THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No: 2013-CP-38-00992
Case No: 2013-CP-38-00994
Appellate Case No. 2016-001807

Denetra Glover,.....Respondent,

v.

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

Of whom Shervon Latreese Simpson is the Appellant.

AND

Shirley Davis, ...Respondent,

v.

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

Of whom Shervon Latreese Simpson is the Appellant.

FINAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

On March 10, 2012, Respondents Denetra Glover and Shirley Davis (hereinafter "Respondents") were injured in an automobile accident. They were passengers in a vehicle being driven by Appellant Shervon Latreese Simpson (hereinafter "Simpson" or "Appellant"), which collided with a vehicle being driven by William Shermon Stack ("Stack"). Respondents filed negligence actions against Simpson and Stack on September 4, 2013. Stack filed an Answer and defended against Respondents' allegations. Simpson did not file an Answer and went into default. The trial court entered default as to Simpson on October 31, 2013 and referred the matters to the master in equity to conduct default damages hearings in each case. (R. pp. 19-20, 31-32).

The default damages hearings were held on May 21, 2014. Because Simpson's liability was deemed admitted by the default, the only issue for the master to determine was the amount of damages owed by Simpson, the defaulting defendant. On July, 9, 2014, the master entered orders that Simpson was responsible for $18,000 in damages to each Respondent. Specifically, the master made two conclusions of law: (1) that Simpson was in default and liable for damages sustained by each Respondent, and (2) that each Respondent was entitled to judgement against Simpson in the amount of $18,000. (R. pp. 14-15, 18). Nothing in the master's orders

determined or purport to determine the total amount of damages sustained by either Respondent as a result of the accident.

The lawsuit continued as to Stack, the non-defaulting defendant. Instead of taking the case to trial, which Stack had the constitutional right to do as to issues of both liability and damages, Stack reached settlements with Respondents ($12,000 as to Glover and $11,000 as to Davis). (R. pp. 114-115).

Thereafter, Respondents sought to collect the $18,000 default judgments against Simpson. On December 31, 2015, Simpson's insurer paid $6,000 to Glover and $7,000 to Davis and alleged that the default judgments were fully satisfied. On or about April 8, 2016, Simpson filed motions for entry of satisfaction of judgment in both cases. The trial court heard oral argument on June 29, 2016 and issued an order in each case on August 2, 2016 denying Simpson's motions. This appeal followed.[1]

STATEMENT OF FACTS

Respondents were in an automobile accident on March 10, 2012. They were passengers in a vehicle being driven by Appellant, which collided with a vehicle being driven by Stack. Respondents were injured in the accident. Both Respondents were treated by medical professionals and each incurred approximately $4,000 in medical expenses as a result of the accident. (R. pp. 116, 119). The pain from their injuries has persisted since the accident and adversely affected their enjoyment of life. Indeed, the master in equity made a finding of fact that the Respondents' conditions were permanent. (R. pp. 14, 18).

[1] Appellant's Notices of Appeal were filed on August 31, 2016 and the two appeals were consolidated on October 18, 2016.

Following the default judgment hearings as to Simpson in each case, the master in equity ordered as follows:

> a. I find that Defendant [Simpson] is in default and is liable for the damages suffered by Plaintiff.
>
> b. I conclude, therefore, that the Plaintiff is entitled to judgment against the Defendant [Simpson] in the amount of Eighteen Thousand and 00/100 Dollars ($18,000.00) for the reasons set forth herein.
>
> IT IS THEREFORE ORDERED that the Plaintiff have judgment against the Defendant, Shervon Latreese Simpson in the amount of Eighteen Thousand and 00/100 Dollars ($18,000.00)....

(R. pp. 14-15, 18).

Contrary to Appellant's repeated premise stated throughout her brief, the master in equity did not make any determination that each Respondent sustained a total amount of damages of $18,000 as a result of the accident. Rather, the master's orders unambiguously state simply that each Respondent is entitled to judgment against Simpson in a certain amount ($18,000).

ARGUMENT

This entire appeal is premised upon Appellant's unfounded claim that the master in equity determined that each Respondent sustained a total of $18,000 in damages as a result of the accident in question. Pursuant to the plain language of the master's orders, no such determinations were made. The master simply held that Appellant was liable for "the damages" suffered by Respondents, but did not make any determinations or findings as to the actual or total *amount* of damages suffered by each. The master made an additional finding that each Respondent was entitled to judgment against Simpson for $18,000 as a result of her default. Appellant strenuously seeks to have the court read an additional finding of fact into the master's orders that does not exist – a finding that each Respondent suffered total damages in the amount of $18,000 as a result of the accident and combined negligence of Simpson and Stack. The trial

court refused to read such a finding into the master's orders and correctly refused to offset the default judgments entered against Simpson with the amounts of the later settlements by Stack.

I. THE TRIAL COURT DID NOT ERR BY REFUSING TO OFFSET THE DEFAULT JUDGMENTS ENTERED AGAINST APPELLANT WITH THE SUBSEQUENT SETTLEMENTS BY THE NON-DEFAULTING CO-DEFENDANT.

Appellant was not entitled to a set off or reduction of the $18,000 default judgments, and Respondents will not receive a windfall or double recovery by requiring Simpson to fully satisfy each judgment entered against her. Respondents concede that both statutory and common law of South Carolina allow for set off from judgments in certain circumstances, but submit that such law does not apply to the facts of these cases. Indeed, Appellant cites no caselaw in support of her position that follows the unique fact pattern presented in this appeal (*i.e.*, unsatisfied default judgment followed by co-defendant settlement, then followed by Rule 60(b) request to reduce default judgment by settlement amount). Instead, all of the cases cited by Appellant involve different factual and procedural scenarios that do not implicate the issues of this appeal. *See, e.g., Riley v. Ford Motor Co.*, 414 S.C. 185, 777 S.E.2d 824 (2015) (refusing to reallocate previously received settlement proceeds among different causes of action in order to allow a larger set off from subsequent judgment against nonsettling co-defendant); *Rutland v. SCDOT*, 400 S.C. 209, 734 S.E.2d 142 (2012) (reallocating settlement proceeds from product manufacturer and applying reallocated amount as set off to subsequent judgment against SCDOT); *Smith v. Widener*, 397 S.C. 468, 472, 724 S.E.2d 188, 190 (Ct. App. 2012) ("before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds *previously paid* by a settling defendant") (emphasis added); *McGee v. Bruce Hospital System*, 344 S.C. 466, 545 S.E.2d 286 (2001) (prohibiting recovery of actual damages from second defendant because first defendant had already fully satisfied judgment on same

cause of action); *Welch v. Epstein*, 342 S.C. 279, 536 S.E.2d 408 (Ct. App. 2000) (reallocating settlement proceeds from one defendant and applying the reallocated amount as a set off to subsequent judgment against co-defendant doctor); *Ellis v. Oliver*, 335 S.C. 106, 515 S.E.2d 268 (Ct. App. 1999) (setting off post-trial judgment against defendant doctor with prior settlement received from hospital); *Loyd's Inc. by Richardson Constr. Co. v. Good*, 306 S.C. 450, 412 S.E.2d 441 (Ct. App. 1941) (prohibiting an action for contribution because no such right existed prior to enactment of the South Carolina Contribution Among Tortfeasors Act in 1988, and because the plaintiff had received full compensation of his claim); *National Bank v. Southern Railway*, 107 S.C. 28, 91 S.E. 972 (1917) (prohibiting recovery of liquidated damages from second defendant after judgment was obtained against and satisfied by first defendant for same liquidated damages).

The question presented in this appeal is different than in the cases cited by Appellant. The issue here is whether a defaulting defendant who fails to satisfy a judgment against her and instead waits until after the plaintiff settles with another third party, who answered and defended the lawsuit, is entitled to receive a set off from the earlier judgment with the amount of the later settlement. Equity requires that a defaulting defendant not be rewarded with set off under such circumstances.

A. The right to set off is controlled by equity and a trial court's decision is reviewed for abuse of discretion.

The long-standing common law right to set off is rooted in equity. *Rutland*, 400 S.C. at 216, 734 S.E.2d at 145 ("The trial court's jurisdiction to set off one judgment against another is equitable in nature and should be exercised when necessary to provide justice between the parties.") (quoting *Welch*, 342 S.C. at 312-13, 536 S.E.2d at 425). Even after S.C. Code § 15-38-50 was enacted in 1988, this Court held in 2000 that "set-off is not necessarily founded upon any

statute or fixed rule of court, but grows out of the inherent equitable jurisdiction of the court." *Welch*, 342 S.C. at 313, 536 S.E.2d at 425. As such, motions for set off "are addressed to the discretion of the court – a discretion which should not be arbitrarily or capriciously exercised." *Id.*

One year earlier, this Court was asked to determine whether the right to set off arises by operation of law. In *Ellis v. Oliver*, the Court held 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." *Ellis*, 335 S.C. at 112, 515 S.E.2d at 271 (emphasis added). Inherent in this Court's ruling was that the right to set off is still premised upon equitable considerations and may be denied when not sought in good faith. Indeed, in reaching its conclusion, the Court relied on persuasive authority that specifically considered "the ends of justice." *Ellis*, 335 S.C. at 111, 515 S.E.2d at 271 (quoting *Ryder v. Benfield*, 258 S.E.2d 849, 856 (N.C. Ct. App. 1979)).

Respondents acknowledge that the Court in *Ellis* went on to state that "Section 15-38-50 grants the court no discretion in determining the equities involved in applying a set-off once a release has been executed in good faith between a plaintiff and one of several joint tortfeasors." *Ellis*, 335 S.C. at 113, 515 S.E.2d at 272. However, Respondents maintain that such language does not apply to the factual scenario of this case because there were no settlements at the time the default judgments were entered against Simpson. If, at the time the default judgments were entered against Simpson, Respondents had already settled with and received payment from Stack, then this language from *Ellis* would arguably afford Simpson a set off in the amount of the settlements (and the ability to appeal the denial of such set off). Because the facts of this case are different, the trial court had discretion to consider the equities (in evaluating the alleged right to set off more than 21 months after judgments were entered) and determine that Simpson was

not entitled to any set off from the default judgments. Indeed, this Court's analysis the next year in *Welch* confirmed that motions for set off "are addressed to the discretion of the court." *Welch*, 342 S.C. at 313, 536 S.E.2d at 425.

B. The trial court correctly concluded there was no right to set off under either common or statutory law based on the circumstances of these cases.

The trial court in these consolidated cases did not abuse its discretion in refusing to grant Appellant's request for set off. Neither statutory nor common law require set off under the facts of these cases. This Court in *Widener* made clear that the right to set off under S.C. Code § 15-38-50 only applies to settlement funds received *prior* to entry of the judgment. The Court specifically held that "before entering judgment on a jury verdict, the court must reduce the amount of the verdict to account for any funds *previously paid* by a settling defendant, so long as the settlement funds were paid to compensate the same plaintiff on a claim for the same injury." *Widener*, 397 S.C. at 472, 724 S.E.2d at 190 (emphasis added). This makes sense because the language of § 15-38-50 presupposes that the release or covenant given by one tortfeasor (along with payment) occurs *prior* to entry of judgment against another tortfeasor. The statute states that such settlement does not discharge the nonsettling tortfeasor from liability but "reduces the claim" against such tortfeasor. The use of the word "claim" means that the statute applies to claims *still existing* at the time the release or covenant is given. In these cases, there were no claims still existing at the time Respondents settled with Stack; the claims against Simpson had already been reduced to judgments. Because no settlement funds had been paid to Respondents *at the time the default judgments were entered* against Appellant, there was no right to set off under either S.C. Code § 15-38-50 or the common law of South Carolina, and there remains today no right to set off (or appeal) under Rule 60(b), SCRCP.

None of the cases cited by Appellant provide for a reduction of a default judgment

entered against one defendant by the amount of a subsequent settlement with a second defendant. Indeed, Appellant does not cite one single case involving a Rule 60(b) request to reduce a default judgment, likely because such appeal is procedurally improper as explained in Section III herein. Nevertheless, Appellant seeks to obtain a benefit from Respondents' settlement with the non-defaulting co-defendant. Both equity and the law of South Carolina do not provide for such relief. The Supreme Court in *Riley* provided valuable insight in this regard:

> A plaintiff who enters into a settlement with a defendant gains a position of control and acquires leverage in relation to a nonsettling defendant.... Settlements are not designed to benefit nonsettling third parties. They are instead created by the settling parties in the interests of these parties. If the position of a nonsettling defendant is worsened by the terms of a settlement, this is the consequence of a refusal to settle. A defendant who fails to bargain is not rewarded with the privilege of fashioning and ultimately extracting a benefit from the decisions of those who do.

Riley, 414 S.C. at 197, 777 S.E.2d at 831 (quoting with approval *Lard v. AM/FM Ohio, Inc.*, 901 N.E.2d 1006, 1018 (Ill. App. 2009)). Here, Appellant is attempting to extract the benefit of set off from the co-defendant's settlement, despite her own unclean hands, default, and delay in satisfying the judgments against her. Appellant is not entitled to set off in this case as a consequence of her own inaction.

Appellant's reliance on *Rourk v. Selvey*, 252 S.C. 25, 164 S.E.2d 909 (1968), does nothing to further Appellant's argument for set off. In that case, the plaintiff obtained a judgment against two negligent defendants, thus making it factually distinguishable from the facts of these cases (where there is judgment against only one defendant). Because the trial court in *Rourk* allowed the jury to apportion liability among the two defendants, when the applicable law at the time was pure joint and several liability, the Supreme Court reversed and held that the plaintiff could recover the total amount of the improperly apportioned judgments from either defendant. Should the plaintiff collect the full judgment amount from one defendant, then the

court held that he could not also seek to collect money from the second defendant, because the collection of a joint judgment against one wrongdoer extinguishes the right to recover from a second wrongdoer. Although Appellant cites this authority in support of her argument, it is inapplicable to these cases because there were no joint judgments entered against both Simpson and Stack. To the contrary, the default judgments were entered as to Simpson only. Thus, Respondents had no ability or right to collect the judgments from Stack, and Stack chose to eliminate the claims against him by way of settlement in exchange for a release. Simpson was not released by Stack's settlement, and instead remains solely responsible for satisfaction of the judgments against her, as she has since the day they were entered. Simpson is not allowed to extract a benefit from Respondents' subsequent decision to settle with Stack.

Likewise, Appellant mistakenly relies on cases involving joint liability as opposed to joint and several liability. For instance, the old case of *Noble v. Cothran*, 18 S.C. 439 (1883), involved two defendants' joint liability for a single, contractual debt. Separate judgments in different amounts were obtained against the debtor and the sureties. The debtor's judgment was smaller and satisfied. The sureties' judgment was then reduced by the amount of the smaller satisfied judgment, because both judgments were rendered on the same contractual debt. The court noted that "it is manifest that the rule [that satisfaction of one judgment is satisfaction *pro tanto* of the others] can only apply where all the judgments are founded on the same cause of action, and are identical in amount, for, were the rule otherwise, the most flagrant injustice would often result from its operation." *Noble* at 444. The facts and reasoning of *Noble* are obviously different than the facts of this case, and therefore do not support Appellant's argument, because (1) there was no joint judgment against Simpson and Stack, and (2) Simpson and Stack are not jointly liable for Respondents' damages, but rather severally liable for the total amount of

damages sustained as a result of the accident.

In this same regard, Appellant's reliance on the *Restatement (Second) of Judgments* § 50 is also misplaced. As an initial matter, South Carolina has not adopted this section as law although it has approved other sections in other contexts. Nevertheless, Appellant does not cite the section specifically, but instead relies on a comment to the section. The section provides:

> § 50. Discharge of Judgment Against One of Several Co-Obligors
>
> When a judgment has been rendered against one of several persons each of whom is liable for a loss claimed in the action on which the judgment is based:
>
> (1) A satisfaction or release of the judgment, or covenant not to execute upon it, or other agreement terminating in whole or in part the judgment debtor's obligation, does not discharge the liability of any of the other persons liable for the loss, except:
>
> (a) To the extent that the agreement may so provide; and
>
> (b) To the extent required by the law of suretyship.
>
> (2) Any consideration received by the judgment creditor in payment of the judgment debtor's obligation discharges, to the extent of the amount of value received, the liability to the judgment creditor of all other persons liable for the loss.

Restatement (Second) of Judgments § 50 (1974).

This rule does not afford any relief to Appellant because Stack's settlement was not given as consideration for either satisfaction of the judgment against Simpson or a release of Simpson. Stack's settlement was given for his own benefit and release. (R. pp. 114-115). The Restatement comment cited by Appellant provides 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." This refers to the scenario where there is a judgment, which adjudicates the loss, followed by payment, in whole or in part, by one of several obligors *to the judgment*. In such scenario, the judgment may be reduced by the

amount of payment. However, such scenario is not present in these cases because there is only one "obligor" for the judgments in question; therefore, the Restatement does not offer any support for Appellant.

The master in these cases did not determine the total amount of damages sustained by each Respondent. Therefore, Respondents are not limited to recover any sum certain amount as a result of the accident. As a result, Respondents will not obtain a double recovery or windfall by being allowed to recover the full $18,000 default judgments from Simpson in addition to the settlement amounts received from Stack. The trial court properly exercised its discretion in evaluating the facts of these cases and the applicable law, and did not err in refusing to offset the original default judgments entered against Appellant with the amounts of the later settlements with Stack.

II. THE TRIAL COURT DID NOT ERR IN HOLDING THAT THE DEFAULT DAMAGES HEARINGS IN THESE CASES ONLY DETERMINED THE AMOUNT OF DAMAGES OWED BY APPELLANT.

There is no basis in this record to find that the default damages hearings in these cases determined more than the amount of Simpson's liability to Respondents. The language of the master's orders clearly and unambiguously state what findings of fact and conclusions of law were being made. Contrary to Appellant's repeated arguments, the master did not determine the total amount of damages sustained by Respondents as a result of the accident.

The purpose of a default damages hearing is to determine "the amount of liability" of the defaulting defendant. *Wells Fargo Bank, N.A. v. Marion Amphitheatre, LLC*, 408 S.C. 87, 90, 757 S.E.2d 557, 558 (Ct. App. 2014) ("a defaulting defendant does not concede the amount of liability"). Default damages hearings determine no more and no less than "the amount of liability" of the defaulting defendant. Indeed, a judge, special referee, or master holding a

default damages hearing as no authority to determine "the amount of liability" of any non-defaulting defendants who timely answered the lawsuit and denied the allegations against them.[2] Indeed, the Seventh Amendment to the U.S. Constitution affords civil litigants the right to receive jury trials, if they so desire. Moreover, Rule 38, SCRCP, preserves inviolate the right of civil litigants to receive jury trials: "The right of trial by jury as declared by the Constitution or as given by a statute of South Carolina shall be preserved to the parties inviolate." Rule 38(a), SCRCP. To this end, "[a]ny party may demand a trial by jury of any issue triable of right by a jury." Rule 38(b), SCRCP. If a trial court, like the trial court in this case, has the authority in a default damages hearing to determine the amount of liability of a non-defaulting defendant, then the non-defaulting defendant would be deprived of his or her absolute right to receive a jury trial on such issue (*i.e.*, damages). Accordingly, trial courts have no such authority.[3]

In support of her argument, Appellant relies on a case from Illinois which is factually and procedurally different from the cases *sub judice*. In *Saichek v. Lupa*, 787 N.E.2d 827 (2003), the plaintiff was injured in a car accident and filed suit against two separate at-fault drivers. One defendant went into default, while the other answered the complaint. The plaintiff obtained a default judgment as to the defaulting defendant and initiated collection efforts. The insurer for the defaulting defendant paid the plaintiff the full amount of the judgement. In return, the plaintiff executed a document entitled, "Satisfaction Release of Judgment." As the case continued against the non-defaulting defendant, that defendant moved to dismiss on the grounds

[2] Appellant takes issue with a footnote from the trial court's order referencing the "liability of Simpson" when it is evident that the trial court was actually referring to the "amount of liability" of Simpson.

[3] The trial court noted this consideration in its order denying satisfaction of judgment, and Appellant does not offer any justification in her brief for depriving non-defaulting litigants their constitutional right to jury trials and instead binding them to damages determinations made in default judgment settings against defaulting co-defendants.

that if she was found liable, she was bound by the prior determination of damages, which the plaintiff had fully recovered, leaving no claims to pursue against her and no money to recover from her. The appellate court agreed with the non-defaulting defendant and granted her motion to dismiss.

There are several critical differences between the facts of *Saichek* and the facts of this appeal, as well as in the law of the two jurisdictions, in particular the following:

- In *Saichek*, the default judgment was fully satisfied by the defaulting defendant.
- Here, the default judgments were not satisfied by the defaulting defendant.
- In *Saichek*, the non-defaulting defendant (with clean hands) sought dismissal of the claims against her, because the defaulting defendant fully satisfied the judgment.
- Here, the defaulting defendant (with unclean hands) seeks to reduce the amount of judgments against her based on settlement amounts subsequently paid by the non-defaulting defendant.
- In *Saichek*, the plaintiff executed a document entitled, "Satisfaction Release of Judgment" which released the defaulting defendant from all liability as to the judgment.
- Here, no release or satisfaction of judgment has been given to the defaulting defendant, or for her benefit.
- In *Saichek*, the court held that "[j]udgments by default have the same validity and force as those rendered upon a trial of the issues" and therefore, obtaining the default judgment collaterally estopped the plaintiff from re-litigating the amount of her damages as to the non-defaulting defendant.
- In contrast, South Carolina law provides that "the doctrine of collateral estoppel cannot be applied to default judgments to preclude subsequent litigation." *Kunst v. Loree*, 404 S.C. 649, 655, 746 S.E.2d 360, 363 (Ct. App. 2013).

Accepting Appellant's argument would mean that any time a plaintiff obtains a default judgment against one defendant, both that plaintiff *and any other non-defaulting defendant* would be collaterally estopped from litigating "the amount of liability" of the non-defaulting defendant (*i.e.*, damages of plaintiff). As noted by the appellate courts of this state, South

Carolina law does not intend or provide such result. *See., e.g., State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998) ("In the context of a default judgment, collateral estoppel or issue preclusion does not apply because an essential element of that doctrine requires that the claim sought to be precluded actually have been litigated in the earlier litigation.").

Furthermore, the court in *Saichek* was not faced with balancing the equities that are present in this appeal. For instance, in *Saichek*, the defaulting defendant fully satisfied the default judgment, leaving nothing for the non-defaulting defendant to pay. Although the non-defaulting defendant had the right to receive a jury trial as to her liability, she instead agreed to be bound by the damages determination in the default judgment and moved to dismiss the claims against her because there was nothing more to pay. As noted by the court in *Saichek*, there is nothing inequitable with such result because it was the defendant's right and choice to proceed as she did. The non-defaulting party arguably received a benefit from the defaulting defendant's default and immediate satisfaction of judgment.

In this appeal, on the other hand, it is the defaulting defendant who seeks to (1) extract a benefit from the non-defaulting defendant's settlements, and (2) collaterally estop any future determinations as to "the amount of liability." The principles of equity are offended in this instance because the defaulting defendant has not fully satisfied the judgments against her and attempts to achieve a better position as a result of her own misconduct. Practically, fashioning a favorable result for the defaulting defendant under these circumstances would lead to inequitable results extending far beyond these cases.

Consider the situation where a plaintiff is injured in a car accident after being hit by a commercial tractor trailer. The plaintiff files negligence causes of action against the truck driver and his employer. The truck driver goes into default. The plaintiff obtains a default judgment

against the truck driver for a substantial amount of money. If the court accepts Appellant's argument, then the practical result will mean that the non-defaulting trucking company in this hypothetical will be bound by the amount of damages ordered in the default judgment and collateral estopped from litigating the issue of damages. Thus, when the case goes to trial against the trucking company, the only issue for the jury to determine is whether liability exists as to the trucking company. If liability is found, then the trucking company is responsible for satisfying the full amount of the prior default judgment without the opportunity to litigate the issue. It is hard to imagine such an inequitable result, yet such injustice will occur in every case where there are multiple defendants and default judgment is entered as to one.

Recognizing all of these considerations, the trial court did not abuse its discretion in denying Appellant's motions for entry of satisfaction of judgment. Because there have been no determinations as to the total amount of damages sustained by each Respondent, it cannot be said that there has or will be double recovery by allowing Respondents to fully recover the amount of the default judgments against Appellant. Indeed, such result does not violate either the statutory or common law of South Carolina.

III. THIS APPEAL SHOULD BE DISMISSED DUE TO PROCEDURAL AND STATUTORY REQUIREMENTS THAT ARE NOT SATISFIED.

The default judgments against Simpson were entered on July 9, 2014. On April 8, 2016, Appellant moved for entry of satisfaction of judgment, purportedly pursuant to Rule 60(b), SCRCP. Rule 60(b)(5) requires such motion to be made within "a reasonable time ... after the judgment, order or proceeding was entered or taken." Rule 60(b)(5), SCRCP. Alternatively, Rule 60(b) allows for an independent action to be filed to seek relief from a judgment, order or proceeding.

Rule 72, SCRCP, generally provides that appeal may be taken from any final judgment or

appealable order. However, "the right to appeal is controlled by South Carolina Code Ann. Section 14-3-330 (1976), not by Rule 72." *Pioneer Assoc., Inc. v. Ticor Title Ins. Co.*, 300 S.C. 346, 348, 387 S.E.2d 711, 712 (Ct. App. 1989) (citing *Jefferson v. Gene's Used Cars, Inc.*, 295 S.C. 317, 368 S.E.2d 456 (1988)). Indeed, S.C. Code § 14-3-330 outlines the parameters of appellate jurisdiction in law cases.

A. Appellant's motions for entry of satisfaction of judgment were not made within a reasonable time as required by Rule 60(b), SCRCP.

Respondents submit that Simpson's motions for entry of satisfaction of judgment were not made within a reasonable time of entry of the default judgment. Nearly 21 months passed from the date judgments were taken against Simpson in the amount of $18,000 and the date Simpson's insurer moved to mark the judgments as satisfied. Simpson did not take any action in response to being served the Summons and Complaints in these actions. She again took no action after being given notice of the default damages hearings. She has not paid any money in an effort to satisfy the judgments against her. She has simply ignored every aspect of this civil action. For purposes of Rule 60(b), her conduct – and not the conduct of her insurer – must be evaluated to determine if the motion for relief from judgment was made within a reasonable time. Respondents contend it was not. Indeed, no explanation for Simpson's conduct has been given. For this reason, this appeal should be dismissed.

B. The orders denying Appellant's motions for entry of satisfaction of judgment are not appealable under S.C. Code § 14-3-330.

Not only was there an unreasonable delay between the judgments and motions for relief, but the orders denying the motions for relief are not appealable under S.C. Code § 14-3-330. The judgments in question were final on July 9, 2014. The substance or validity of the judgments have not been challenged and do not serve as the basis for this appeal. Instead,

Appellant appeals the post-judgment orders denying her motions for entry of satisfaction of judgment based upon the alleged right to set off that purportedly arose after the judgments were entered. Such orders do not fall within any exception to the final judgment rule and therefore are not appealable.

The orders in question do not involve the merits of the underlying actions, and do not serve as a final judgment in the actions, so the orders do not implicate § 14-3-330(1). Likewise, the orders do not affect a substantial right made in the underlying actions because they do not determine the actions and prevent judgment from which an appeal might be taken, or discontinue the actions. The actions were determined on July 9, 2014 and there was no right to set off at that time. Thus, § 14-3-330(2) does not allow for this appeal. The proper time to have appealed these judgments would have been immediately after they were entered, but the sole basis of appeal (the request for set off from judgment) was not present at that time. Thus, there was no "substantial right" to set off in the underlying actions at the time they were determined and judgments were entered. If there was such right at that time, but the trial court denied it as it entered judgment, then the orders doing so may have been appealable. But in this instance, they are not. Lastly, the orders do not affect a substantial right made in any special proceeding, nor do they grant, continue, modify, or refuse an injunction, thus making § 14-3-330(3) and (4) inapplicable.

Because the right to appeal is controlled by S.C. Code § 14-3-330, and because the orders at issue do not fall under one of the enumerated categories, this appeal should be dismissed. *See, e.g., Pioneer*, 300 S.C. at 348, 387 S.E.2d at 712. The proper way for Appellant to have sought relief from the default judgments at issue would have been to file an independent action for relief from judgments, as envisioned by Rule 60(b), SCRCP. Such proceeding would have resulted in

an order from which appeal could properly be taken pursuant to S.C. Code § 14-3-330.

CONCLUSION

For the reasons set forth herein, this Court should affirm the trial court's denial of Appellant's motions to set off the default judgments entered against her with the subsequent settlements received by Respondents from the non-defaulting co-defendant. Alternatively, the Court should dismiss this appeal because the orders from which appeal are taken are not appealable under S.C. Code § 14-3-330.

March 20, 2017

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable R. Knox McMahon, Circuit Court Judge

Case No: 2013-CP-38-00992
Case No: 2013-CP-38-00994
Appellate Case No. 2016-001807

Denetra Glover,.....Respondent,

v.

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

Of whom Shervon Latreese Simpson is the Appellant.

AND

Shirley Davis, ...Respondent,

v.

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

Of whom Shervon Latreese Simpson is the Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel for Respondents certifies that the Final Brief of Respondents in this matter complies with Rule 211(b), SCACR.

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