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THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2017-000674

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NOV 20 2018

SC Court of Appeals

Lahitsha Hampton

Respondents,

v.

George Edward Willoughby, Richard  
Mann & William Sherman,

Defendants

OF WHOM  
William Sherman is the

Appellant.

**APPELLANT'S PETITION FOR REHEARING  
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 221(a) and Rule 240(i), SCACR, Appellant William Sherman ("Appellant") respectfully petitions this Court for a rehearing of Opinion No. 2018-UP-412, filed November 7, 2018. Rehearing is appropriate where, as here, the Court has overlooked or misapprehended an argument. *Kennedy v. S.C. Ret. Sys.*, 349 S.C. 531, 532, 564 S.E.2d 322, 322 (2001). The Petition for Rehearing should be granted because the Court's Opinion (1) misapprehends the argument being made by Appellant, and (2) overlooks the interests of justice in the analysis of setting aside the entry of default and enforcing the default judgment. Appellant hereby incorporates by reference its previously filed briefs and the Record on Appeal for a substantive review of the facts and procedural history relevant to this matter.

## **I. Background Facts.**

This case arises out of a motor vehicle accident involving Respondent and Defendants Willoughby and Mann. Specifically, on or about March 30, 2015 Appellant was driving a 2007 Ford northbound on East Stone Avenue near the intersection of Spartanburg Street. Defendant, Richard Mann, was traveling southbound on East Stone Avenue in a 2006 Mini Cooper near the aforementioned intersection of Spartanburg Street. Defendant, George Edward Willoughby was also traveling southbound on East Stone Avenue in a 1973 Chevy, which was owned by Appellant. Defendant Willoughby was slowing to make a left turn onto Spartanburg Street when his vehicle was struck from behind by Defendant Mann causing his vehicle to enter the northbound lane of East Stone Avenue resulting in a collision with Respondent's vehicle. Appellant was not present at the scene and was only named in this suit as owner of the 1973 Chevy.

Respondent contends that she sustained numerous injuries including a concussion requiring medical treatment.

Respondent alleges Appellant was negligent under the numerous theories including, family purpose doctrine, negligent entrustment, bailor/bailee, lessor/lessee, employer/employee, master/servant, principal/agent; including any ostensible or apparent agency relationships, contractual relationships, corporate relationships, family and/or other relationships including business relationships.

## **II. Procedural Posture.**

On December 11, 2015 Respondent, Lahitsha Hampton, filed suit against each of the above Defendants alleging negligence stemming from a motor vehicle accident against Defendants Mann and Willoughby with a separate claim for Negligent Entrustment against

Appellant. Respondent, on March 24, 2016, moved for an Entry of Default as to Appellant contending he was personally served at 36 Lisa Drive in Greenville, South Carolina on December 14, 2015 though no Answer was filed within the requisite thirty (30) days. Appellant, on June 1, 2016, filed a Motion to Prevent Entry of Default or, in the Alternative, for Relief from Entry of Default Pursuant to SCRCP 55, which was heard by The Honorable Letitia H. Verdin on July 28, 2016 in Greenville, South Carolina. After hearing oral arguments and taking the matter under advisement, Judge Verdin issued an Order Denying Appellant's Motion. Of significance, as of the date of the Hearing Defendant Mann was also in default and Defendant Willoughby had only just filed an Answer on July 13, 2016. Moreover, on October 7, 2016 an Order was filed setting aside default as to Defendant Mann.

Following the entry of the foregoing Order by Judge Verdin Appellant filed subsequent motions including the Order that forms the basis for this appeal, which was the Motion to Stay Enforcement of a Judgment. In response to the entry of a Default Judgment on October 17, 2016, Appellant filed a Motion to Stay Enforcement of a Judgment pursuant to Rules 54(b), 62(b), and 62(h), SCRCP. Judge Verdin heard Appellant's Motion on November 1, 2016 and later issued, on November 9, 2016, a Form 4 Order denying Appellant's Motion without a detailed ruling. Finally, on November 17, 2016, Appellant filed a Motion for Reconsideration of the Court's ruling denied on February 17, 2017. The instant appeal followed.

**III. The Court of Appeals Misapprehended the Standard for Setting Aside an Entry of Default and Arguments Made by Appellant Relative to the Entry of Default and Motion to Stay Enforcement of Judgment.**

In affirming the decision of the lower court to deny Appellant's Motion to Set Aside the Entry of Default the Court of Appeals misapprehended the standard and Appellant's argument relative thereto. Rule 55(c) establishes the standard for granting relief from an entry of default as

“mere good cause.” *Sundown Operating Co. v. Intedge Indus., Inc.*, 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009). In further analyzing this standard it is noted in the Opinion that “a party seeking relief from an entry of default under Rule 55(c) [must] provide *an explanation* for the default and give reasons why vacation of the default entry *would serve the interests of justice.*” *Id.* (*emphasis added*). The Court of Appeals seems to hold that the explanation proffered by Appellant was a lack of familiarity with legal proceedings in noting that laymen are held to the same standard as an attorney.

This holding, Appellant submits, misapprehends the standard for relief from an entry of default and the argument propounded by Appellant. The standard for relief requires a moving party to provide an explanation for the default along with reasons why vacation of the default entry would serve the interests of justice. The Court seems to stop its analysis with the explanation offered rather than continuing its analysis by looking how the interests of justice would be served as submitted by Appellant. In his original motion and again on appeal Appellant provided a clear and consistent explanation in that he was in no personally involved in the underlying motor vehicle accident in which he was being sued. The analysis under Rule 55(c) and *Sundown* is not linear but rather requires that both the explanation for the default and reasons why the interests of justice would be served be assessed. Appellant argues that the *Sundown* analysis necessitates evaluating the explanation for the default and how vacating the entry would serve the interests of justice.

In fulfilling the second component of his duty in seeking to have the entry of default vacated Appellant provided very clear and significant reasons the interests of justice would be served. First, Appellant argued the claim brought against him was wholly without merit and the entry of default allows a judgment to be entered without regards for the clear absence of a

justiciable controversy between the parties. Appellant directed the lower court to the Complaint filed against him noting the clear deficiencies in the cause of action asserted by Plaintiff against Appellant. The Complaint, as drafted, could not withstand a 12(b)(6) challenge as the theory under which suit was brought against Appellant, negligent entrustment, lacked required allegations. Specifically, Respondent made no assertion anywhere in her Complaint that alcohol was a factor in this accident. Without the allegation that alcohol was a factor in the accident no claim for negligent entrustment can be advanced. Therefore, it is without contradiction that the interests of justice would most assuredly be served by vacating the entry of default as the alternative leads to a person being unable to defend a claim that is brought against him without merit. Alternatively, Appellant directed the Court to the fact that the driver of his vehicle, Defendant Willoughby, was defending the negligence claim brought against him. Therefore, this case presents a unique scenario where one could be held to have negligently entrusted his vehicle, through a procedural defect, with a subsequent adjudication that his vehicle was not operated negligently. There can be no greater reason for vacating an entry of default than to ensure that someone is not wrongfully held responsible for an action that never occurred and/or did not contribute to one's damages.

**IV. The Court of Appeals Erroneously Overlooked the Absence of an Express Determination that there was no Just Reason for the Delay in Applying Rule (54)(b), SCRPC.**

Alternatively, Appellant submits that the interests of justice require execution of the default judgment be stayed until the entering of a subsequent judgment in accordance with Rule 62(h) SCRPC. As proscribed by Rule 54(b), SCRPC entry of a final judgment may be directed in matters where more than one claim for relief is presented "*only upon an express determination that there is no just reason for delay.*" As set forth hereinabove Appellant presented the Court

with two clear reasons for delaying the entry of the default judgment. First, the factual allegations of Respondent's Complaint are clearly lacking in support of a claim for negligent entrustment thereby leading to entry of a judgment in a meritless claim. Second, the underlying negligence claim against the driver of Appellant's vehicle, Willoughby, is currently being litigated. There is, given the posture of the pending litigation, that the entry of a final judgment and enforcement of it as to Appellant could render him liable for damages only because his case went into default. To put this differently if Willoughby is found to have not contributed to this accident Appellant will be obligated to pay a judgment simply because his vehicle was involved in an accident. The clearly illogical and inconsistent outcomes could, and should, be avoided through the application of Rule 54(b) and/or 62(h), SCRCP. Only through reliance on Rule 54(b) or 62(h) can the Court avoid such an improper outcome that would do a great and irreparable disservice to the system of justice.

**V. Conclusion**

As the Court of Appeals misapprehended the standard for vacating an entry of default and overlooked the trial court's erroneous application of Rule 54(b), SCRCP, the petition for rehearing should be granted permitting the parties to be heard. Alternatively, the underlying rulings by the lower court should be reversed and the matter remanded.

*(SIGNATURE PAGE FOLLOWS)*

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'MCL', with a horizontal line drawn underneath it.

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Attorneys for Appellant

November 20, 2018  
Columbia, South Carolina

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PROOF OF SERVICE

I certify that I have served Appellant's Petition for Rehearing and Memorandum in Support on Lahitsha Hampton by depositing a copy of it in the United States Mail, postage prepaid, on November 20, 2018, addressed to her attorney, Brian T. Smith, of Brian T. Smith Law Offices, 714 Pettigru Street, Greenville, South Carolina 29601.

November 20, 2018

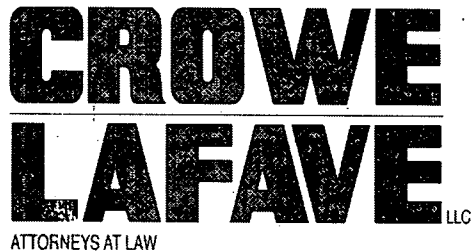


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*Via Hand Delivery*

Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, SC 29201

RE: Lahitsha Hampton v. George Edward Willoughby, Richard Mann, and William Sherman  
Appellate Case No. 2017-000674  
Claim No. 5809597

Dear Ms. Kitchings:

Please find enclosed for filing an original and seven copies of Appellant's Petition for Rehearing and Memorandum in Support, along with an original and one copy of the Proof of Service, regarding the above-captioned matter. Also is a check in the amount of \$50.00 representing the filing fee. Once filing is complete, please return the clocked copies to the individual presenting these documents for filing.

By copy of this correspondence to the attorney for Respondent, I am hereby serving a copy of Appellant's Petition for Rehearing and Memorandum in Support. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in black ink, appearing to read "MCLAF", written over a horizontal line.

Matthew C. LaFave

MCL/dmb  
Enclosures

cc: Brian T. Smith, Esquire  
Client/Carrier