STATE OF SOUTH CAROLINA

COUNTY OF MARION

IN THE COURT OF COMMON PLEAS

TWELFTH JUDICIAL CIRCUIT

James Washington, Jr.,
Plaintiff,

v.

Crystal Denise Dudley,
Defendant.

C/A No.: 2018-CP-33-00534

ORDER SETTING ASIDE DEFAULT

This matter comes before the Court by way of Defendant's Motion to Set Aside Default. The Court finds that for good cause shown the default entered in this case should be set aside and Defendant allowed to answer.

FACTUAL BACKGROUND

The present case was filed by the Plaintiff on July 26, 2018. This case arose from an automobile accident which occurred in Mullins, South Carolina on January 30, 2018. Plaintiff's affidavit of service shows that the Defendant received service of process on July 31, 2018 at her home and that she was personally served. Defendant failed to answer the complaint within the thirty (30) day time period allowed by Rule 12(a), SCRCP. Plaintiff moved for entry of default on September 4, 2018. The entry of default was signed on September 13, 2018 by the Honorable William H. Seals, Jr., Circuit Judge. The entry of default was filed with the Marion County Clerk of Court's Office on September 18, 2018. Defendant filed her answer September 19, 2018 and subsequently filed an amended answer on September 24, 2018. Defendant then moved on

December 11, 2018 for the entry of default signed by Judge Seals to be set aside. The Court convened a hearing on this motion on April 15, 2019 at the Marion County Courthouse.

ANALYSIS

The first matter for the Court is which standard of review is appropriate for this case. Defendant urges that this case be reviewed under the "good cause" standard found in Rule 55(c), SCRCP. However, Plaintiff argues that because the entry of default was denominated an Order of Default, and was signed by a Circuit Judge, that the standard for default judgments found in Rule 60(b), SCRCP, is appropriate. The Court finds that the appropriate standard is "good cause" as found in Rule 55(c).

As a first matter the Court must turn to language of the rule itself. Rule 55(c) states "For good cause shown the court may set aside an entry of default and, if a judgment by default has been entered, may likewise set it aside in accordance with Rule 60(b)." "In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes." *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2003). "If a rule's language is plain, unambiguous, and conveys a clear meaning, interpretation is unnecessary and the stated meaning should be enforced." *Id.* Rule 55(c) is clearly unambiguous, the standard to be used is determined by whether the order in question is an entry of default or a default judgment. Plaintiff contends that the order of default is a default judgment because it was signed by a Circuit Judge and not the Clerk of Court. The Court finds this argument unpersuasive. "The entry of default is an official recognition of the failure to appear or otherwise respond, but is not a judgment by default. Judgment by default is not properly entered until damages are determined." *Beckham v. Durant*, 300 S.C. 329, 331, 387 S.E.2d 701, 703 fn. 2

(Ct. App. 1989).[1] It is undisputed here that no damages were set or determined by Judge Seals in his September 13 order. Therefore, as this is not a default judgment, but an entry of default, the Court will proceed under the "good cause" standard found in Rule 55(c).

"The decision whether to set aside an entry of default or a default judgment lies solely within the sound discretion of the trial judge." *Sundown Op. Co., Inc. v. Intedge Indus., Inc.*, 383 S.C. 601, 606, 681 S.E.2d 885, 888 (2009). The standard under Rule 55(c) requires that the moving party give an explanation why the setting aside of the default would serve the interests of justice. *Id* at 607, 681 S.E.2d at 888. "Once a party has put forth a satisfactory explanation for the default, the trial court must also consider: (1) the timing of the motion for relief; (2) whether the defendant has a meritorious defense; and (3) the degree of prejudice to the plaintiff if relief is granted." *Id* at 607-08, 681 S.E.2d at 888 (*citing Wham v. Shearson Lehman Bros., Inc.,* 298 S.C. 462, 465, 381 S.E.2d 499, 501-02 (Ct. App. 1989)). Counsel for the Defendant has indicated to the Court that reason for the delay was some confusion on the part of the insured and the insurance company as to the complaint. The Court finds that this, when considered in light of the *Wham* factors, is a satisfactory explanation. As to the *Wham* factors the Court finds that each points towards setting aside the default in this case. Turning to the first factor the Court finds that Defendant was diligent once it found that default had been entered. The Defendant made her answer the day after the entry of default, and moved to set aside the default less than three months later. The Court finds that this factor weighs in favor of setting aside the default. As to the second factor the Court finds that Defendant does indeed have a meritorious defense. "To establish a meritorious defense, a party is not required to show an absolute defense." *Mictronics,*

[1] Indeed the Court of Appeals in *Beckham* made it clear that it make no difference whether the entry of default is signed by a judge or by the clerk of court. In *Beckham* the entry of default was actually made by a Circuit Judge after a hearing.

Inc. v. S.C. Dep't of Revenue, 345 S.C. 506, 511, 548 S.E.2d 223, 226 (Ct. App. 2001). "A meritorious defense need not be perfect nor one which can be guaranteed to prevail at a trial. It need be only one which is worthy of a hearing or judicial inquiry because it raises a question of law deserving of some investigation and discussion or a real controversy as to essential facts arising from conflicting or doubtful evidence." *Graham v. Town of Loris*, 272 S.C. 442, 453, 248 S.E.2d 594, 599 (1978). After a careful review of the factual allegations in the Plaintiff's complaint the Court finds that the Defendant has at least one meritorious defense, namely comparative negligence. Therefore, the second *Wham* factor weighs in favor of setting aside the default. Finally, turning to the third factor the Court finds that the Defendant will suffer no prejudice. Plaintiff argues that he will suffer prejudice because he will be forced to litigate the cause of the accident. Plaintiff cites to *Hill v. Dotts*, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001), for this proposition. The Court finds that *Hill* is distinguishable in this case. In *Hill* the Court of Appeals was considering a default judgment, not an entry of default. As the Court of Appeals recognized the factors are construed more liberally when considering an entry of default as opposed to a default judgment. *Id.* at 309-10, 547 S.E.2d at 897 fn. 1. If the Court were to consider the Plaintiff prejudiced simply because the Plaintiff will now have to contest liability this would weigh against setting aside a default in almost all cases. Such a position would be inconsistent with the general policy of South Carolina to resolve issues on the merits instead of on technicalities. *Mictronics*, 345 S.C. at 511, 548 S.E.2d at 226. Therefore, the Court finds that Plaintiff would suffer no appreciable prejudice in this case and finds that the third *Wham* factor weighs in favor of setting aside the default.

CONCLUSION

Therefore, for the reasons stated above the Court finds that Defendant's Motion to Set Aside Default should be **GRANTED.**

AND IT IS SO ORDERED!

April 17, 2019
Marion, South Carolina

/s/ Michael G. Nettles
Presiding Judge, 12th Judicial Circuit

Marion Common Pleas

Case Caption: James Washington Jr VS Crystal Denise Dudley

Case Number: 2018CP3300534

Type: Order/Other

So Ordered

s/ The Honorable Michael G. Nettles #2140