

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

**RECEIVED**

**May 26 2020**

**SC Court of Appeals**

Appeal from Cherokee County  
Cherokee County Court of Common Pleas  
Hon. Judge R. Keith Kelly, Circuit Court Judge, Presiding

---

2017-CP-11-00330

---

Gladys B. Potter.....Respondent,

Versus

Donald Moody and Shayan Investments Gaffney, LLC, Defendants,  
of whom Shayan Investments Gaffney, LLC is.....Appellant.

---

**INITIAL REPLY BRIEF OF APPELLANT**

---

*Scarlet B. Moore*

---

Scarlet B. Moore, #72534  
Attorney for Appellant  
P.O. Box 17615  
Greenville, S.C. 29606  
(864) 214-5805

May 26, 2020

**TABLE OF CONTENTS**

Table of Contents..... 2

Table of Authorities ..... 3

Statement of Issues on Reply ..... 4

Argument

**I. THE APPEAL IN THIS MATTER WAS FILED TIMELY AND IS PROPERLY BEFORE THE APPELLATE COURT..... 5-6**

**II. THE RESPONDENT INCORRECTLY ASSERTS THAT THERE ARE NO ISSUES PRESERVED FOR APPELLATE REVIEW... 6-7**

**III. THIS ACTION IS BARRED AGAINST THE APPELLANT AS HE IS NOT LIABLE UNDER THE LAW FOR THE INJURIES OF THE RESPONDENT.....7**

**IV. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN AWARDING ACTUAL AND PUNITIVE DAMAGES IN THIS CASE.....7**

Conclusion..... 8

**TABLE OF AUTHORITIES**

*Rules*

S.C. Appellate Court Rule 203(b)(1).....5  
S.C. Rule of Civil Procedure 5(b)(1).....5, 6  
S.C. Rule of Civil Procedure 77(d).....6

*Cases*

Belue v. Belue, 276 S.C. 120, 276 S.E.2d 295 (1981)..... 5  
Jackson v. Midlands Human Res. Ctr., 296 S.C. 526, 529,  
374 S.E.2d 505, 507 (Ct.App.1988)..... 6, 7  
Renney v. Dobbs House, Inc., 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981).....6  
Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012).....6, 7  
Wells Fargo Bank, N.A. v. Fallon Props S.C., LLC, 810 S.E.2d 856,  
422 S.C. 211 (S.C. 2018)..... 6

## STATEMENT OF ISSUES ON REPLY

- I. IS THE APPEAL IN THIS MATTER TIMELY AND PROPERLY BEFORE THE APPELLATE COURT?
- II. ARE THERE ISSUES PROPERLY PRESERVED FOR APPELLATE REVIEW IN THIS MATTER?
- III. IS THE APPELLANT LIABLE UNDER THE LAW FOR THE INJURIES OF THE RESPONDENT?
- IV. DID THE TRIAL COURT ABUSE ITS DISCRETION AND ERR AS A MATTER OF LAW IN AWARDED ACTUAL AND PUNITIVE DAMAGES AGAINST THE APPELLANT?

## ARGUMENT

### I. THE APPEAL IN THIS MATTER WAS FILED TIMELY AND IS PROPERLY BEFORE THE APPELLATE COURT.

The Appeal in this matter was filed timely and is properly before the Appellate Court. As an initial matter, the Respondent relies on the wholly inapplicable case of *Belue v. Belue*, 276 S.C. 120, 276 S.E.2d 295 (1981) – an appeal of a family court action for divorce on the ground of habitual drunkenness—for the proposition that this appeal is not properly before the Appellate Court. As addressed in Argument II, below, the appeal of the damages in this case is properly before the Court pursuant to the case law cited by the Respondent in brief, and the Respondent’s argument has no merit.

Further, the appeal in this case was filed timely. Rule 203(b)(1) of the S.C. Appellate Court Rules requires an Appellant to file a notice of appeal within thirty (30) days after receipt of written notice of the entry of the Order or Judgment. The Appellant received written notice of the entry of the present Judgment on July 22, 2019, in conjunction with receipt of a companion lawsuit filed by the Respondent, which is not the subject of this Appeal. The Respondent presents absolutely no evidence to refute the assertion of the Appellant. Further, the references by Respondent to Rule 5(b)(1) of the S.C. Rules of Civil Procedure are misplaced in the face of the consideration of the timeliness of an Appeal. In fact, the mailing date pursuant to Rule 5(b)(1) is not the trigger for the timeliness of an appeal – the actual receipt of the written notice is what triggers the timeframes for an appeal pursuant to Rule 203(b)(1), referenced above. The Respondent references her Certificate of Service of the Order and Judgment by Mail, which was filed in the Cherokee County Court of Common Pleas on March 8, 2018. However, the Order

and Judgment was allegedly mailed by certified mail, return receipt requested, with no certified receipts or “green cards” attached to the filing. (Certificate of Service by Mail.) This filing by Respondent does not establish that the Appellant received the notice of the entry of the Order or Judgment on a particular date – which is required by the Appellate Court rules. Certainly, if the mailing date referenced in Rule 5(b)(1) were the definitive trigger for an appeal, the S.C. Supreme Court would not have elaborated in great detail the importance of adherence to the language in Rule 203(b)(1) in the seminal case of Wells Fargo Bank, N.A. v. Fallon Props S.C., LLC, 810 S.E.2d 856, 422 S.C. 211 (S.C. 2018), regarding email service of an order as triggering the timeframe to appeal a Judgment. Lastly, the Order was not served upon the Appellant pursuant to Rule 77(d) of the S.C. Rules of Civil Procedure (which is applicable to Clerks and Courts), and therefore the Respondent’s argument on this point lacks merits. This appeal is properly before the Appellate Court, and was timely filed, and this Honorable Court should reject the argument of Respondent in brief.

**II. THE RESPONDENT INCORRECTLY ASSERTS THAT THERE ARE NO ISSUES PRESERVED FOR APPELLATE REVIEW.**

The Respondent stipulates in the recitation of the Standard of Review in her brief that the issue of the amount of liability imposed by a trial court *is properly* at issue in a matter in which the Appellant is in default. A defendant in default admits liability but not the damages as set forth in the prayer for relief. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597 (Ct. App. 2012). Renney v. Dobbs House, Inc., 275 S.C. 562, 566, 274 S.E.2d 290, 292 (1981). The amount of damages in a default action must be proved by the preponderance of the evidence. *Id.*; see Jackson v. Midlands Human Res.

*Ctr.*, 296 S.C. 526, 529, 374 S.E.2d 505, 507 (Ct.App.1988) (“A judgment for money damages must be warranted by the proof of the party in whose favor it is rendered.”). There is a difference between a defendant being declared in default and subsequently having judgment entered against him for damages. Although a defendant may be in default as to liability, the award of damages must be in keeping not only with the allegations of the complaint and the prayer for relief, but also with the proof that has been submitted. *Jackson*, 296 S.C. at 529, 374 S.E.2d at 506 (citations omitted). *Solley.*, 397 S.C. 192, 723 S.E.2d 597 (S.C. App. 2012) Therefore, the Respondent’s argument lacks merit and should be rejected by this Honorable Court.

**III. THIS ACTION IS BARRED AGAINST THE APPELLANT AS HE IS NOT LIABLE UNDER THE LAW FOR THE INJURIES OF THE RESPONDENT.**

The Appellant references Argument III in the Appellant’s Brief as a Reply to the Respondent’s argument regarding the liability of the Appellant for the damages to the Respondent.

**IV. THE TRIAL COURT ABUSED ITS DISCRETION AND ERRED AS A MATTER OF LAW IN AWARDING ACTUAL AND PUNITIVE DAMAGES IN THIS CASE.**

The Appellant references Arguments I & II in the Appellant’s Brief as a Reply to the Respondent’s argument regarding the actual and punitive damages awarded to Respondent in this case.

## CONCLUSION

The Appellant Shayan Investments Gaffney, LLC respectfully prays that this Honorable Appellate Court will reverse the Order of the Trial Court, Honorable R. Keith Kelley, presiding, awarding actual and punitive damages against the Appellant, reject the arguments furthered in the Respondent's Brief, and for any and all relief that the Court deems necessary and appropriate.

Respectfully submitted,



---

Scarlet B. Moore, Esq., #72534  
Attorney for Appellant, Shayan Investments Gaffney, LLC  
P.O. Box 17615  
Greenville, S.C. 29606  
(864) 214-5805  
(864) 752-0930 (FAX)

May 26, 2020.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**RECEIVED**

**May 26 2020**

Appeal from Cherokee County  
Cherokee County Court of Common Pleas  
Hon. Judge R. Keith Kelly, Circuit Court Judge, Presiding

**SC Court of Appeals**

2017-CP-11-00330

Gladys B. Potter.....Respondent,

Versus

Donald Moody and Shayan Investments Gaffney, LLC, of whom Shayan Investments Gaffney, LLC is the.....Appellant.

**CERTIFICATE OF SERVICE**

I certify that on this date, May 26, 2020, I served a copy of the **Appellant's Initial Reply Brief** on opposing counsel to their respective **E-MAIL** addresses, pursuant to the Order of the Supreme Court Appellate Case No. 2020-000447(g)(3).

William G. Rhoden  
[Rhoden@winter-rhoden.com](mailto:Rhoden@winter-rhoden.com)



Scarlet B. Moore, #72534  
Attorney for Appellant Shayan Investments  
P.O. Box 17615  
Greenville, S.C. 29606  
(864) 214-5805 / (864) 752-0930 (FAX)

Greenville, South Carolina  
May 26, 2020.

Scarlet B. Moore

*Attorney at Law*

P.O. BOX 17615  
GREENVILLE, SC 29606  
(864) 214-5805  
(864) 752-0930 (FAX)

May 26, 2020

**RECEIVED**

**May 26 2020**

**SC Court of Appeals**

**FILED VIA ONE DRIVE:**

Jenny Abbott Kitchings  
Clerk, The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, S.C. 29211

**RE: Gladys B. Potter, Respondent versus Donald Moody and Shayan Investments Gaffney, LLC, of whom Shayan Investments Gaffney, LLC is the Appellant  
2017-CP-11-00330**

Dear Madam Clerk,

Enclosed please find the Appellant's Initial Reply Brief and a Certificate of Service.  
With kind regards, I remain

Very Truly Yours,



Scarlet B. Moore, Esq.  
Counsel for Appellant

SBM/s

Cc: William G. Rhoden, Esq. (via email)