000. Therefore, they have received their satisfaction, have been made whole, and the judgment should be marked satisfied.

The Circuit Court's Order ignores these deeply-established principles of law by allowing Respondents to pursue multiple recoveries for the same indivisible harm. Moreover, the Order violates the purpose of tort law: to make a plaintiff whole. *See generally* 74 Am. Jur. 2d Torts § 62 ("The purpose of tort law is to make an injured person whole . . ."). In a case where no punitive damages are awarded, the purpose of tort recovery is not to punish an individual defendant, and it is not to place the plaintiff in a better position than she would have been had the tort never happened.

Here, in an uncontested default damages hearing, the Master found Respondents' damages to be \$18,000. Therefore, the purpose of tort law was satisfied when Respondents recovered \$18,000. However, the Circuit Court's Order not only allows Respondents to recover their

damages in the amount of \$18,000, but it also goes far beyond by allowing Respondents to recover *more than* their damages in the amounts of \$30,000 and \$29,000, respectively. Such a result constitutes an unlawful double recovery that flies in the face of South Carolina law as set forth in South Carolina Code § 15-38-50 and South Carolina's common law. Therefore, the Circuit Court's judgment should be reversed.

II. The Circuit Court relied upon multiple legal errors in reaching its conclusion that Respondents' recovery from one tortfeasor does not reduce the outstanding amount owed by Simpson.

Respectfully, the Circuit Court operated under a number of erroneous presumptions. Moreover, these erroneous presumptions influenced the Court's ultimate refusal to award an offset that was required by South Carolina statutes and case law.

A. The Circuit Court erred by finding the special referee at a default damages hearing could award something less than a plaintiff's total damages.

A default damages hearing determines one thing: The amount of the plaintiff's damages. The defendant is deemed to have admitted the factual allegations of the complaint. Moreover, the defendant cannot raise any affirmative defenses. Therefore, assuming the complaint alleges a cause of action, the extent of the plaintiff's damages is the only issue left for a court to determine at the default damages hearing.

However, the Circuit Court below ignored this principle and held that the Master did not make a determination of Respondents' damages:

By its terms, the default judgment states that Plaintiff was entitled to judgment *against Simpson* in the amount of \$18,000.00, and judgment was so entered 'against the Defendant, Shervon Latreese Simpson.' No judgment was entered as to Defendant Stack. It was not a joint judgment. ***It was not a final judgment determining the total amount of damages sustained by Plaintiff as a result of the accident, or an allocation of liability among the two defendants.***

(R. pp. 2-3) (R. pp. 8-9) (emphasis in bold added). The Circuit Court repeated its reliance on this misapplication of the law in the footnote on page three of the Order, in which the Circuit Court reasoned: “Had the default judgment entered as to Simpson made a final determination of the entirety of Plaintiff’s damages caused by the motor vehicle accident . . . then Simpson’s argument may have merit. However, because the default judgment by its terms was limited to determining the liability of Simpson – as opposed to the total damage of Plaintiff – Simpson’s argument is misplaced.” (R. p. 3, n.1) (R. p. 9, n.1). Respectfully, this holding constitutes an error of law.

“A defendant in default admits liability but not damages” *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014) (citations omitted). Therefore, “[i]n a default case . . . the plaintiff must prove . . . **the amount of his damages**, and such proof must be by a preponderance of the evidence.” *Id.* (citations omitted). A defendant cannot introduce evidence of another party’s comparative fault. *See e.g., Calise v. Hidden Valley Condominium Ass’n, Inc.*, 773 A.2d 834 (R.I. 2001) (holding that a party in default cannot seek to prove comparative fault of settling co-defendant); *Rodriguez v. Parks and Woolson Machine, Co., Inc.*, 22 Mass. L. Rptr. 643 (Mass. Sup. Ct. 2007) (holding that allowing a defaulting party to contest comparative fault “at a Rule 55(b)(2) assessment of damages hearing would distort the nature of the hearing by expanding it from the subject of damages to the subject of liability in contravention of Rule 55(b).”). Therefore, the only issue at a default damages hearing is the amount of the plaintiff’s damages. The court cannot allocate fault, and the court has no discretion to award anything less than the plaintiff’s full damages.

The fact that a default damages hearing only addresses the amount of a plaintiff’s damages is borne out by the fact that no hearing is required in cases of unliquidated damages. Rule 55(b)(1), SCRPC. Moreover, Rule 55(b)(2) provides, “If, in order to enable the court to enter judgment or

to carry it into effect, it is necessary to take an account or *to determine the amount of damages* or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearing or order such references as it deems necessary and proper” Rule 55(b)(2), SCRCP (emphasis added). “This proceeding is the same as any other trial except that *it is limited to the question of damages.*” *Federal Practice & Procedure* § 2688 (emphasis added). The South Carolina Summary Court Bench Book explains that, when a defendant is in default in a case with unliquidated damages, “the court must arrange a damage hearing for the plaintiff *to prove the amount of his damages or claim.*” *South Carolina Summary Judges Benchbook, Chapter C. Civil Procedure in Magistrate’s Courts*, ¶ 10 (emphasis added).

A plaintiff is not required to prove liability at a default damages hearing, and a defendant is unable to present evidence or cross-examine plaintiff on matters of liability. *See Doe v. S.B.M.*, 327 S.C. 352, 488 S.E.2d 878 (Ct. App. 1997). Therefore, the only question before the finder of fact in a default damages hearing is the amount of damages sustained by the plaintiff.⁵

The nature of the judgments against Respondent in this case bears consideration. Respondents obtained these judgments at an uncontested default damages hearing. A default damages hearing is a best-case scenario for a plaintiff to prove her damages. The Circuit Court’s

⁵ The Circuit Court also held that the default damages hearing cannot determine a plaintiff’s total damages because “[s]uch a result would deprive the plaintiff . . . of their constitutional right to seek a jury verdict as to the amount of damages.” (R. p. 5, n.2) (R. p. 11, n.2). However, Rule 55(b)(2) expressly reserves the Plaintiff’s right to have a jury determine damages at the damages hearing rather than a special referee or a circuit judge. Rule 55(b)(2), SCRCP (“If, in order to enable the court to enter judgment . . . it is necessary to take an account or to determine the amount of damages . . . the court may conduct such hearing . . . and shall accord a right of trial by jury to the parties if a proper demand therefor has been made pursuant to Rule 38 and not withdrawn”). Therefore, the default had no impact on Respondents’ right to a jury trial on the issue of damages. Rather, Respondents waived that right presumably because they thought they would get a better result by submitting their damages evidence to the Master.

conclusion that the Master's damages determination could have equaled anything less than Respondents' total damages casts a blind eye to the reality of the case. Simpson did not appear to object to any evidence. Even had she appeared, she could not challenge her own liability or raise the fact that Stack turned left in front of her.

The Supreme Court of Illinois discussed the nature of a default damages hearing in a similar case in *Saichek v. Lupa*, 204 Ill.2d 127, 787 N.E.2d 827 (2003). In that case, the plaintiff was a passenger in a taxi cab that was rear-ended while waiting to turn left. The plaintiff filed suit against the cab driver and the driver of the rear vehicle. The cab driver failed to answer and, instead of waiting until the conclusion of the case against the rear driver, the plaintiff chose to proceed with a default damages hearing against the cab driver. After the hearing, the court entered a judgment against the defaulting cab driver, the defaulting cab driver satisfied the judgment, and then the plaintiff pursued her claim against the driver of the second car. The Supreme Court held that satisfaction of the default judgment made the plaintiff whole. Therefore, citing the principle that "there can be only one compensation for one wrong" – the same principle that South Carolina applies – the Supreme Court held the plaintiff could not pursue the second driver even though she rear-ended the cab.

In an effort to avoid the Supreme Court's holding, the plaintiff in *Saichek* argued that the default damages hearing could have determined something less than the plaintiff's total damages.

The Supreme Court rejected this argument:

Although we have no record of what transpired during the prove-up hearing, we fail to see how that proceeding could have been anything other than beneficial for plaintiff. Just as there was no adversarial challenge on the question of liability, plaintiff was apparently relieved of any significant adversarial challenge to the elements of damages for which she sought compensation. Without an adversarial challenge by [the defaulting defendant] or his insurer, plaintiff's claims avoided the same level of scrutiny to which they

would otherwise have been subject. Spared such scrutiny, plaintiff was free to present any element of damages she could claim in good faith. She had no reason to make less than a full and complete presentation of her damage claims

Id. at 139, 787 N.E.2d at 834.

Like the plaintiff in *Saicheck*, Respondents in this case obtained their default judgments under the best possible circumstances for their case. Simpson did not appear to object to the evidence they submitted. Even though Stack turned left in front of Simpson, there was no argument for comparative fault. Even though Respondents each presented medical bills below \$4,000, the Master went so far as to consider Respondent's life expectancy and find their conditions to be permanent. (R. p. 14, ¶ 12) (R. p. 18, ¶ 12). Thus, not only was the Master unable to award anything less than his calculation of Respondents' total damages resulting from the accident, but there is nothing in his Order to suggest that he discounted the damages award. Therefore, when Respondents received the full amount of their judgments by payments from Stack and Simpson, they were made whole.

Even if Respondents contend that the Master failed to accurately account for their damages, they are barred from doing so at this stage. The special referee determined that each Respondent sustained damages in the amount of \$18,000. Respondents did not ask the special referee to

reconsider his damage determination. They did not appeal that determination. Therefore, they – just like Simpson – are bound by the determination.⁶

The Circuit Court erroneously held that the Master's Order determined something other than Respondent's total damages arising out of the underlying automobile accident. By subjecting herself to a default, Simpson was deemed to have admitted the factual allegations of the Complaints. Thus, issues of liability or comparative fault were not at issue in the default damages hearing. Rather, the Master's sole determination was the extent of Respondents' damages. Because Respondents have now recovered the full amount of those damages, the Circuit Court's order should be reversed and the judgment should be marked satisfied.

B. The Circuit Court erroneously assumed that Respondents would not be receiving a double recovery because the Master was calculating their bodily injury damages as distinguished from property damages.

During arguments on the motion, the Court revealed in a colloquy its belief that property damage and bodily injury damages are treated differently under the law:

Mr. Sawyer: But the issue at default damages hearing because there's no argument for apportionment or allocation or anything else, is what are your damage from the accident. And here with one collision, it's indivisible damages regardless of the number of defendants. . . .

The Court: In criminal court, which I always go back to my roots, crime doesn't pay, but in civil pay – if you default and your [sic]

⁶ In the lower court, Respondents contended that they could not be bound by the default damages determination because they had an outstanding claim against another defendant who had answered. However, the judgment that Respondents seek to enforce is between Respondents and Simpson. Certainly, the referee's determination of damages is binding between the parties in this appeal. Respondents could have chosen to wait until after litigating the case against Stack before pursuing a damages hearing. They did not. Although it is unnecessary for this Court to address the issue here, courts in other jurisdictions have held that a party who chooses to proceed to a default damages judgment against one tortfeasor is collaterally estopped from claiming damages in excess of that judgment against any other tortfeasors for the same injuries. *See e.g., Ponce v. Tractor Supply Co.*, 105 Cal. Rptr. 628, 29 Cal. App. 3d 500 (Cal. Ct. App. 1973) (holding that party that chose to obtain default judgment against one defendant was collaterally estopped from seeking damages above the amount of the default judgment from a second defendant).

fortunate enough to have a codefendant that settles, it might be to your benefit to sue them.

Mr. Sawyer: Well, Judge, it's not to your benefit because – the idea is that the plaintiff didn't get a wind fall or multiple recoveries for one set of damages. So think of it in the context of property damage, Judge.

* * *

The Court: So windfall to the plaintiff is trumped by default by a co-tortfeasor?

Mr. Sawyer: Well, Judge, imagine it this way, there's four defaults, four tortfeasors, plaintiff can't recover from all four. They still have only one set of damages. If they have a \$20,000 car, they can't get 80,000 because they got four defaults. They can only get 20,000 for a \$20,000 car.

The Court: Well, we're not talking about a \$20,000 car, we're talking about damages.

(R. p. 101, line 22-p. 102, line 14; p. 102, line 24-p. 103, line 8). Respectfully, there is no difference between bodily injury damages and property damages in tort. They are both damages. The property damage analogy merely highlights the injustice of allowing Respondents to recover more than once for a single harm.

The United States Court of Appeals for the Seventh Circuit addressed the bodily injury version of the above-quoted analogy in *Watts v. Laurent*, 774 F.2d 168 (7th Cir. 1985). In that case, the plaintiff suffered a single, indivisible injury when he was tackled by a co-resident of a facility housing young criminal offenders and sustained a permanent injury to his hip. *Id.* at 171. The plaintiff sued multiple employees of the facility, and obtained a jury verdict against five of them on five separate verdict forms. Each verdict form awarded \$40,000. The plaintiff argued that he should be allowed to recover \$200,000 (\$40,000 for each of the five verdict forms), and the defendants argued the plaintiff could only recover a total amount of \$40,000. The trial court agreed with the defendants.

On appeal, the Seventh Circuit addressed the impact of the five separate verdicts.⁷ In particular, the plaintiff in that case relied on the premise that *had* he filed separate lawsuits against each defendant and obtained judgments of \$40,000 separately against each defendant, he could have recover \$40,000 from each defendant for a total recovery of \$200,000. *Id.* at 176. Therefore, the plaintiff argued he should be entitled to \$200,000 based upon the multiple verdict forms in the single case. The Seventh Circuit rejected the plaintiff's premise, and held the plaintiff in that circumstance could only recover \$40,000 total from all of the defendants, reasoning "the very nature of damages as compensation for injury suffered requires that once the plaintiff has been fully compensated for his injuries by one or more of the tortfeasors, he may not thereafter recover any additional compensation from any of the remaining tortfeasors." *Id.* at 179 (citing *Restatement (Second) of Torts*, § 885(3) and comment e) (other citations omitted). The Seventh Circuit held:

Thus, if in this case each defendant's independent actions (or failure to take action) produced a single, indivisible injury, and if a lawsuit against any one defendant would have produced a compensatory judgment of \$40,000, then the fact that plaintiff might have obtained five such judgments would mean only that those five defendants would be jointly and severally liable for \$40,000, *not* that plaintiff could obtain satisfaction with respect to all the judgments for a total award of \$200,000.

Id. (emphasis in original).

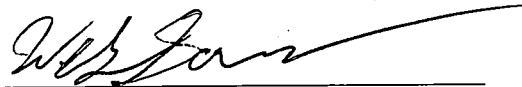
Applying the logic in *Watts* – which comports with the principles of South Carolina set out above in Section I, Respondents cannot recover more than the amount of damages determined by the Master. Regardless of whether the Master was determining damages due to property damage or bodily injuries, the result is the same: Respondents are only entitled to a single satisfaction for their damages. In an uncontested damages hearing, the Master held their damages were \$18,000 each. Neither Respondent moved for reconsideration of the Master's finding, and neither of them

⁷ One of the defendants obtained a JNOV.

appealed the finding. Therefore, they are bound by the determination that their damages are \$18,000.

CONCLUSION

For the above-stated reasons, the Circuit Court's Order should be reversed. Respondents are only entitled to one recovery for their damages. In an uncontested default damages hearing, the Master determined their damages to be \$18,000, each. Since that determination, Respondents have each recovered \$18,000 from the allegedly at-fault parties. South Carolina Code § 15-38-50, mandates that Stack's payments to Respondents reduce the outstanding judgments as a matter of law. Even if § 15-38-50 does not apply, principles of South Carolina common law require reduction of the judgment to avoid a double recovery. Regardless, Respondents have been made whole. Therefore, Appellant Simpson requests that the Circuit Court's Order be reversed and the case be remanded with instructions for the judgments to be marked satisfied.



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March 20, 2017

IN THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Case No. 2013-CP-38-00992
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Appellate Case No. 2016-001807

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MAR 20 2017

SC Court of Appeals

Denetra Glover.....Respondent,

v.

William Shervon Stack and Shervon Latrese Simpson,Defendants,

Of whom

Shervon Latrese Simpson.....Appellant.

AND

Shirley Davis.....Respondent,

v.

William Shermon Stack and Shervon Latrese Simpson.....Defendants,

Of Whom Shervon Latrese Simpson.....Appellant.

CERTIFICATE OF COUNSEL

I, Wesley B. Sawyer, Esquire, Attorney for Appellant, certify that the Final Brief of Appellant complies with the South Carolina Supreme Court Order of August 13, 2007 and Rule 211(b) of the South Carolina Court Rules.

March 20, 2017



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