

**STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

Appeal from Charleston County
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity
J.C. Nicholson, Jr., Circuit Judge

Case No. 2015-CP-10-3392
Appeal No. 2017-001628

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SC Court of Appeals

Ann M. Blandin,

Respondent-Appellant,

v.

City of North Charleston,

Appellant-Respondent.

**FINAL REPLY BRIEF OF APPELLANT-RESPONDENT
CITY OF NORTH CHARLESTON**

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POINTS OF CLARIFICATION ON REPLY

1. *Regarding Appellate Preservation*

The Plaintiff/Respondent argues on appeal that “the City did not file a 60(b) motion and as such its 55(c) appeal is not properly before the court.” However, the Plaintiff previously has raised that same issue in her motion to dismiss the appeal which was denied by the Court in its order of March 22, 2018.

As discussed in the City’s Return, which is incorporated as if fully restated, the City was not required to make Rule 60(b) motion after having already made a Rule 55(c) motion. As noted by the Plaintiff/Respondent, the Court has stated that: “Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. An appeal may then be taken from the denial of this motion.” Sundown Operating Co. v. Intedge Indus., Inc., 383 S.C. 601, 681 S.E.2d 885, 888 (2009). However, consideration of the Supreme Court’s opinion shows that the relevant choice depends on when the defaulting party realizes the default and makes a motion for relief. Nothing in the Rules or legal logic require that a Rule 60(b) motion be made in circumstances such as here where a Rule 55(c) motion has been made and ruled upon. *See discussion in* Balloon Plantation, Inc. v. Head Balloons, Inc., 303 S.C. 152, 157–58, 399 S.E.2d 439, 442 (Ct. App. 1990) (“Rule 60(b) provides that a court may relieve a party from a final judgment, order or proceeding for “Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc.” The defendants do not seek relief based on any of these grounds. Therefore, a motion pursuant to Rule 60(b) would not make any sense.”)

2. *Regarding Rule 55(e), SCRCP*

In this appeal, the City does not rely upon or seek the protections of Rule 55(e), SCRCP. The City does, however, reply upon the core principle of Rule 55 precedent that: “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 (Ct. App. 2008). The City maintains that forcing innocent taxpayers to pay a default from the public treasury here would subvert justice, not further it. The Plaintiff is pursuing over \$5 million dollars of taxpayer money in a case in which there is evidence to suggest the Plaintiff herself was the primary cause of the accident when she ran a stop sign. Allowing the Plaintiff to enjoy a multi-million-dollar default here, erasing her role in the accident, is not a "just" sanction for a single misplaced government email. The injustice is magnified a thousand-fold when one considers that it is the innocent taxpayers who will be paying, not even the person who misplaced the email.

3. *Regarding the Mere Good Cause Standard for Rule 55(c) Motions*

In a Form 4 order, the Trial Court ruled that the failure to forward an e-mail does not amount to good cause shown for failure to timely file an answer. In support of the Trial Court's decision, the Plaintiff relies upon the Court's 1995 decision in Roche v. Young Bros. of Florence, 318 S.C. 207, 212, 456 S.E.2d 897, 900, wherein the Court held that: "Losing a summons and complaint within the corporation is not a ground to set aside a default judgment."

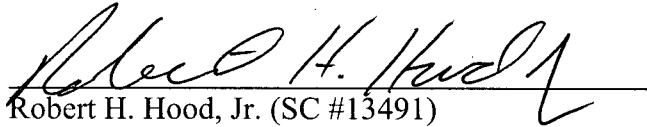
The City maintains that in that Roche is inapposite because in that case, default judgment had been entered and the motion was made under Rule 60(b). Under current precedent as succinctly set forth in Sundown Operating, a motion to set aside entry of default under Rule 55(c) is governed by a different, more lenient standard, of mere good cause. The Trial Court failed to appreciate and apply the more lenient Rule 55(c) mere good cause standard where the City has made the threshold showings by offering an explanation for the default, and valid reasons why vacation of the default entry would serve the interests of justice.

CONCLUSION

WHEREFORE, based on the foregoing, the Defendant City of North Charleston requests that the Court reverse the judgment, set aside the entry of default, and remand to allow the City to responsively plead to Plaintiff's Complaint.

Respectfully submitted,

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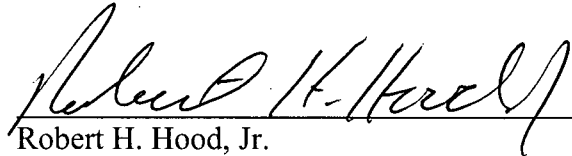
**Attorneys for the Appellant/Respondent
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8/17, 2018

Certification of Counsel

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.

8/17, 2018



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