THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul M. Burch, Circuit Court Judge
William O. Spencer, Special Referee

Case No. 2017-CP-13-804

First Citizens Bank & Trust Company and Sadie M. Murvin, ... Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman
and Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is ....Appellant.

REPLY IN SUPPORT OF MOTION FOR LEAVE TO FILE SUPPLEMENTAL RULE 60(B) MOTION AND MOTION TO REMAND

Appellant Great American Life Insurance Company ("GALIC") respectfully submits this Reply in Support of its Motion for Leave to File Supplemental Rule 60(b) Motion and Motion to Remand ("Motion"). First Citizens Bank & Trust Company and Sadie M. Murvin ("Respondents") oppose GALIC's motion by, *inter alia*: (1) citing phantom documents which were neither filed with the trial court below nor are a part of the record on appeal before this Court; (2) misrepresenting the evidence and documents that are before the Court; (3) misrepresenting the nature of GALIC's argument below and to this Court; (4) characterizing an admitted misrepresentation in a sworn affidavit as an "honest mistake;" (5) continuing to rely upon and attempting to take advantage of that "honest mistake," while criticizing GALIC for doing the same;

(6) and continuing their quest to exact a gross financial windfall from a default judgment based on admittedly false allegations. This cannot stand. The Court therefore should grant GALIC leave to file a supplemental motion for relief from default judgment under Rule 60(b), SCRCP, and if necessary, remand this matter to the Special Referee.

LAW/ANALYSIS

I. Respondents Never Filed an Opposition to GALIC's Motion for Relief from Default Judgment.

In opposing GALIC's attempt to have a full and complete hearing of all of the facts underlying the claims against it,[1] Respondents continue and compound their obstruction efforts by making the incredible claim that an admission of a misrepresentation used to procure a default judgment against GALIC should be disregarded because they have already admitted to the misrepresentation in prior filings in this case. Indeed, the crux of Respondents' argument in opposition to the Motion is that they previously admitted the falsity of material statements in their complaint and Ms. King's affidavit, and thus there is no basis for relief. It's a position that boggles the mind and stands fairness and justice on its head. But even in confirming that they made material misrepresentations to the trial court, Respondents cannot seem to help themselves from further misrepresenting the record to this Court. The sole source for Respondents' assertion that their admitted false affidavit and statements of fact in the Amended Complaint are not "new information" which would justify relief under Rule 60(b)(2), SCRCP, is Respondents' bizarre assertion that they previously admitted to providing a false affidavit to the trial court, citing an

[1] Such a hearing, it is worth reiterating, would be consistent with South Carolina's stated policy of favoring disposition of issues on their merits rather than on technicalities. *See Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986).

alleged "Memorandum in Opposition to Motion to Set Aside Default Judgment" ("Opposition Memorandum") as support for this twisted logic. *See* Resp. at pp.3, 4, 6, & n.2.[2]

Setting aside for a moment the fact that Respondents' admitted misrepresentation, which was employed in the procurement of the underlying default judgment, is by itself a sufficient basis for relief from the entry of default and default judgment, Respondents' argument fails out of the gate for an equally critical reason: **Respondents did not file an Opposition Memorandum, as reflected by the fact that the Chesterfield County Clerk of Court's record does not contain any written opposition to GALIC's motion to vacate**. Not only does the Public Index reflect the fact that no Opposition Memorandum was filed, Respondents' own Initial Designation of Matter to be Included in the Record on Appeal to this Court, filed concurrent with their initial respondent's brief in this appeal, neither identified the alleged document's existence and nor designated it as a document to be included in the record before this Court.[3]

Moreover, there is no transcript of the proceedings below which would otherwise demonstrate that Respondents advanced an Opposition Memorandum to the Special Referee, much less a filing containing an admission of Respondents' material misrepresentations regarding facts relied upon by the trial court in entering default and default judgment against GALIC. The

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[2] A copy of Respondents' Designation is attached hereto as Exhibit A. As an example of Respondents' mistaken citation, on page four of the Response, Respondents assert that "First Citizens and Sadie Murvin submitted a Memorandum in Opposition to Defendant's Motion to Vacate Default Judgment," and proceed to quote from the alleged memorandum. Resp. p.4. However, the quotation included by Respondents is a verbatim quote from the Special Referee's order denying the motion to vacate judgment, a copy of which is attached hereto as Exhibit B for the Court's reference and comparison.

[3] With respect to both the circuit court's case file, which is available online, and Respondents' prior designation of matter to be included in the record on appeal, this Court "can take judicial notice of its own records, files[,] and proceedings for all proper purposes including facts established in its records." *Freeman v. McBee*, 280 S.C. 490, 313 S.E.2d 325 (Ct. App. 1984).

"Opposition Memorandum" therefore is **not** a part of the record and, to the extent it even exists, cannot be considered.[4] This Court should disregard all references to it. *See S.C. State Highway Dept. v. Meredith*, 241 S.C. 306, 311, 128 S.E.2d 179, 182 (1962) ("This Court will not consider any fact which does not appear in the transcript of record . . . . Likewise, counsel is prohibited from embodying in their briefs any fact which does not appear in the record.").

II. Respondents Never Admitted Their Allegations Were False Until the Filing of Their Respondents' Brief to This Court.

Even assuming this Court can consider statements made in the phantom Opposition Memorandum, they do not, as Respondents repeatedly aver, demonstrate an unambiguous admission by Respondents that they made material misrepresentations of fact in the Amended Complaint and in Ms. King's affidavit. According to Respondents, they previously argued to the Special Master in the "Opposition Memorandum" that "[s]imply checking Great American's computer system and determining that the annuity number was not one of their system's number, without even bothering to check the name of the insured is careless and should not be used as an excuse to set aside a default judgment."[5] Resp. at p.4. Even if this statement had been actually

[4] Moreover, Respondents have waived the right to now argue that a memorandum in opposition to GALIC's initial motion to vacate was submitted to the Special Referee. In its initial brief to this Court, GALIC made the express argument that its motion to vacate was unopposed by written submission before the Special Referee *precisely* for the reason that the record contained no filed opposition. *See* Initial Br. of GALIC at n.9. In their initial brief to this Court, Respondents did not object or otherwise respond to this characterization of the record; consequently, they have waived the ability and are now judicially estopped from taking a contrary position. *See Cannon v. Georgia Attorney General's Office*, 397 S.C. 541, 546, 725 S.E.2d 698, 701 (2012) (citing *Hurst v. Sumter County,* 189 S.C. 376, 1 S.E.2d 238 (1939) (noting the general rule in civil cases that issues must be raised at the earliest opportunity, or they will be considered waived)); *Hayne Federal Credit Union v. Bailey*, 327 S.C. 242, 251, 489 S.E.2d 472, 477 (1997) ("Judicial estoppel precludes a party from adopting a position in conflict with one earlier taken in the same or related litigation.").

[5] As set forth above in footnote 2, however, this quotation appears on page 6 of the Special Referee's order denying GALIC's motion to vacate judgment, not the "Opposition Memorandum."

advanced to the Special Referee, it is a far cry from Respondents conceding that they made material errors in pleading and submitted a factually incorrect affidavit to the Special Master. Indeed, Respondents appear to misapprehend GALIC's Rule 60(b)(2) argument altogether: the "newly discovered evidence" **is the admission**, which appears for the first time in Respondents' brief to this Court, **not the facts underlying the admission**. By admitting that the Amended Complaint and Ms. King's affidavit contained material misrepresentations to the trial court, Respondents are conceding that the entry of default and default judgment were procured by misrepresentation, which would alone justify relief under Rule 60(b)(3).

Instead of constituting a prior admission of misrepresentation, the foregoing quoted statement relied upon by Respondents is an *argument* advanced to excuse Respondents' misrepresentations, not admit to them. In point of fact, Respondents admitted no wrong doing, no fault, and no error through this statement. They instead hid the ball by dodging the issue, shifting blame to GALIC, and conceding nothing.[6] Respondents continue to do the same before this Court.

III. Respondents' Admission That Their Complaint Contains Material Falsehoods is Newly-Discovered Evidence.

Rather than confront the falsity of their prior statements, Respondents obfuscate the question by repeatedly misrepresenting the nature of GALIC's motion. As provided above, at issue in the Motion is not that Respondents' Amended Complaint and Ms. King's affidavit referred to and attached a policy that GALIC did not issue. GALIC has advanced those facts all along in support of its request for relief from default on the grounds of mistake, inadvertence, or excusable

[6] In addition to mischaracterizing GALIC's argument as explained below, Respondents amazingly blame GALIC for Respondents' failure to uncover these errors earlier: "Because Great American ignored the lawsuit against it and instead of answering and notifying Respondents of the issue, Respondents were not notified of the mistaken policy number and policy printout until those issues were raised by Great American's counsel in its memorandum to the Special Referee." Resp. at p.7.

neglect, including in briefing to this Court in the underlying appeal. However, it is of no moment that GALIC had in fact issued Lonnie B. Murvin an annuity. GALIC freely admits and has never contested this fact. What is newly-discovered is Respondents' full and unequivocal admission, made for the first time in their Respondents' Brief to this Court, that the Amended Complaint and Ms. King's affidavit contained material misrepresentations regarding annuity policy underlying the claim—meaning Respondents' complaint on its face did not seek to recover under GALIC's policy and the default judgment was procured by knowing—and now admitted—misrepresentations.

This new admission dramatically alters the landscape. Until now, Respondents have ducked the falsity of their allegations and the propriety of their reliance on those false statements to procure a judgment against GALIC. Nowhere in the record did Respondents admit to these fatal pleading errors while they urged the Special Master to allow the default judgment against GALIC to persist. They now seek to do just that before this Court—admit they made material pleading errors but, under the appellate standard of review, ask for the default judgment that those errors wrought still stand. The Special Referee should have the opportunity to fully and fairly consider relieving GALIC from default in light of Respondents' recent admissions, or, alternatively, judicial economy would justify this Court granting GALIC's requested relief in the first instance. *See S.E. Hous. Found.*, 380 S.C. at 636, 670 S.E.2d at 688 (invoking judicial economy to address the merits of the arguments challenging the grant of a Rule 60(b) motion "in an effort to avoid another appeal in the future and potentially narrow the issues for trial (i.e. judicial economy)") (quoting *Edge v. State Farm Mut. Auto. Ins. Co.*, 366 S.C. 511, 517, 623 S.E.2d 387, 390 (2005)).

IV. Respondents Seek the Benefit of an "Honest Mistake" But Vigorously Fight to Prevent GALIC From Doing the Same.

GALIC previously moved to set aside the default judgment under Rule 60(b)(1), SCRPC, on the ground of good faith mistake, inadvertence, or excusable neglect. As explained previously, GALIC reviewed the Amended Complaint and determined in good faith that it had been named incorrectly due to the policy number that Respondents cited, Respondents' attachment of a policy GALIC never issued, and the attachment of a policy issued by a company with which GALIC is frequently confused. Believing in good faith that it had been mistakenly named as a party in this lawsuit, the Amended Complaint was not processed as a claim against GALIC within its legal department; consequently, no answer or other responsive pleading was timely filed on GALIC's behalf. Respondents have chastised GALIC for this, calling these actions "careless" and maintaining they are inexcusable.

Yet Respondents term Ms. King's statement in her affidavit that a copy of the operative policy was attached to the Amended Complaint—a false statement given by an attorney under oath and under the representation that she "is very familiar with the issues involved in this litigation" (Appellant's Mot. Ex. 3 ¶1)—a simple "honest mistake." Resp. at pp.7-8. Respondents cannot have it both ways. They cannot maintain that GALIC's actions based on the false facts Respondents presented in the Amended Complaint are unredeemable and subject GALIC to hundreds of thousands of dollars in liability, not to mention Respondents' frivolous claims for punitive damages, while Ms. King's false statement given under oath based on facts entirely within her possession made to procure a judgment against GALIC was an "honest mistake" that should receive a pass.

V. Respondents Should Not Be Permitted to Receive a Great Financial Windfall from Their Own Pleading Errors.

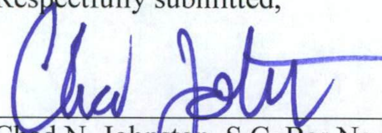
As a result of their now admitted false statements, first to the trial court and second to the Special Referee, Respondents received a default judgment in the amount of $136,000 for breach of contract. A damages hearing is pending on Respondents' remaining causes of action—including their request for punitive damages. Had Respondents correctly pled the case to begin with, the matter would be decided on its merits and not a procedural rule that confers an enormous windfall on Respondents. Had Respondents been candid with the Special Referee about their own errors that brought about the default, this matter again could be decided on its merits. And now, Respondents continue down the same path before this Court and feverishly oppose any attempt to have their claims heard on the merits in order to protect the gains they stand to reap. This Court should stop this tide and allow the Special Referee to consider the effect of Respondents' admittedly false statements to GALIC, to the trial court, and to the Special Referee himself.

CONCLUSION

For the foregoing reasons and the reasons set forth in GALIC's Motion for Leave to File Supplemental Rule 60(b) Motion and Motion to Remand, this Court should grant GALIC leave to file a supplemental motion for relief under Rule, 60(b), SCRCP, stay these proceedings as necessary, and grant such other relief as the Court deems just and proper.

[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,



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March 28, 2019
Columbia, South Carolina

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul Burch, Circuit Court Judge
William O. Spencer, Special Referee

Appellate Case No. 2018-001808
Civil Action No. 2017-CP-13-00804

First Citizens Bank & Trust Company and Sadie M. Murvin, ... Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman and
Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is the .... Appellant.

RESPONDENT FIRST CITIZENS BANK & TRUST COMPANY AND SADIE M. MURVIN'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

Pursuant to Rule 209, of the South Carolina Appellate Rules (SCACR), Respondent First Citizens Bank & Trust Company and Sadie M. Murvin, proposes the following to be included in the Record on Appeal:

1. Summons filed December 18, 2017;
2. Complaint filed December 18, 2017;
3. Amended Summons filed January 17, 2018;
4. Amended Complaint filed January 17, 2018;
5. Letter from the S.C. Department of Insurance to Great American filed February 9, 2018;
6. Affidavit of Service filed February 9, 2018;

7. Affidavit of Service filed March 5, 2018;

8. Affidavit of Default filed March 5, 2018;

9. Motion for Order of Default filed March 5, 2018;

10. Motion for Entry of Default by Clerk filed March 5, 2018;

11. Entry of Default filed March 5, 2018;

12. Judgment for Plaintiffs and Order for Default and for Hearing on Damages filed on March 22, 2018;

13. Notice of Appearance by Wilbur E. Johnson, Esq. filed on April 12, 2018;

14. Defendant Great American Life Insurance Company's Motion to Vacate Default Judgment filed April 16, 2018;

15. Memorandum in Support of Defendant Great American Life Insurance Company's Motion to Vacate Default Judgment filed July 12, 2018;

16. Order Denying Defendant's Motion to Vacate Default Judgment filed September 13, 2018;

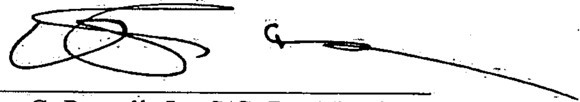
17. Notice of Appeal filed October 12, 2018.

(signature page to follow)

CERTIFICATION OF COUNSEL

The undersigned certifies that this designation contains no matter which is irrelevant to this appeal, pursuant to Rule 209(c), SCACR.

Respectfully submitted,



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Admission to Practice Pro Hac Vice Pending

This the 8th day of February 2019

EXHIBIT B

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF CHESTERFIELD	)	CASE NO. 17-CP-13-804
First-Citizens Bank & Trust Company and Sadie M. Murvin	)	
Plaintiffs,	)	
v.	)	**ORDER DENYING DEFENDANT'S MOTION TO VACATE DEFAULT JUDGMENT**
Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman and Great American Life Insurance Company,	)	
Defendants.	)	

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Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY, S.C.

This matter is before the undersigned pursuant to the Judgment for Plaintiffs and Order for Default and for Hearing on Damages, signed by Honorable Paul M. Burch and filed on March 22, 2018. This Order referred the matter to the undersigned, and granted Plaintiff, First-Citizens Bank & Trust Company, a judgment against the Defendants in the sum of $136,000.00 on the breach of contract cause of action. It also found the Defendants in default on the remaining causes of action and ordered the undersigned to set a hearing on damages.

Pursuant to the above referenced Order, the undersigned scheduled a hearing on July 12, 2018 on the Defendant, Great American's, Motion to Vacate the Default Judgment. Both attorneys appeared at the hearing and presented oral arguments.

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A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

and Memoranda to the undersigned for consideration. The Defendant, Murvin, has not appeared in this matter and did not appear at this hearing.

This action was filed by the Plaintiffs on December 18, 2017 against the above-referenced Defendants. The Complaint alleges causes of action against the Defendant, Great American, for breach of contract, insurance bad faith, breach of covenant of good faith and fair dealing and conversion. It also alleges a cause of action against the Defendant, Murvin, for conversion. Clerical errors were corrected with the filing of an Amended Complaint on January 17, 2018. The Defendant, Murvin, was personally served with the Amended Complaint on January 24, 2018 and has not filed any responsive pleadings nor made an appearance. Defendant, Murvin is thus in default.

The Defendant, Great American, was properly served with the Summons and Amended Complaint through the South Carolina Department of Insurance on January 25, 2018. On that same date, the South Carolina Department of Insurance mailed a certified letter to Great American notifying them that service had been accepted on their behalf. A copy of that letter was filed with the Clerk of Court for Chesterfield County on February 9, 2018.

On March 5, 2018, Plaintiff filed a Motion for Entry of Default by Clerk, which requested that judgment be entered for the liquidated amount, $136,000.00, outlined in the breach of

contract action only. In addition, Plaintiffs requested that an Order of Default be entered on the remaining unliquidated damage causes of action and that a hearing be set before a duly appointed Special Referee. An Entry of Default was entered by the Clerk and filed on March 5, 2018.

A Judgment for Plaintiffs and Order for Default and for Hearing on Damages was filed by Honorable Paul M. Burch on March 22, 2018. The Judgment on the liquidated amount was against both Defendants in the sum of $136,000.00, jointly and severally. A default judgment was also entered on the unliquidated amount, which Order also ordered that a hearing be held to determine same.

This Judgment/Order was mailed to Thomas Higgins, Senior Counsel for the Defendant, Great American. A Motion to Vacate Default Judgment under S.C.R.C.P. Rule 60 was served upon Plaintiffs' counsel on April 13, 2018. The basis for this Motion, as stated in the Motion, is that the judgment should be set aside upon the grounds that the default judgment was the result of mistake, inadvertence or excusable neglect and that Plaintiff would not be prejudiced by vacating the default judgment. S.C.R.C.P., Rule 60.

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The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge. *Harbor Island Owners' Ass'n v. Preferred Island*

Props., Inc., 369 S.C. 540, 544, 633 S.E.2d 497 (2006). The trial court's decision will not be disturbed on appeal absent a clear showing of an abuse of that discretion. *Mitchell Supply Co., Inc. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct.App.1988). An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support. *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct.App.1997).

Once a default judgment has been entered, a party seeking to be relieved must do so under Rule 60(b), SCRCP. The standard for granting relief from a default judgment under Rule 60(b) is more rigorous than the "good cause" standard established in Rule 55(c). *Ricks v. Weinrauch*, 293 S.C. 372, 374, 360 S.E.2d 535, 536 (Ct.App.1987). Rule 60(b) requires a more particularized showing of "mistake, inadvertence, excusable neglect, surprise, newly discovered evidence, fraud, misrepresentation, or other misconduct of an adverse party." Rule 60(b), SCRCP. The different standards under the two rules underscore the clear intent to make it more difficult for a party to avoid a default once the court has entered a judgment, which carries greater finality. The Defendant's Motion in this case, as it relates to the judgments that have been entered against them for

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$136,000.00 on the liquidated claim and for unspecified damages on the unliquidated claim, is pursuant to Rule 60(b).

The movant in a Rule 60(b) motion has the burden of presenting evidence proving the facts essential to entitle him to relief. See 49 C.J.S. Judgments § 297, at 545 (1947) ("The party who seeks to have a judgment opened or set aside must assume the burden of proving the facts essential to entitle him to the relief asked."); 46 Am.Jur.2d Judgments § 780, at 940 (1969) ("The general rule is that no court has authority to open or vacate a judgment without some material evidence to support the claims on which the application for relief depends."); cf. 7 J. Moore & J. Lucas, Moore's Federal Practice p 60.24, at 60-217 (1990). 403 S.E.2d 127. *Bowers v. Bowers*, 304 S.C. 65, 403 S.E.2d 127 (1991).

The Defendant, Great American, alleges that it should be allowed out of default based upon mistake, inadvertence or excusable neglect. The Defendant contends that they looked at the Amended Complaint and determined that the referenced annuity was not issued by them, and that they were named as a party Defendant by mistake or confusion on the part of the Plaintiff because that has happened to this Defendant in the past. Great American is an insurance company and should have been diligent enough to recognize that the insured referenced in the Amended

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Complaint was their insured and that Great American was a proper party to this lawsuit.

Even if this Defendant had been named by mistake, the insurance company and its attorneys should know that the proper method for addressing the matter would be to file an Answer and/or a Motion to Dismiss, not to simply ignore it. Simply checking Great American's computer system and determining that the annuity number was not one of their system's number, without even bothering to check the name of the insured is careless and is not an excuse sufficient to set aside a default judgment. Ignoring the matter altogether is even more careless. I find that Great American certainly should not be rewarded for such careless behavior. See *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 456 S.E.2d 897 (1995)("Losing a summons and complaint within the corporation is not a ground to set aside a default judgment"); *Ricks v. Weinrauch*, 293 S.C. 372, 360 S.E.2d 535 (Ct. App. 1987)(leaving the suit papers in the trunk of defendant's car would not, alone meet the requisite showing for good cause).

"[A] party has a duty to monitor the progress of his case." *Goodson v. Am. Bankers Ins. Co.*, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct.App.1988). "It is always a matter of regret that a party should not have his day in court. However, ... [where] the appellant was duly served with the summons and complaint, [i]t

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was his duty to answer the complaint. ... [Therefore,] [h]e must suffer the consequence of his failure to answer." *Williams v. Ray*, 232 S.C. 373, 383-84, 102 S.E.2d 368, 373 (1958); see also *Bissonette v. Joseph*, 170 S.C. 407, 170 S.E. 467 (1933) (refusing to vacate a default judgment on the ground of excusable neglect where the defendant in an automobile collision case forwarded the summons to his insurance carrier which then failed to serve notice of appearance until after the plaintiff had obtained judgment).

The undersigned finds that the case at bar is very similar to the facts in *Ledford v. Pennsylvania Insurance Company*, 267 S.C. 671, 230 S.E.2d 900 (1976). In *Ledford,* the Defendant was properly served with the Summons and Complaint. The insurance company admittedly saw the Summons and Complaint but took no action and failed to answer and was subsequently held in default. The Defendant's explanation for "excusable negligence or mistake" is that the Defendant's in-house counsel assumed the matter had been referred to local counsel and that an Answer had been filed. The attorney had reviewed the file and made a mistaken assumption. The Court reversed the granting of the Defendant's Motion to Vacate Default and noted "even a cursory examination of these papers would readily have disclosed the fallacy of the assumption which he made. We are of the opinion that (this conduct) under these circumstances was unreasonable,

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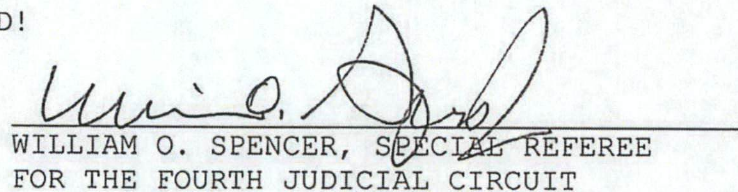
there being a total absence of any justification for the conclusion he reached". In other words, the court clearly found that the Defendant's mistaken assumption was not a sufficient excuse to allow the court to set aside a default judgment. The same is true in this case. The Defendant, Great American, mistakenly assumed that they had been named as a party Defendant by mistake. Instead of hiring local counsel to deal with it, they instead ignored it. I do not believe this conduct is a sufficient basis upon which to vacate the default judgment.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the Defendant's Motion to Vacate Default Judgment is hereby denied.

IT IS FUTHER ORDERED ADJUDGED AND DECREED that a damages hearing will be set on the Plaintiffs' unliquidated claims.

AND IT IS SO ORDERED!



WILLIAM O. SPENCER, SPECIAL REFEREE
FOR THE FOURTH JUDICIAL CIRCUIT

Chesterfield, South Carolina
September 13, 2018

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Wanda C. Miles
CLERK OF COURT
CHESTERFIELD COUNTY,S.C.

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A True Copy Attest
Wanda C. Miles
CLERK OF COURT C.P. & G.S.
CHESTERFIELD COUNTY, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
MAR 28 2019
SC Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
In the Court of Common Pleas

Paul M. Burch, Circuit Court Judge
William O. Spencer, Special Referee

Case No. 2017-CP-13-804

First Citizens Bank & Trust Company and Sadie M. Murvin, ... Respondents,

v.

Miranda Libby Murvin, a/k/a Miranda Libby Murvin Zimmerman
and Great American Life Insurance Company, ... Defendants.

Of whom Great American Life Insurance Company is ....Appellant.

PROOF OF SERVICE

This is to certify that I, Elizabeth Kurtz, a paralegal with the law firm Willoughby & Hoefer, P.A., has caused to be served this day one (1) copy of **Defendant's Reply in Support of its Motion for Leave to File a Supplemental Motion for Relief with the Trial Court** under Rule 60(b), SCRP by depositing the same in the U.S. Mail to the following:

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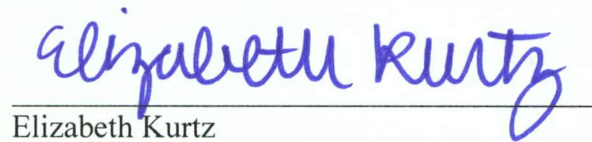

Elizabeth Kurtz

Columbia, South Carolina
This 28th day of March 2019

WILLOUGHBY & HOEFER, P.A.

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MAR 28 2019
SC Court of Appeals

March 28, 2019

VIA HAND DELIVERY
Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: *First-Citizens Bank & Trust Company et al. v. Miranda Libby Murvin et al.*, Appellate Case No. 2018-001808

Dear Ms. Kitchings:

Enclosed, please find two separate documents of Appellant Great American Life Insurance Company for filing, as detailed below:

1. Consistent with Rule 210, SCACR, please find sixteen (16) copies of the **Record on Appeal**, including one unbound copy.

2. Consistent with Rule 240, SCACR, please find the original and seven (7) copies of Great American Life Insurance Company's **Reply in Support of its Motion for Leave to File a Supplemental Motion for Relief with the Trial Court** under Rule 60(b), SCRCP.

I would appreciate your acknowledging receipt of both of these filings by file stamping the respective extra copy of each that is enclosed and returning it to me via our courier. By copy of this letter, I am serving counsel of record for Respondents and enclose a Proof of Service to that effect.

If you have any questions or if you need any additional information, please do not hesitate to contact me.

With best regards, I am,

Respectfully,

WILLOUGHBY & HOEFER, P.A.

Chad Johnston

Enclosures.

cc: Warren C. Powell, Jr., Esquire (via U.S. Mail w/ enclosure)
Chelsea J. Clark, Esquire (via U.S. Mail w/ enclosure)
Benjamin N. Thompson, Esquire (via U.S. Mail w/ enclosure)
Samuel A. Slater, Esquire (via U.S. Mail w/ enclosure)
Kevin M. Barth, Esquire (via U.S. Mail w/ enclosure)